

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

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|---------------------------|---|------------------------|
| DONALD DOWNING, |) | MEC CASE NO. 2-83 |
| |) | |
| Grievant, |) | DECISION NO. 4-D - MEC |
| |) | |
| vs. |) | |
| |) | DECISION AMENDING |
| WASHINGTON STATE FERRIES, |) | AND AFFIRMING |
| |) | DECISION NO. 4 MEC |
| Respondent. |) | AND ORDER |
| _____ |) | |

On June 29, 1984, the Marine Employees' Commission (MEC) ordered dismissal of a grievance which Donald Downing had filed against Washington State Ferries (WSF) on the grounds that Grievant Downing had failed to utilize the procedures set out in Rule 15.02 of the Agreement between WSF and the Inlandboatmen's Union of the Pacific (IBU) (Decision No. 4 MEC).

Grievant Downing filed a Motion for Reconsideration on July 9, 1984, which MEC scheduled for expedited hearing on July 24, 1984, in order to re-assume jurisdiction, thereby preserving Downing's right to appeal. After Downing did not appear at the hearing, MEC denied his Motion under WAC 316-65-535 (Decision No. 4-A MEC).

On or about November 9, 1984, Grievant filed the Second Motion for Reconsideration with an affidavit, swearing that he had not received notice of the July 27, 1984 hearing.

MEC granted the Second Motion for Reconsideration after discovery that serving the notice to the parties for the July 27, 1984 hearing had not complied with RCW 47.64.260. MEC notified the parties that reconsideration of the MEC decisions would be restricted

to the terms of Hall v. Seattle, 24 Wn. App. 357, 602 P. 2nd 366 (1977). No fraud, mistake or determinative misconception of fact was found under Hall v. Seattle. Accordingly, MEC rescinded Decision No. 4-A MEC, but dismissed Downing's Second Motion for Reconsideration on June 6, 1985 (Decision 4-B MEC).

Grievant Downing filed an appeal in the Superior Court of Washington, Kitsap County (Docket No. 85-2-00800-8), which held MEC's interpretation of Hall v. Seattle, *ibid.*, was improper. The Court remanded Downing v. WSF to MEC with the further observation that MEC should have established the respective burdens of proof in considering WSF's affirmative defense, in the original hearing, that Downing had failed to utilize the contractual remedies available to him. The Court specified that WSF had the burden of proof, but Downing had the burden of coming forward to offset such proof.

In compliance with the remandment, on June 17, 1986 MEC granted the Motions for Reconsideration filed on July 9 and November 9, 1984 respectively, and ordered a hearing limited to Grievant Downing's use of or failure to use the grievance procedures specified in Rule 15.02 of the WSF/IBU Agreement, and did establish the respective burdens of proof (Decision No. 4-C MEC). The parties were so notified, and on October 15, 1986, Commissioner Stewart held the hearing.

As in each prior hearing, IBU was notified but did not participate in this hearing. However, Richard H. "Hank" Hood, retired Field Representative of IBU, did appear as a witness at the request of Grievant Downing.

Chairman Haworth and Commissioner Kokjer did not participate in the hearing, but all three commissioners have read the entire record.

POSITIONS OF THE PARTIES

POSITION OF GRIEVANT

Grievant Downing contended that, after filing his grievance with "Hank" Hood, IBU, he

checked several times with Hood. He was informed that Hood was “working on it.” Finally, Hood advised Downing that he had gone as far as he could go and that Downing should file a grievance with the Public Employment Relations Commission (PERC). Hood’s testimony supported Downing’s statements. Hood testified that he had promptly filed Downing’s grievance with the WSF Personnel Office. After the grievance was rejected, Hood asked the Personnel Officer several times to reconsider, both on the telephone and in person.

Grievant further contended that the WSF/IBU Agreement is ambiguous, that the second step of the grievance procedure did not have to precede the third step, i.e., filing the grievance with PERC (or MEC). Grievant relied on Washington State Ferry System (PERC Case No. 3497-A-81-298, Decision No. 1445-MRNE) as a precedent decision allowing a greater period of time than specified in the WSF/IBU Agreement. Grievant also relied on Washington State Ferry System (PERC Case No. 3252-A-81-263, Decision No. 1277-A-MRNE) to show that he could file his grievance with PERC without completing the procedures specified in Rule 15.02, WSF/IBU Agreement. Grievant argued that he had repeatedly, but unsuccessfully, asked for a conference. Through his attorney Downing asked WSF for a “second step” grievance conference even after the first arbitration hearing and still wants such a conference.

