

STATE OF WASHINGTON
BEFORE THE MARINE EMPLOYEES' COMMISSION

INLANDBOATMEN'S UNION
OF THE PACIFIC on behalf of
THOMAS HOBBS et al.,

Grievant,

v.

WASHINGTON STATE FERRIES,

Respondent.

MEC Case No. 45-02

DECISION NO. 398 - MEC

DECISION AND AWARD

APPEARANCES

Schwerin, Campbell and Barnard, Attorneys, by *April Upchurch*, appearing for Inlandboatmen's Union of the Pacific and Thomas Hobbs.

Christine Gregoire, Attorney General, by *David Slown*, Assistant Attorney General, appearing for Washington State Ferries.

NATURE OF THE PROCEEDING

The Inlandboatmen's Union of the Pacific (IBU) brought this matter before the Marine Employees' Commission with a grievance alleging that Thomas Hobbs had claimed and Washington State Ferries (WSF) had failed to pay, overtime in accordance with Section 31.05 of the collective bargaining agreement between IBU and WSF. In due course, the Marine Employees Commission scheduled the matter for a settlement conference and thereafter noticed the matter for arbitration hearing. The hearing was held on October 29, 2002 before MEC Chairman John D. Nelson, who acted as arbitrator in this matter. Both parties subsequently filed post-hearing briefs.

WSF moved for dismissal upon the opening of the hearing, arguing that IBU had entered into a settlement wherein it had agreed to, *inter alia*, withdraw the grievance. Positions on this motion were solicited and the arbitrator deferred ruling until such time as the parties addressed the issue more completely.

The record in this matter consists of the pleadings of the parties, the notices from the Marine Employees' Commission setting settlement discussions and hearing, the transcript of the arbitration proceeding and the briefs of the parties.

ISSUES

While the parties did not stipulate to the issues statement, the Union proposed a Statement of Issues in its brief that appears to summarize the issues presented for arbitration:

1. Does the MEC have jurisdiction over the instant grievance, or did the IBU withdraw its grievance and waive its right to hearing pursuant to the parties' settlement agreement dated June 10, 2002?
2. Did WSF violate the Contract by failing to pay the grievants overtime for training scheduled from 8:30 a.m. to 4:30 p.m. on Wednesday, April 26, 2000 and by failing to pay the grievants scheduled shift pay per Section 1.11? If so, what is the appropriate remedy?
3. Is the original settlement agreement reached by the IBU and WSF valid, and if so, did the WSF breach that agreement by failing to pay grievant Hobbs an additional eight hours straight time?

POSITIONS OF THE PARTIES

Inlandboatmen's Union of the Pacific (IBU) takes the position that grievant Thomas Hobbs and four of his co-workers on the Kingston D-watch were entitled to overtime pay for attending WSF required training on their day off. IBU further argues on a procedural basis that

settlement discussion between IBU representative Conklin and WSF spokesman Manning settled the matter, with WSF agreeing to pay Hobbs an additional eight hours of straight time pay. While IBU maintained that the amount due was eight hours of overtime pay, it allegedly agreed to the lesser amount for settlement purposes.

Washington State Ferries (WSF) argues that the collective bargaining agreement between the parties controls this situation. Rule 31.05 in particular deals with employer-provided training for all IBU-represented employees. WSF further argues that Hobbs may not be paid for the shift he did not work on the occasion in dispute. At the time of the arbitration hearing in this matter, WSF vigorously advanced a position that the merits of the grievance had been subjected to settlement discussions wherein IBU agreed to withdraw the grievance as a result of the settlement discussions. WSF argued that MEC lacked jurisdiction to proceed in light of the settlement undertakings. This argument is not developed in the WSF brief, and will not be part of the analysis in this decision, which will deal solely with the merits of the grievance.

