

STATE OF WASHINGTON
BEFORE THE MARINE EMPLOYEES COMMISSION

WILLIAM GRIFFITH,)	
)	MEC CASE NO. 12-85
Grievant,)	
)	DECISION NO. 24 - MEC
v.)	
)	
WASHINGTON STATE FERRIES,)	FINDINGS OF FACT,
)	CONCLUSIONS OF LAW,
Respondent.)	AND ORDER
_____)	

David A. Strickland, Attorney at Law, appeared on behalf of William Griffith.

Kenneth Eikenberry, Attorney General, by Robert McIntosh, appeared on behalf of employer, Washington State Ferries.

INTRODUCTION

William Griffith, hereafter referred to as "Grievant", was discharged from his position as Ticket Taker with the Washington State Ferries (WSF) at Colman Dock, Seattle, Washington. The reported termination date was February 6, 1985, and a grievance was filed with the Marine Employees' Commission by Attorney David Strickland on December 20, 1985 on grievant's behalf. The complaint was "improper discharge."

Grievant was a member of the Inlandboatmen's Union of the Pacific (IBU) and as such worked under the terms of an existing agreement between that union and the WSF.

This matter came on for hearing before Commissioner Donald E. Kokjer, acting as assigned Hearing Examiner. Hearings were held in the "Spike" Eikum Conference Room, Colman Dock, Seattle, Washington, on March 19, 1986, September 3, 1986, and September 4, 1986.

IBU chose not to pursue the grievance beyond the predetermination hearing but indicated no resistance to Grievant seeking arbitration on his own.

Commission Chairman Haworth and Commissioner Stewart did not participate in the hearings, but all Commissioners have read the entire record, including the transcript of the hearings, the exhibits submitted and the briefs of the parties.

POSITIONS OF THE PARTIES

GRIEVANT'S POSITION

It is Grievant's contention that he was improperly discharged after eight and one-half years of employment with WSF. He asserts he has been punished for enforcing the rules, and that WSF supervisors were prejudiced against him. He claims that WSF bears the burden of proving by a preponderance of credible evidence that the termination was "for cause."

Grievant seeks re-instatement to his job as a Ticket Taker and an award of back wages from the time of his suspension, minus the delay caused by Grievant's request for postponement of hearing date.

RESPONDENT'S POSITION

WSF takes the position that a long series of Grievant's job performance problems was good cause for termination. WSF claims that all possible efforts were made to improve Grievant's job performance but to no avail.

WSF further contends that the rules of procedure under the labor agreement were followed and that all of the steps required under WSF/IBU Agreement Contract Rule 15.02 were taken in a timely manner.

ISSUES

- I. At issue is the question of whether grievant's conduct on the job warranted his dismissal.
- II. If not, then what shall be the remedy?

The Marine Employees' Commission having read the hearing transcript, examined the exhibits, and read the parties' briefs now enters the following findings of fact.

FINDINGS OF FACT

1. Grievant came to work for WSF in August of 1976 as an Auto Ticket Taker on Colman Dock, Seattle, Washington.
2. In October 1977 Grievant was suspended for 40 hours for an incident involving a confrontation with a WSF customer (EX 58-59).
3. Between October 1977 and May 3, 1983 Grievant was involved in eight incidents which evoked customer complaints, two incidents concerning improper performance of duties, and one incident described as "insubordination to supervisor" (EX 14 attachment).
4. On May 1, 1984 a formal written warning was directed to Grievant by the WSF Personnel Manager citing 17 incidents on 14 different days during the preceding eight months. This warning was noted as a "second step" in accordance with WSF Discipline Policy 02-R1.
5. Following additional difficulties with ferry patrons and fellow employees, grievant was suspended from June 26 to July 3, 1984 (EX 57) with the proviso that his return to work would depend on counseling by the State Employee Assistance Service. This counseling resulted in a one month medical leave of absence with return to work on August 7, 1984.
6. The record is silent as to whether Grievant filed a grievance(s) with IBU or WSF following the foregoing disciplinary actions.
7. After the medical leave (5 above) there was an initial improvement in job performance by Grievant.

8. On January 7, 1985, one of the supervisors most friendly to Grievant noted that “Griffith was rude again” to a ferry passenger. On January 27, 1985, Grievant got into an altercation with a woman and her husband which resulted in an angry and profane shouting match. On January 28, 1985, Grievant was suspended, pending investigation and resolution.
9. In accordance with Contract Dispute Provisions Rule 15.02 a pretermination hearing was held on February 4, 1985. The final determination was that the Grievant should be terminated.
10. Grievant received progressive discipline in accordance with published WSF disciplinary policy, but was given many opportunities to improve his performance at all stages of the process.
11. The record is replete with “strained relationships” between the Grievant and his co-workers. Similar problems were apparent between Grievant and many of the WSF customers.

Based upon the foregoing findings of fact, the Marine Employees’ Commission now enters the following conclusions of law.

CONCLUSIONS OF LAW

1. The Marine Employees’ Commission has jurisdiction over the parties and the subject matter. (Section 15.02 of the WSF/IBU Agreement; Chapter 47.64 RCW.)
2. The 1980-83 Agreement by and between Inlandboatmen’s Union of the Pacific and Washington State Ferries is the governing document in this case. (RCW 47.64.170(7))
3. MEC may only interpret said agreement as it applies to the issue, and shall not change or amend the terms, conditions, or application of said agreement (RCW 47.64.150).

4. WSF retains the right and duty to adopt regulations governing work procedures of its employees, as are reasonably required to maintain safety, efficiency, quality of service and the confidence of the traveling public.
5. WSF may require its employees to perform their work in a way that will not alienate its passengers (Middle Department Assn., 52 LA 413 1969)). Conversely, Grievant had a responsibility to WSF to serve its passengers in a way conducive to WSF's best interests (Greyhound Lines, Inc., 79 LA 422, 424 (1982)). Nor does the anger of a passenger excuse Grievant's behavior (Delaware Port Authority, 76 LA 350 (1981)). Grievant's behavior noted in Finding of Fact No. 9, above, was sufficient cause for removing Grievant from his ticket taker position.
6. MEC may consider Grievant's job performance prior to the January 1985 incidents, even though WSF had earlier taken disciplinary measures. Insofar as such prior record establishes that Grievant's pattern of performance and WSF's attempts to achieve improvement through discipline and counseling do not indicate any degree of probability that Grievant's performance would improve if he were reinstated, MEC must conclude that WSF terminated Grievant with "just cause."

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

ORDER

1. The termination of William Griffith from his job as a Ticket Taker with the Washington State Ferry System is hereby sustained.
2. No compensation is due William Griffith for time lost as a result of his suspensions and/or termination.

3. The grievance of William Griffith against WSF is hereby dismissed.

DATED at Olympia, Washington, this 2nd day of December, 1986.

MARINE EMPLOYEES' COMMISSION

DAVID P. HAWORTH, Chairman

DONALD E. KOKJER, Commissioner

LOUIS O. STEWART, Commissioner