POSITION OF RESPONDENT

WSF presented uncontradicted testimony that the Personnel Officer, David Rice, had promptly considered the grievance, and rejected it for alleged lack of merit. During subsequent inquiries by “Hank” Hood, Rice answered that the grievance lacked merit, because a PERC arbitrator had previously held that seniority cannot accrue for time not worked. Rice insisted that neither IBU nor Downing ever asked for a conference prior to the first MEC arbitration hearing. No minutes were kept, because no conference was held.

WSF cited Byrd Plastic Inc. (51 LA 79 (1968)) that each of the parties (Union and Employer) is responsible for the language in the agreement and that the arbitrator’s

function is to interpret the language and not to rewrite the agreement. WSF also cited Fibreboard Paper Products Corp. (39 LA 691 (1962)) in arguing that procedural aspects of grievances must be strictly construed. WSF further cited the Fibreboard arbitrator as agreeing that the parties may mutually agree to vary procedures, but they may not ask the arbitrator to do so (ibid., at 695). Thus, WSF argued, Downing must bear the burden of failing to utilize the contractual procedures.

ISSUE AND REMEDY

The parties did not stipulate the issue. It was set forth by MEC in Decision No. 4-C MEC and in the notice to the parties:

Did Grievant Downing use or fail to use the grievance procedures set forth in Rule 15.02 of the WSF/IBU Agreement?

The remedy was neither stipulated nor set forth by MEC prior to the hearing on the foregoing issue.

The Marine Employees' Commission, having read and considered the entire record including the hearing transcript, exhibits and briefs, now enters the following findings of fact.

FINDINGS OF FACT

1. Grievant Downing was employed by WSF as a Ticket Taker at Lofall/Southpoint on Hood Canal in June, 1980.
2. On December 18, 1981 Grievant applied for promotion to Ticket Seller at the Winslow/Seattle or Kingston/Edmonds Terminal.
3. On April 19, 1982 WSF offered Grievant a temporary promotion to Ticket Seller.

4. Grievant discussed with his immediate supervisors (Terminal Agents) his concern over possible loss of seniority in the event of a reduction in force concomitant with the re-opening of the Hood Canal Bridge while he was still a temporary Ticket Seller. On their advice that his accumulated seniority as a Ticket Taker would be “frozen” while he worked as a Ticket Seller, Grievant decided to decline the temporary promotion to Ticket Seller. When he was again offered a temporary promotion, he declined again. Each time he asked that his application for a permanent promotion be kept intact.
5. When the Hood Canal Bridge re-opened, he learned that those other Ticket Takers, who had accepted temporary promotions to Ticket Seller, either had permanent status (seniority status) as Ticket Seller or returned to Ticket Taker with their accumulated seniority in the Terminal Department intact.
6. On or about October 25, 1982 Grievant Downing filed a written grievance with Field Representative “Hank” Hood of IBU on the grounds that his supervisors had given him erroneous advice, causing him loss of promotion, loss of higher wages, and extra travel expenses.
7. Rule 15.02 of the 1980-1983 WSF/IBU Agreement governs the procedures to be followed in the event that an employee considers himself unjustly treated:

RULE 15 – DISPUTES

15.01

15.02 In the event of a controversy or dispute arising either out of the interpretation of this Agreement or because an employee considers himself or herself unjustly treated, the aggrieved party shall, within thirty (30) calendar days after the facts and circumstances actually become known, mail or personally present his claim concerning the matter in writing to the Union and the Employer, together with such pertinent facts as will substantiate his claim.

Grievances shall be pursued according to the following steps:

- (1) The Union Delegate will attempt to resolve the issue immediately. If the issue is not resolved within three (3) days, it will be referred to the Union for step 2 processing.
- (2) A conference shall be arranged as soon as reasonably possible between the Union and the Employer. Each may appoint one (1) representative, with full authority to settle such controversy or dispute. The aggrieved party may attend all hearings.
- (3) In the event the representatives fail to agree within thirty (30) days, it shall be their duty to refer such controversy or dispute to the Public Employment Relations Commission, established under R.C.W. Chapter 47.64. The orders and awards of the Public Employment Relations Commission shall be binding upon any employee, or employees, or their representatives, and upon the Employer.

15.03 ...