DISCUSSION

Thomas Hobbs worked the Kingston “D” watch. His shift, commonly called the graveyard shift, commenced at 8:30 p.m. (2030) on Wednesday, and ended at 4:30 a.m. (0430) the following morning. Hobbs’ workweek was Wednesday to Sunday, ending at 4:30 a.m. on Monday morning. WSF scheduled training for Hobbs and his fellow crewmembers, which required that they receive such training away from the vessel to which they were assigned. The training took place on April 26, 2000, and Hobbs and his crew were paid for the training at their regular straight-time rate of pay. Upon completion of the training, Hobbs and crew did not report to their regularly scheduled watch, but rather were relieved by WSF, to avoid contractual

overtime requirements. In reliance upon his interpretation of the contractual agreement, Hobbs and his crewmembers sought pay for the shift from which they had been relieved. WSF denied the claims and the grievance followed.

Both parties rely on Section 31.05 of the collective bargaining agreement to support their respective positions in this matter. Additionally, IBU presents testimony from Hobbs wherein he asserts that the dispatcher, a person identified as Sandy by Hobbs, informed him that he was entitled to overtime pay for attending training on his scheduled day off. While there is controversy over whether the dispatcher to whom Hobbs spoke was “Sandy” or one of several other dispatchers, and whether dispatchers have any supervisory authority binding on WSF, it does not appear necessary to resolve those differences in that Hobbs colored his exchange with the dispatcher by informing her that he had been scheduled for the training session on his day off. Whether or not April 26, 2000, was a day off for Hobbs and his crew is the very critical point upon which resolution of this case rests.

The relevant contract sections which are part of the record herein and which serve as the basis for the respective parties’ positions are as follows:

1.11 YEAR AROUND POSITIONS. The term “year around position” or “year round assignments” is eighty (80) hours of scheduled straight time work within a two (2) week work period, which is expected to exist, during periods of the lowest level of scheduled service.

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31.05 WSF has the option to provide training at the work site of the employee or an alternate location. The procedures below are adopted for governing pay practices relative to WSF sponsored training.

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- E. Employees required to attend training classes on their day or days off shall be paid the overtime rate of pay.

Hobbs and his fellow crewmembers on the Kingston/Edmonds “D” watch, worked a regular workweek of five eight hour shifts, commencing at 8:30 p.m. (2030) on Wednesday, and

concluding at 4:30 a.m. (0430) on Thursday. This pattern was repeated Thursday, Friday, Saturday and Sunday, with the workweek officially ending at 4:30 a.m. on the following Monday. The “D” watch was then off until the next workweek commenced, at 8:30 p.m. on the following Wednesday. This particular watch, to which Hobbs was permanently assigned, was scheduled for training in April 2000. All of the crewmembers assigned this watch were properly notified under the provisions of the collective bargaining agreement that they would report for off-vessel training, to be held at the Kingston Yacht Club facility on April 26, 2000 commencing at 8:00 a.m. The training was held, Hobbs and the “D” watch crew were paid for eight hours work, although the training lasted a shorter period of time, and the WSF relieved the entire crew to avoid overtime payment. The “D” watch crew did not work again until the next scheduled watch, at 8:30 p.m. on April 27. Following the training, Hobbs and each of the four other permanent crew claimed eight hours pay for their scheduled shifts on April 26, and eight hours overtime pay for attending training class. Each was denied their pay order claim, and Hobbs filed a grievance seeking the overtime pay. The Union and Hobbs maintain that the grievance includes all of the permanent “D” watch crew, consisting of Tom Tilton, Tom Lybeck, Scott Freiboth, and Bob Peters. At the time of the hearing, pay orders for the crewmembers other than Hobbs were not available, however, the record was left open to receive the pay orders upon their production. Pay orders reflect that each of the crewmembers made a claim identical to that of Hobbs.

In assessing the merits of the grievance we need to look to the practice of the parties. In the facts here present, there is no claim of a practice that would favor the IBU’s interpretation of the workday/day off issue. Former IBU Regional Director, Pete Jones testified that when the training provisions of the contract were added, it was the Union’s view that what the prohibition

