

STATE OF WASHINGTON  
BEFORE THE MARINE EMPLOYEES' COMMISSION

In Arbitration  
Before Chairman John D. Nelson

INLANDBOATMEN'S UNION  
OF THE PACIFIC on behalf of  
T. CHISWELL,

Grievant,

v.

WASHINGTON STATE FERRIES,

Respondent.

MEC Case No. 23-02

DECISION NO. 350 – MEC

DECISION AND AWARD

**APPEARANCES**

Schwerin, Campbell and Barnard, attorneys, by *Judith Krebs*, appearing for and on behalf of the Inlandboatmen's Union of the Pacific and T. Chiswell.

Christine Gregoire, Attorney General, by *David Slown*, Assistant Attorney General, appearing for and on behalf of the Washington State Ferries.

THIS MATTER came on regularly before John D. Nelson of the Marine Employees' Commission (MEC) when the Union, Inlandboatmen's Union of the Pacific filed its grievance on behalf of employee Tim Chiswell designated case No. MEC 23-02. There followed an attempt to settle the grievance which failed and the matter was heard in arbitration on September 20, 2002.

IBU has certified that the grievance procedures in the IBU/WSF collective bargaining agreement have been utilized and exhausted. IBU has also certified that the Arbitrator's decision

shall not change or amend the terms, conditions or application of said collective bargaining agreement, and that the Arbitrator's award shall be final and binding.

Following the hearing in this matter, briefs were timely filed by the parties.

### **NATURE OF THE PROCEEDING**

The Inlandboatmen's Union of the Pacific brought this matter before the Marine Employees' Commission to decide a grievance relating to the proper payment of overtime to employee Tim Chiswell, a ticket taker working a scheduled tour of 10-hour shifts at the Fauntleroy terminal. While working his scheduled shift which began at 1430 (2:30 pm) on August 24, and ended at 0030 (12:30 am) on August 25, Chiswell became aware of a medical emergency which caused a backup because of congestion at the terminal. Chiswell was authorized to work an extra hour to facilitate the loading of the next vessel, and departed from his duties at 0130 (1:30 am), traveled to his home in Enumclaw, and returned for his next scheduled shift at 0830 (8:30 am) on the 25<sup>th</sup>. Chiswell was paid one hour of overtime at the double time rate for working from the scheduled end of his shift on August 25, 2001 until his departure, one hour later.

### **THE ISSUES**

The issue presented for arbitration is whether employee Chiswell was correctly denied overtime pay under the terms of the collective bargaining agreement between the parties.

### **POSITIONS OF THE PARTIES**

#### **IBU**

The IBU contends that the grievant herein was denied overtime pay when he worked an extended shift following his scheduled 10-hour shift which ended at 12:30 am on August 25, 2001. The IBU views the extension of Chiswell's shift as a separate, new shift, and posits that

following this shift, his next regular shift was a third shift which brought into play the requirements of Section 11.02 of the collective bargaining agreement. IBU further argues that Chiswell did not have the requisite 6 hours rest envisioned by Section 11.02 in that his residence was of a sufficient distance from his assigned duty post such that when travel to his home was deducted from his time off following his completion of the prior duty period, he had less than 6 hours of rest. IBU contends that because of the travel time involved, Chiswell did not get his 6 hours of rest and was therefore entitled to triple time for the next scheduled shift of 10 hours.

### **WSF**

The WSF takes the position that grievant Chiswell was authorized to stay an hour past his scheduled shift completion. This entitled him to an hour of overtime pay for which he was compensated at the contractual double time rate. WSF further maintains that because Chiswell was not entitled to travel time pay, any attempt to deduct the time it took him to travel to his home and return for his next scheduled shift is irrelevant. Finally, WSF asserts that the circumstances giving rise to Chiswell working the extra hour past his normal scheduled shift completion on August 25, 2001 can not be viewed as working a separate shift, and that accordingly, when he reported for his scheduled shift at 8:30 am on August 25, 2001 this was the second shift for Chiswell, and the extra hour worked following his scheduled first shift was merely an extension of his first shift.

### **DISCUSSION**

Each side to this dispute views the solution to be straightforward and easy to reach. In the WSF's view, an hour of overtime was incurred, and paid at the contractual double time rate. In IBU's view, the authorizing of Chiswell to stay and help the next scheduled crew load the vessels, comprised the creation of a separate shift which brought the contractual rule at 11.02

into play and required payment of triple time for the next scheduled shift. WSF contends that the extra hour authorized and worked can not be considered the equivalent of a shift, but even if it could be viewed that way, Chiswell still had seven hours between the end of the extended shift on the 25<sup>th</sup> of August and his next scheduled work shift. WSF asserts that it would be inappropriate to exclude travel time from the seven hours between work periods because WSF does not dictate where employees should live, and Chiswell was not a relief employee who is contractually entitled to travel time.

Neither party presented evidence to show a practice, which gives definition to the application of Rule 11.02 in circumstances here. It is clear to the arbitrator that payment of triple time overtime is a rarity. Mike Anderson, Terminal Operations Manager for the South Region of WSF testified that only once in his career of 27 years with WSF has he been paid at the triple time rate, that being occasioned by working 27 hours straight without relief.