8. IBU promptly forwarded Downing's grievance to the WSF Personnel Officer, David Rice.
9. Rice's testimony that he promptly rejected the grievance for lack of merit and returned it to IBU is contradicted.
10. From time to time thereafter "Hank" Hood asked Rice about settling the Downing Grievance. Rice responded that the grievance lacked merit, because PERC had ruled in a different case that seniority could not be accrued for time not worked.
11. No log was kept by WSF of Downing's grievances; nor did either Rice or Hood keep any records. MEC must depend on statements based upon the personal recollections of "Hank" Hood and David Rice.
12. Past practice indicated that the Step 2 conferences have been initiated by the Union, although WSF sometimes asked for a conference for the purpose of getting more information before acting on the initial grievance.

13. Past practice indicated that Step 2 conferences invariably were held in the office of WSF Industrial Relations Manager, with the grievants and the Union invariably present, and minutes always kept.
14. No evidence was presented to show that either IBU or Downing ever asked WSF for a Step 2 conference, nor that such Step 2 conference was held. Nor was Downing ever notified of a conference which he could attend in accordance with Rule 15.02(2).
15. Neither IBU nor WSF, either jointly or separately, referred the Downing grievance to PERC in accordance with Rule 15.02(3). Instead on March 17, 1983 "Hank" Hood informed Downing that he had taken the grievance as far as he could and advised Downing to file a complaint with PERC, which Downing did on the same day.
16. Seniority of Ticket Takers and Ticket Sellers is governing by Rule 19 of the 1980-1983 WSF/IBU Agreement.

RULE 19 – SENIORITY AND ASSIGNMENTS

19.01 Statement of Adherence to Seniority

The Employer recognizes the principle of seniority in the administration of promotions, transfers, layoffs and recalls. In the application of seniority under this Rule, if an employee has the necessary qualifications and the ability to perform in accordance with the job requirements, seniority shall prevail.

In reducing or increasing personnel in the respective departments, seniority shall govern. When layoffs or demotions become necessary, the last employee hired in a classification shall be the first laid off or demoted. When employees are called back to service, the last laid off or demoted in a classification shall be the first restored to work in that classification.

19.02 Establishing Seniority

Seniority in each department will be established on the date the employee is assigned to regular year round employment in that department.

Exception: In the Terminal Department, there shall be three seniority groups as set forth in Rule 19.03(B). (Emphasis added)

19.03 Seniority Departments

19.03 A – Departments shall be; Deck Department, Engine Department, Terminal Department, and Information Department.

19.03 B – For seniority purposes, classification of Terminal Department personnel shall fall into three (3) categories as follows:

- | | | | |
|-----|--------------------------|-----|-------------------------|
| (1) | Auto Ticket Sellers | (2) | Auto Ticket Takers |
| | Passenger Ticket Sellers | | Passenger Ticket Takers |
| | | | Dock Watchmen |
| | (3) Terminal Agents | | Terminal Attendants |

19.03 C

19.04

19.05

19.06 Filling of Vacancies

Employees interested in year-round positions or temporary promotions must notify the Employer and the Union in writing of the positions they wish to fill. The Employer shall maintain a file of all such requests and, upon receipt of such requests, shall immediately notify in writing the employee submitting such request of its receipt. These requests will be kept on file for a period of one (1) year after receipt and then will be destroyed unless the individuals indicate in writing their desire to extend the requests each subsequent year. When a permanent opening occurs in any classification of the department involved, the Employer shall notify the Union in writing, and the Union shall post the notice at the Union hall for thirty (30) days. The Employer may fill the job with a new employee during this thirty (30) day period. If the Employer does not fill the job with a new employee and if the person previously holding that job fails to return during this thirty (30) day period, the most senior year-round employee in the department involved who has a request on file for that job and is available shall be assigned. If there are no available year-round employees having requests on file, the most senior available employee who does not have a year-round assignment shall be assigned to the job. This rule shall not apply to the filling of any openings in the positions of Terminal Agent, Information Clerk I, A/B-Bos'n, or shoreside maintenance employees.

If the regular employee returns from an approved absence after the job is filled under the above procedure, all affected employees will return to their previous assignments. When a regular employee accepts a temporary position, the employee may return to the employee's former job at the completion of the temporary job. (Emphasis added.)

19.07....

19.08....

19.09....

