

STATE OF WASHINGTON
BEFORE THE MARINE EMPLOYEES' COMMISSION

In Arbitration Before
John R. Swanson

INLANDBOATMEN'S UNION
OF THE PACIFIC,

Grievant,

v.

WASHINGTON STATE FERRIES,

Respondent.

MEC CASE NO. 39-05

DECISION NO. 537-A-MEC

DECISION ON MOTION FOR
RECONSIDERATION
REGARDING INTEREST

APPEARANCES

Schwerin, Campbell, Barnard and Iglitzin, by *Robert Lavitt*, Attorney, appearing for the Inlandboatmen's Union of the Pacific.

Rob McKenna, Attorney General, by *David Slown*, Assistant Attorney General, appearing for the Washington State Ferries.

THIS MATTER came before the Marine Employees' Commission on February 1, 2008 when the Inlandboatmen's Union of the Pacific (IBU) filed a Petition for Reconsideration Regarding Award of Interest.

NATURE OF PROCEEDINGS

In MEC Case 39-05, the Commission found that WSF had not properly applied Rule 29.01 when the ferry ILLAHEE was ordered to change its tie-up position to Anacortes from Friday Harbor under the specific situation involved in Case 39-05.

The delay in the adjudication in the matter was in part because the parties had agreed to wait for a similar case submitted to arbitration by the Masters, Mates and Pilots (MM&P). The parties were of the opinion that the outcome of the MM&P arbitration

case may provide some guidance for the parties in the settlement of Case 39-05. The settlement of the MM&P arbitration did not result in the settlement of Case 39-05 and that issue was arbitrated by MEC.

The Arbitrator awarded payment to the employees represented by the IBU in accordance with Rule 29.01 of the Collective Bargaining Agreement (CBA).

Learned counsel for the union filed a Motion for Reconsideration for the payment of interest because of the protracted length of time employees involved were denied payment due them because of WSF's failure to apply Rule 29.01.

ISSUE

Is WSF required to calculate and include interest earned from the date of the violation of Rule 29.01 until the date of payment for those employees of K, L and M crews adversely affected by the violation?

RECORD BEFORE THE ARBITRATOR

The Commission has the following record before it:

1. Request for Grievance Arbitration, filed March 28, 2005 and docketed as MEC Case 39-05.
2. Notice of Scheduled Settlement Conference held June 9, 2005.
3. Notice of Continued Settlement Conference held July 14, 2005.
4. Notice of Scheduled Hearing, March 8, 2006—cancelled.
5. Notice of Continued Hearing, October 25, 2006—cancelled.
6. Notice of Continued Settlement Conference held March 2, 2007,
7. Notice of Continued Hearing, July 12, 2007—cancelled.
8. Notice of Continued Hearing, August 6, 2007.

9. Notice of Continued Hearing, September 26, 2007.
10. The IBU and WSF Collective Bargaining Agreement for the period July 1, 2003 through June 30, 2005.
11. Transcript of the hearing conducted on August 6 and continued on September 26, 2007.
12. Exhibits accepted into evidence from both parties during the two days of hearing.
13. Post-hearing briefs from both WSF and IBU, filed December 7, 2007, completing the record.
14. IBU's Motion for Reconsideration Regarding Award of Interest, filed February 1, 2008.

CONCLUSIONS FROM THE RECORD AND THE LAW

WAC 316-65-560, "grievance arbitration remedies," is not applicable in this case. It appears interest is appropriate in those cases involving an employee's reinstatement to employment following a period of unemployment and where an award of back pay is determined owed to the employee.

WAC 316-65-560 Grievance arbitration remedies.

If upon the preponderance of evidence the arbitrator or commission shall conclude that any person named in the complaint has committed acts or is committing acts which have resulted in injury, injustice, or violation of rights granted by rule, statute or collective bargaining agreement, then the arbitrator or commission shall state its findings of fact and conclusions of law and cause to be served on such person a remedial order requiring him or her to cease and desist from such acts and to take such affirmative and corrective action as necessary to restore grievant's rights and to effectuate the policies of RCW 47.64.005 and 47.64.006, including but not limited to reinstatement of employees with or without back pay. In calculating back pay orders, the following shall apply:

(1) Employee(s) reinstated to employment with back pay shall have deducted from any amount due an amount equal to any earnings such employee(s) may have received during the period of the violation in substitution for the terminated employment, calculated on a quarterly basis.

(2) Employee(s) reinstated to employment with back pay shall have deducted from any amount due an amount equal to any unemployment compensation benefits such employee(s) may have received during the period of the violation, and the department shall provide evidence to the commission that such amount has been repaid to the Washington state department of employment security as a credit to the benefit record of the employee.

(3) Money amounts due shall be subject to interest at the rate which would accrue on a civil judgment of the Washington state courts, from the date of the violation to the date of payment.

DECISION

IBU's Motion for Reconsideration Regarding the Award of Interest is denied.

DATED this 7th day of March 2008.

MARINE EMPLOYEES' COMMISSION

/s/ JOHN SWANSON, Arbitrator

Approved by:

/s/ JOHN SULLIVAN, Commissioner