

STATE OF WASHINGTON
BEFORE THE MARINE EMPLOYEES' COMMISSION

DISTRICT NO. 1 MARINE)	MEC Case No. 4-95
ENGINEERS BENEFICIAL)	
ASSOCIATION on behalf of)	
EDWARD CASPERS)	
)	DECISION NO. 139 - MEC
Grievants,)	
)	
v.)	DECISION AND ORDER
)	AND CONCURRING OPINION
WASHINGTON STATE FERRIES,)	
)	
Respondent.)	
_____)	

Davies, Roberts and Reid, attorneys, by Kenneth J. Pedersen, attorney at law, appearing for and on behalf of District No. 1 Marine Engineers Beneficial Association.

Christine Gregoire, Attorney General, by Bryce E. Brown, Assistant Attorney General, appearing for and on behalf of Washington State Ferries.

THIS MATTER came on regularly before the Marine Employees' Commission (MEC) on April 26, 1995, when District No. 1 Marine Engineers Beneficial Association (MEBA) filed a request for grievance arbitration against Washington State Ferries (WSF) on behalf of Edward Caspers.

MEBA alleged that as a result of a decision of the Commission issued in MEC Case No. 8-03, the Grievant Edward Caspers was not "made whole". MEBA contended that Caspers should have been restored to the position of Alternate Staff Chief on the M.V. Yakima, paid travel time and mileage for the six months he worked on the M.V. Elwha and returned to the "B" watch on the "A" week.

DECISION AND ORDER
AND CONCURRING OPINION -1-

MEBA sought in essence to have the Commission decision interpreted or to enforce the decision.

MEBA has certified that the grievance procedures in the MEBA/WSF collective bargaining agreement have been utilized and exhausted. MEBA has also certified that the arbitrator's decision shall not change or amend the terms, conditions or application of said collective bargaining agreement, and that the arbitrator's award shall be final and binding.

The request for grievance arbitration was docketed as MEC Case No. 4-95 and assigned to Chairman Henry L. Chiles Jr. to act as arbitrator pursuant to WAC 316-65-070.

Pursuant to WAC 316-65-080, notice of hearing was sent to all parties scheduling a grievance arbitration hearing on June 28, 1995.

Briefs were filed on July 17, 1995 and have been carefully considered by the MEC.

BACKGROUND

In August 1992 two employees of WSF filed charges of sexual harassment with WSF against Edward Caspers. The WSF Office of Equal Opportunity investigated the charges against Mr. Caspers. The OEO did not find sexual harassment, but did find Mr. Caspers had engaged in inappropriate conduct while on duty. Mr. Ben Davis, WSF Senior Port Engineer, then conducted an independent investigation of the activities aboard the M.V. Yakima. Thereafter, Mr. Caspers was disciplined.

MEBA filed a grievance on September 24, 1993. Hearings were held on February 10, 11 and March 11, 21, and 22, 1994. A Decision and

Order, No. 119-MEC, was entered on July 6, 1994. An amended decision was issued on August 11, 1994.

A number of the charges against Mr. Caspers could not be proved. The MEC did find there was sufficient cause to discipline Mr. Caspers for (1) bringing guns aboard the vessel, (2) using vulgarities and inappropriate sexual references, and (3) causing a hazard by removing deck plates. The MEC ordered WSF to adjust the discipline accordingly. Mr. Caspers discipline was adjusted as follows:

8. WSF shall immediately adjust Caspers' discipline as follows:
 - (a) You are hereby suspended for thirty-six (36) hours without pay;
 - (b) Your demotion from Alternate Staff Chief Engineer to Assistant Engineer is hereby amended, to read: You are hereby demoted to Chief Engineer for a period of six (6) months; after the expiration of the foregoing suspension you may be reappointed as Alternate Staff chief, but only if recommended by the Staff Chief Engineer;
 - (c) You will be required to attend training courses, selected by management and designed to improve your supervisory skills, a maximum of twenty (20) clock hours of which shall be on your own time.

9. WSF shall immediately compensate Caspers for all wages and other benefits lost by his 3-day suspension instead of one week and shall correct his seniority record accordingly. WSF shall also compensate Caspers for the difference between any wages and benefits paid to Caspers while reduced to the pay level of Assistant Engineer and the pay level of Chief Engineer for such period of time as Caspers was reduced to Assistant Engineer pursuant to this discipline and shall correct his seniority record accordingly.

District No. 1 MEBA v. WSF (Caspers and Gallagher), MEC Case No. 8-93, Decision No. 122 Amending Decision No. 119-MEC, (1994).

A dispute arose over the interpretation of the award. The parties exchanged letters, but did not reach agreement. On October 5, 1994, MEBA requested a hearing to obtain a final and binding ruling of the MEC award. On December 7, 1994, the MEC sent a letter to both parties concluding that "the Commission finds itself without authority to comment further on its decision."

It was concluded that (1) an arbitrator's authority and jurisdiction was terminated upon completion of the award. The MEC did not retain jurisdiction over the award and no clarification or interpretation of the award is permissible without the consent of both parties. The WSF did not consent.