17. Terminal Agents are recognized by WSF management as “on-site supervisor(s) and certainly part of that would be representing management policy,” as stated in uncontradicted testimony by Assistant Terminal Manager Carol Andrews.
18. Terminal Agent Patrick Whalen (through a written statement introduced by Grievant, marked as Exhibit 1, but with admittance withheld by Commissioner Stewart) had advised Grievant in “mid-summer 1982 that if a ticket taker was promoted to a full-time selling position; his taking seniority would stop accruing at that time. ...(He) advised Don Downing that he should keep this in mind before deciding to take any selling shifts that might be available at the beginning of the summer.”
19. Terminal Agent Larry Reynolds’ testimony indicate difference in seniority accrual, depending upon the purpose:

BY MR. DOWNING

Q. IF I HAD, SAY FOR EXAMPLE, SIX MONTHS TICKET SELLING SENIORITY AND SIX MONTHS TICKET TAKING SENIORITY WOULD SOMEONE – WAS IT YOUR UNDERSTANDING THAT SOMEONE WITH SIX MONTHS AND ONE DAY OF TICKET TAKING SENIORITY WOULD BE OFFERED A PERMANENT POSITION AHEAD OF ME?

BY MR. REYNOLDS

A. ... I AM NOT SURE EXACTLY THE SITUATION YOU’RE TRYING TO PORTRAY HERE. HOWEVER, IF YOU ARE REFERRING TO JOB RETENTION, IT’S MY UNDERSTANDING AT THE TIME THAT IT WAS COMPANY SENIORITY, OR TOTAL DEPARTMENTAL SENIORITY. AT THE TIME THAT THE PERMANENT—OR SELLING POSITION—BEING DEMOTED FROM SELLING POSITION TO BACK DOWN IN LOWER CLASSIFICATION, THAT YOU TAKE THE LOWEST SENIOR POSITION AVAILABLE AND THEN ARE ABLE TO BID ON ANOTHER POSITION USING THE TOTAL TIME WITHIN THAT CLASIFICIATION WHICH WOULD BE JUST YOUR TOTAL TICKET TAKER TIME; THAT WAS MY UNDERSTANDING AT THAT TIME. SO, IN OTHER WORDS, WHAT I AM SAYING WAS THAT YOU DIDN’T HAVE –YOU DIDN’T ACCRUATE BOTH SELLING AND TAKING SENIORITY AT THE SAME TIME.

BY MR. DOWNING

Q. SO IF THERE WASN’T A FULL-TIME TICKET TAKING POSITION AVAILABLE TO ME I WOULD HAVE TO ACCEPT A PART-TIME; BY THE SAME TOKEN IF

THERE WASN'T A FULL-TIME TICKET SELLING POSITION AVAILABLE TO ME, OR A FULL-TIME TICKET TAKING POSITION, I WOULD HAVE TO ACCEPT A PART-TIME, OR LAYOFF, OR SOMETHING LIKE THAT; IS THAT CORRECT?

BY MR. REYNOLDS

A. COULD YOU REPEAT THAT AGAIN, DON, PLEASE.

BY MR. DOWNING

Q. SEE IF I CAN CLARIFY IT IN MY OWN MIND FOR A SECOND.

MY UNDERSTANDING WAS THAT IF YOU TOOK A TICKET SELLING JOB YOUR TAKING SENIORITY FROZE AND WHEN THE BRIDGE WAS COMPLETED YOU WOULD BE GIVEN A JOB BASED ON SENIORITY—STRICTLY ON SENIORITY, SO IF YOU HAD TICKET SELLING SENIORITY—SAY SIX MONTHS TICKET SELLING SENIORITY, AND 18 MONTHS TICKET TAKING SENIORITY—YOU WOULD BE GIVEN AN OPPORTUNITY TO BID ON A JOB AS A TICKET TAKER WITH 18 MONTHS SENIORITY, OR TICKET SELLER WITH SIX MONTHS SENIORITY. AND IF I HAD NOT WORKED AS A TICKET SELLER, I WOULD HAVE OPPORTUNITY TO BID ON THE TICKET TAKING JOB WITH 24 MONTHS SENIORITY?

BY MR. REYNOLDS

A. YES, I AGREE WITH THAT AS FAR AS BIDDING FOR A SHIFT. WE ARE NOT TAKING (SIC) ABOUT JOB RETENTION.

BY MR. DOWNING

Q. WELL, BIDDING FOR A SHIFT IN THIS CASE MEANS ANYTHING FROM A TWO WEEK PART-TIME SHIFT TO FULL-TIME EMPLOYMENT; IS THAT CORRECT?

