

STATE OF WASHINGTON  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

DONALD DOWNING,	)	
	)	
Grievant,	)	
	)	MEC CASE NO. 2-83
v.	)	
	)	PERC NO. 4548-A-83-382
WASHINGTON STATE FERRIES,	)	
	)	
Respondent.	)	DECISION NO. 4 -MEC
	)	
_____	)	

DECISION

The grievant's complaint was dismissed by the Marine Employees' Commission because the grievant failed to utilize the grievance procedures set out in the contract.

THIS MATTER came on for hearing before Commissioner Louis O. Stewart, hearing examiner, on behalf of the Marine Employees' Commission. The hearing was held March 12, 1984. Petitioner appeared pro se, and Washington State Ferries was represented by Robert M. MacIntosh, Assistant Attorney General.

At the beginning of the hearing WSF raised the issue of whether the MEC should decide the merits when the grievance procedure had not been utilized. The hearing examiner took the issue under advisement, reserved ruling on the matter, and proceeded to hear the merits of the case.

The Marine Employees' Commission, having reviewed and considered the record, now enters the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The Grievant, Donald Downing, filed a complaint with the Washington State Public Employment Relations Commission (PERC) on March 17, 1983, alleging that certain employees of the Washington State Ferry System (WSF) had incorrectly advised him about the effect of seniority provisions in the contract.
2. PERC accepted the complaint for resolution. Before PERC was able to resolve the grievance, the Washington State Legislature repealed the authority of PERC over labor relations between WSF and its employees and transferred that authority to the Marine Employees' Commission.
3. Section 15.02 of the contract provides that an aggrieved party must, within 30 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. The agreement sets out the following provisions for pursuit of grievances:

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 RCW chapter 47.64. The orders and awards of the Public Employment Relations Commission shall be binding upon any employee, or employees, or their representative, and upon the Employer.

4. No evidence was presented to show that the grievant notified IBU and WSF of his claim prior to filing it with PERC as required by Rules 15.02 of the WSF/IBU agreement.
5. No grievance conference was ever held nor was there any attempt by representatives of the union and the employer to settle the matter before the grievant filed with the Marine Employees' Commission.

Based on the foregoing findings of fact, the Marine Employees' Commission adopted the following conclusions of law.

#### CONCLUSIONS OF LAW

1. The Marine Employees' Commission has been assigned jurisdiction in this matter under the provisions of RCW 47.64.150 and 47.64.280.
2. Rule 15.02 of the WSF/IBU agreement requires an aggrieved party to follow certain procedures for resolving disputes or controversies between the employer and the employee.
3. The grievant failed to utilize the procedures set out in Section 15.02, nor did he show cause for proceeding directly to PERC or the MEC with his complaint instead of attempting to utilize the grievance procedures in the contract.
4. The grievant's complaint should be dismissed.

Based on the foregoing findings of fact and conclusions of law, the Marine Employees' Commission makes the following decision.

#### DECISION

Donald Downing's grievance filed against the Washington State Ferries on March 17, 1983 is hereby dismissed.

Dated at Seattle, Washington, this 29<sup>th</sup> day of June, 1984.

MARINE EMPLOYEES' COMMISSION

/s/ DAVID P. HAWORTH, Chairman

/s/ DONALD E. KOKJER, Commissioner

/s/ LOUIS O. STEWART, Commissioner