against training employees on their day or days off without incurring overtime pay meant, was that an employee who attended training prior to the scheduled time of his/her next watch, was on time off. WSF, on the other hand steadfastly maintains that this has not been the case, rather, that they carefully schedule training such as that involved in this matter to commence at a time where employees have had their time off. Thus, in the view of WSF, scheduling the graveyard watch for training only occurred after they had realized more than 48 hours time off. In other words, the WSF considered the definition of a day off to be 24 hours. There is no contractual support for this interpretation that has been brought to the arbitrator's attention. The IBU contends that it had attempted on various occasions, including the negotiations surrounding the Rule 31.05 discussions, to establish a definition of "day." IBU advanced the notion that a day should be defined as midnight to midnight, but that WSF always held out for a 24-hour clock definition. Neither party prevailed in obtaining its particular definition of "day." Neither party presented evidence of any contractual definition of "day" or "day off". At some point IBU appeared to be claiming that the early call out provisions for overtime might support its position. Rule 11.03 of the collective bargaining agreement states:

Employees called to work prior to commencing their regular scheduled shift shall receive the overtime rate of pay in increments of one (1) hour for early call-out. Early call-outs shall not be on a daily or regularly scheduled basis. This rule does not apply to WSF training (Rule 31.05).

It thus appears that rule 11.03, by its own terms, is not applicable to training situations as we have here.

It is clear that each of the "D" watch crew was required to report for training some twelve hours prior to the normal commencement of their scheduled shift. While the IBU would contend that a better practice here would have been to conduct the training for the "D" watch crew members on the vessel during their normal scheduled shift, WSF had to deal with the constraints

imposed by the necessity of providing training through an outside contractor, and determined that it was best performed at an off-site facility. All “D” watch individuals were paid the same pay as if they had worked that scheduled shift. None was paid penalty overtime pay for suffering the inconvenience of reporting for work twelve hours early. Was this early start an intrusion into their day off?

Pay order sheets are set up in columnar fashion showing columns for each day of the month. WSF employees complete the pay order by inserting the hours worked under the column which has the corresponding date at the top of the column. It is instructive to note that pay orders for the Kingston/Edmonds “D” watch uniformly list the hours under the date on which the shift begins. Thus, even though the workday commenced at 2030 and finished at 0430 the following calendar day, all hours are claimed under the column heading for the day in which work commenced. This timekeeping method would seem to support the notion that April 26, 2000 was the workday for “D” watch employees. In the view of the arbitrator, there is no support for the notion that the workday did not start until 2030 on the 26th, and that any hours worked prior thereto would qualify as overtime hours pursuant to Rule 31.05 (C)

While IBU further argues that WSF, at a minimum should be required to pay 8 hours of straight time because that is what was agreed to in settlement discussions between the parties, the arbitrator cannot accept this argument. It is far from clear what discussions between the parties provided. Both IBU and WSF have differing views of what was agreed to and what conditions were to be met that would trigger any settlement. It is the arbitrator’s view that settlement broke down for reasons not fully understood, but in any event cannot serve as the basis for a remedy herein.

In summary, IBU has not established the merit in its grievance. It is not within the arbitrator's province to modify the contract between the parties. There is no contractual requirement that would provide for overtime pay to the grievants who were subjected to the April 26, 2000 training. WSF appears to have paid the grievants properly when it paid them for attending the training at their regular rates, and relieved them from working their regularly scheduled shift on that day. In so doing, WSF did not require the grievants to work on their day off. Having thus concluded, the following conclusions of law are entered.

CONCLUSIONS OF LAW

1. The Marine Employees' Commission has jurisdiction over this case.
2. The 1999-2001 contract between the parties remains in full force and effect by operation of law although its stated expiration date has gone past (RCW 47.64.170).
3. There is no basis in contract or past practice that would require the payment of overtime or early call out time to grievant Hobbs or to his crewmembers, Tilton, Lybeck, Freiboth, or Peters.
4. The settlement between the parties was never finalized.
5. The grievants were properly paid for attendance at WSF provided training on April 26, 2000.

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ORDER OF DISMISSAL

On the basis of the above discussion and Conclusions of Law, the Marine Employees' Commission hereby orders the grievance in this matter dismissed in its entirety.

DATED this _____ day of January 2004.

MARINE EMPLOYEES' COMMISSION

JOHN NELSON, Arbitrator

Approved By:

JOHN SULLIVAN, Commissioner

JOHN BYRNE, Commissioner