BY MR. REYNOLDS

A. WELL, I THOUGHT WE WERE TALKING ABOUT FULL-TIME SHIFTS RIGHTNOW.

BY MR. DOWNING

Q. WELL, NO I AM TALKING – WHEN—

BY MR. REYNOLDS

A. (INTERPOSING) YEAR ROUND ASSIGNMENTS/

BY MR. DOWNING

Q. YES. IF THERE ARE NO YEAR ROUND ASSIGNMENTS AVAILABLE, RIGHT, YOU JUST CHOOSE FROM WHAT OTHER SHIFTS ARE LEFT AND BID IN ORDER OF SENIORITY?

BY MR. REYNOLDS

A. SURE

BY EXAMINER STEWART

Q. JUST TO MAKE SURE, MR. DOWNING, THAT I UNDERSTAND. YOUR QUESTION AND THE RESPONSES—I THINK I HEARD YOU SAY THAT IF THE PERSON HAS FULL-TIME STANDING AS A TICKET TAKER, BUT THEN HE PROMOTES TO TICKET SELLER, THAT DURING THE TIME THAT PERSON WORKS AS A TICKET SELLER HE COULD NOT CONTINUE TO ACCRUE SENIORITY AS A TICKET TAKER, BUT ONLY AS A TICKET SELLER DURING THAT PERIOD OF TIME?

BY MR. REYNOLDS

A. THAT WAS MY UNDERSTANDING AT THAT TIME—THAT WAS THE BEST INFORMATION I HAD.

BY EXAMINER STEWART

Q. AND THAT WAS THE QUESTION YOU INTENDED—THE ANSWER TO THE QUESTION YOU INTENDED TO GET/

BY MR. DOWNING

A. THAT'S CORRECT, YES.

Later, during cross-examination by counsel for WSF, Reynolds testified as follows:

BY MR. MCINTOSH

Q. NOW I WANT TO TRY TO CLARIFY WHAT YOU DID AND DIDN'T TELL MR. DOWNING. YOU DIDN'T TELL HIM THAT IF HE WENT TO WORK FOR SOME PERIOD OF TIME AS A SELLER THAT THAT WOULD CAUSE HIS TICKET TAKERS OR HIS TERMINAL DEPARTMENT—LET'S SAY—YOU DIDN'T TELL HIM THAT IF HE WENT TO WORK FOR SOMETIME AS A TICKET TAKER THAT THAT WOULD CAUSE HIS SENIORITY DATE TO CHANGE, DID YOU?

BY MR. REYNOLDS

A. NOT FOR THE DATE TO CHANGE, NO.

BY MR. MCINTOSH

Q. AND YOU MENTIONED THAT FOR PURPOSES OF BIDDING ON JOBS, THAT IT WAS YOUR UNDERSTANDING AT THAT TIME THAT YOU COULDN'T ACCURATE SENIORITY IN TWO DEPARTMENTS AT THE SAME TIME; IS THAT CORRECT?

BY MR. REYNOLDS

A. THAT'S CORRECT.

BY MR. MCINTOSH

Q. NOW DID YOU TELL MR. DOWNING THAT HIS JOB RETENTION RIGHTS WITHIN THE TERMINAL DEPARTMENT WOULD BE LOST DURING THE PERIOD OF TIME THAT HE WORKED AS A SELLER? YOU DIDN'T TELL HIM THAT, DID YOU/

BY MR. REYNOLDS

A. NO.

20. Terminal Agent Mike Anderson testified, in pertinent part:

... IF YOU TOOK THE SELLING POSITION I BELIEVE I TOLD YOU THAT WHEN THAT CLOSED AND YOU HAD TO BE DEMOTED BACK, YOU WOULD GO BY YOUR SELLING SENIORITY; THEN YOU WOULD GO DOWN TO A TAKING POSITION AND YOU WOULD GET YOUR TAKING POSITION BASED ON YOUR TAKING SENIORITY.

21. The record is silent as to whether Grievant asked for further seniority advice from higher WSF authority or if he asked any IBU representative for advice.

The Marine Employees' Commission, having considered the foregoing findings of fact, now enters the following conclusions of law.