What constitutes a shift seems to the arbitrator to be an integral part of the solution to this problem. Whether the hour worked by Chiswell in the early morning of August 25<sup>th</sup> was an extension of his previous shift or a separate shift, it clearly was not scheduled. However, once it was authorized, it became a requirement that Chiswell meet, or face discipline for leaving his duty station. In resolving this issue, the contract language found at Rule 12.01 is instructive. That section defines a shift for part-time and on-call employees as four (4) hours of straight-time pay for each shift worked. Rule 11.02 appears to control what happens to an employee required to work beyond the end of the regular workday, and references such requirement as an extension of the work shift, and defines the overtime requirements. In this context, the arbitrator views the 0030 to 0130 time worked as an extension of Chiswell's shift, not the working of a separate

second shift. By this interpretation, the triple time requirements found in Rule 11.02 would not be triggered.

WSF argues that even if Rule 11.02 came into play, the Employer has no control over where employees choose to live, and that to grant this grievance would be to allow all similarly situated employees to reside at distances that would require the payment of triple time whenever such employees were held over their scheduled first shift.

The contract language in the relevant section of Rule 11.02 states:

Employees required to work more than one (1) shift without a break shall be paid as follows:

The first scheduled shift shall be paid at the straight time rate; the second shift shall be at the overtime rate; the third shall be at triple the straight time rate, unless the employee has had a minimum of an [sic] six (6) hour break preceding the third shift excluding travel time. Sixteen (16) hours including uncompensated time off between work shifts shall constitute the first and second shift.

...

The arbitrator notes that neither party is contending that Chiswell was entitled to travel time and pay in the position he has bid. He chose the shift configuration with two ten-hour shifts interrupted by an eight-hour rest break. He was held over after he raised the issue of the congestion and loading problem caused by the medical emergency. Chiswell is to be commended for being such a responsible employee. Having said that, it is the conclusion of the arbitrator that the triple-time provisions of the contract have not been triggered. Weighing heavily in coming to this conclusion is the recognition that the claimed driving time to Fauntleroy from Enumclaw is an hour and fifteen minutes. Thus at no time when Chiswell worked the ten-hour shifts separated by an eight-hour break would he get six hours of rest when the travel time was excluded. Any extension of a shift for any reason, if it were characterized as a separate shift, would incur the requirements of triple-time for any employee similarly situated.

Thus it would appear, based upon the language of the contract rule, that Chiswell worked an extended shift on the early morning of August 25, 2001 and was properly compensated for the one-hour extension at the double time rate. It also follows that the shift worked commencing at 0830 on August 25, 2001 was properly paid at the straight time rate.

### **FINDINGS OF FACT**

1. Inlandboatmen's Union of the Pacific and Washington State Ferries are parties to an extended collective bargaining agreement covering terms and conditions of employment.

2. Tim Chiswell is a terminal department employee holding an on-call, part-time position at WSF. During the time at issue in this proceeding, Chiswell was assigned to ticket taker duties at the Fauntleroy terminal.

3. At the conclusion of his shift at 0030 on August 25, 2001, Chiswell was authorized to work an additional hour, and thus concluded his duties and left the job at 0130.

4. Chiswell was paid double-time for the additional hour worked.

5. Chiswell was scheduled to work at Fauntleroy at 0830 on August 25, 2001. He reported for work at the scheduled time.

6. Chiswell resided in Enumclaw, Washington, which required a drive of an hour and fifteen minutes each way.

7. Chiswell was paid for his full shift on August 25, 2001 at the straight-time rate.

8. When the travel time to his residence is excluded from the time between his second shift ending and the commencement of his third shift, Chiswell had less than a six-hour break.

9. Chiswell's hourly rate as a ticket taker was \$18.23 at the straight time rate.

## CONCLUSIONS OF LAW

On the basis of the Record before it, the Findings of Fact and the contractual and legal analysis, the Marine Employees' Commission makes the following Conclusions of Law:

1. The parties' 1999-2001 contract remains in full force and effect past its stated expiration date by operation of law (RCW 47.64.170).
2. The Marine Employees' Commission has jurisdiction over the parties and the dispute (RCW 47.64.280). This case is properly before the Marine Employees' Commission for decision.
3. Rule 11.02 of the collective bargaining agreement controls payment of overtime.
4. Grievant Chiswell worked an extra hour in addition to his normal scheduled shift that began at 2:30 pm on August 24, 2001 and was scheduled to end at 12:30 am on August 25, 2001.
5. In working this extra hour, Chiswell was working an extended shift.
6. WSF did not violate Rule 11.02 when it failed to pay Chiswell triple time for his scheduled ten-hour shift on August 25, 2001.

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**AWARD**

The Marine Employees' Commission hereby determines that the Washington State Ferries did not violate the contract when it refused to pay triple time to Tim Chiswell for ten hours of work performed on his scheduled shift on August 25, 2001.

As a result of the above findings, the Marine Employees' Commission hereby Orders that the grievance filed herein by the Inlandboatmen's Union be dismissed.

DATED this \_\_\_\_ day of December 2002.

MARINE EMPLOYEES' COMMISSION

\_\_\_\_\_  
JOHN NELSON, Arbitrator

Concurrence:

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JOHN SULLIVAN, Commissioner

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JOHN BYRNE, Commissioner