CONCLUSIONS OF LAW

1. The Marine Employees' Commission (MEC) has jurisdiction in this matter under the provisions of Rule 15 of the 1980-1983 WSF/IBU Agreement, as effected by and under the provisions of Chapter 47.64 RCW, and in accordance with the remandment by the Superior Court of Washington, Kitsap County (Docket No. 85-2-00800-8).
2. This proceeding is governed by Rule 15.02 of said WSF/IBU Agreement and by the terms of the remandment of the Superior Court, supra.
3. MEC may not change or amend the terms of the 1980-1983 WSF/IBU Agreement, except that "Public Employment Relations Commission" in Rule 15.02(3) should be read "Marine Employees' Commission" (Chapter 15, Laws of 1983).
4. When IBU forwarded Grievant's complaint to WSF, and WSF promptly rejected and returned said complaint to IBU for alleged lack of merit, "Step 1" of the contractual grievance was complete (Rule 15.02(1), WSF/IBU Agreement).
5. The language in Rule 15.02(1), unmistakably indicating that an issue which is unresolved at the first step "will be referred to the Union for step 2 processing (emphasis added), " clearly places the burden of demanding and/or arranging a "Step 2" conference on IBU.
6. On the basis of Findings of Fact No. 13 and 14, MEC must conclude that no such "Step 2" conference occurred in the Downing matter in accordance with Rule 15.02.

7. Washington State Ferry System (PERC Decision No. 1445 – MNRE, determining that the third step (referral of unresolved grievances to PERC (or MEC) under Rule 15.02(3) may occur more than thirty days after the Step 2 conference, is not relevant to this proceeding in which no “Step 2” conference occurred.
8. Washington State Ferry System (PERC Decision No. 1277-A-MRNE) (also cited by Grievant) is also not directly relevant to this proceeding. In that case PERC concluded that, because “IBU actions themselves being in dispute and IBU advice to (grievant0 to go directly to the Commission, the normal pursuit of the matter through the grievance procedure would have been a futile exercise.” In this case, IBU actions are not in dispute. However, instead of demanding a “Step 2” grievance conference in accordance with Rule 15.02(2), IBU Field Representative “Hank” Hood advised Grievant Downing to file his grievance with PERC. Applying PERC’s logic to Downing’s case, MEC in its reconsideration must conclude that Downing was deprived of the remedies in Rule 15.02 by “Hank” Hood’s failure to enforce those remedies and not because of failure on Downing’s part. In the interest of fairness, MEC should amend Decision No. 4 MEC by deleting Conclusion of Law No. 3.
9. MEC must conclude that deletion of Conclusion of Law No. 3 from Decision No. 4 MEC now requires MEC to examine and consider the grievance on its merits as presented by Grievant in the hearing held on March 12, 1984.
10. The statement by Terminal Agent Patrick Whalen, introduced by Downing, marked as Exhibit 1, and to which WSF objected as hearsay without opportunity to cross-examine, shall be admitted as evidence.
11. The statement by Terminal Agent Whalen and the testimony by Terminal Agent Mike Anderson indicate that their advice to Grievant was a true representation of Rule 19 as applied to the Terminal Department.

12. Although Terminal Agent Mike Anderson's testimony reflected, to some degree, WSF's argument based on past practice that seniority is accrued on the basis of total time in the Terminal Department and did not clearly reflect the Exception of the Terminal Department in Rules 19.02 and 19.03B, his purported understanding as cited in Finding of Fact No. 20 is congruent with those Rules.
13. If there is a difference between past or current seniority accruals in the Terminal Department from those specified in Rule 19, WSF/IBU Agreement, the specified "categories" of seniority accrual must prevail.
14. Grievant failed to prove that his decision not to accept a temporary promotion to Ticket Seller was based on faulty advice from his supervisors; therefore MEC should dismiss his grievance.

Based upon the foregoing findings of fact and conclusions of law, the Marine Employees' Commission now enters the following Order:

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. Decision No. 4 MEC dated August 10, 1984 is amended by deleting Conclusion of Law No. 3.
2. Decision No. 4 MEC as amended hereinabove and by Decision No. 4 – B MEC, dated June 6, 1985, is affirmed.
3. The grievance of Donald Downing v. Washington State Ferries is dismissed.

Dated at Olympia, Washington, this 20th day of January 1987.

MARINE EMPLOYEES' COMMISSION
/s/ DAVID P. HAWORTH, Chairman
/s/ LOUIS O. STEWART, Commissioner
/s/ DONALD E. KOKJER, Commissioner