The instant grievance was then filed. Thereafter on June 8, 1995 the WSF filed a Motion to Dismiss the grievance. MEBA did not file an answer until June 27, 1995. The hearing was conducted on June 28, 1995. Each party had an opportunity to state its position. MEBA contended that the refusal of WSF to reinstate Caspers to his former position was a new cause of action and should be the subject of a grievance.

POSITIONS OF THE PARTIES

Position of WSF

WSF contends that MEC does not have authority to interpret or clarify a final and binding arbitration award. The grievance should be dismissed. RCW 47.64.280(3) provides that "the orders and award of the Commission are final and binding upon any ferry employee or employees or their representative affected hereby and upon the department." The MEC, in a letter to the parties, found that it had no further authority to comment on its decision. See Irish v. WSF and MEBA, MEC Case No. 10-93, Decision No.116 (1994). The WSF does not seek interpretation of the award. The consent of

both parties is needed to interpret an award. WSF contends that they have complied fully with the award.

Position of MEBA

MEBA contends that WSF has not complied with the decision of MEC. WSF did not restore Caspers to a position of Alternate Staff Chief, did not pay time and mileage while he worked six months on the M.V. Elwa and did not return him to the proper watch and work week.

MEBA also contends that the issue of returning to the position of Alternate Staff Chief is a new cause of action and should be subject to another grievance hearing.

THE ISSUE

1. Does the MEC have authority and jurisdiction to interpret a prior and binding arbitration decision without the consent of both parties?
2. Does the second grievance state a new cause of action?

THE HEARING OF JUNE 28, 1995

All parties were present and made their motions and were able to respond on the record. The main issue was the authority of the MEC to hold a hearing.

MEC's Decision in the earlier case adjusted the discipline for Mr. Caspers. It is fully set forth in the "Background" above.

WSF provided information on the record to show that they had complied in full with the order. All of the differences in pay due

to Mr. Caspers has been paid to him and all the records that needed adjustment have been adjusted.

It was obvious that the parties had a difference of how to interpret parts of the order.

Having read and carefully considered the entire record, including the request for arbitration, the Motion to Dismiss, the Brief in Opposition, the transcript of the hearing, briefs and the record in MEC Case No. 8-93 the Marine Employees' now hereby enters the following findings of fact.

FINDINGS OF FACT

1. Edward Caspers is employed by Washington State Ferries as a licensed engineer officer.
2. WSF and MEBA are parties to a 1991-1993 collective bargaining agreement, for Licensed Engineer Officers, effective July 1, 1991, which specifies MEC as the arbitrator of unresolved allegations of contract violations.
3. Pursuant to the MEBA Licensed Engineer/WSF Collective Bargaining Agreement and RCW 47.64.280, a decision issued by an arbitrator is final and binding upon the parties. The authority and jurisdiction of an arbitrator are entirely terminated by the completion and delivery of an award. They have thereafter no power to recall the same, to order a rehearing, to amend, or to "interpret" in such manner as may be regarded as authoritative. Irish v. WSF and MEBA, MEC Case No. 10-93, Decision and Order No. 116 (1994). However, when MEC determines that a decision contains an error MEC may

correct that error. See Hall v. Seattle, 24 Wn. App. 357, 602 P.2d 366 (1979).

4. MEC did not retain jurisdiction beyond the decision and award.
5. The three matters that MEBA alleges are in dispute, restoration of Ed Caspers to Alternate Staff Chief, mileage while he worked on the M.V. Elwha and return to "B" watch on the "A" week were all a part of MEC Case No. 8-93. They were all considered by MEC in the decision-making process.
6. The MEC Decision No. 122 amended Mr. Caspers discipline. IT is clear that WSF complied in full with the order. WSF has "made whole" the wages due Mr. Caspers and corrected his records.
7. All of the matters before MEC in the instant case are part of Case No. 8-93 which has been decided and complied with fully. The MEC does not have jurisdiction. None of the items complained of by MEBA are new causes of action that would require a separate grievance hearing.

The Commission having entered the foregoing findings of fact now hereby enters the following conclusions of law.

CONCLUSIONS OF LAW

1. The Marine Employees' Commission has jurisdiction over the parties and subject matter in this case. Chapter 47.64 RCW; especially RCW 47.64.150 and 47.64.280.

2. MEC may not change or amend the terms, conditions or applications of the MEBA/WSF Collective Bargaining Agreement. RCW47.64.180.
3. This grievance does not present anything new. All of the matter in dispute was before the Commission and considered by them in their decision in MEC Case No. 8-93. The MEC made a decision in that case and does not have jurisdiction to interpret or clarify a final and binding arbitration award. RCW 47.64.280(3).

DECISION AND ORDER

1. The grievance of District No. 1 MEBA v. WSF, docketed as MEC Case No. 4-95, is hereby dismissed.

DONE this 12th day of August 1995.

MARINE EMPLOYEES' COMMISSION

/s/ HENRY L. CHILES, JR., Chairman

/s/ JOHN P. SULLIVAN, Commissioner

CONCURRING OPINION

With full deference to my associates and predecessors, who heard this case and returned the original award before I joined the Commission, I concur in the foregoing determination, emphasizing

however in the process, that, in a proper case, the Commission may clarify what it regards as an ambiguous award or complete and finalize an award, which in its judgment, will not otherwise dispose plainly of an issue presented fairly by the material record. Additionally, I believe that, in the instant context, on behalf of its member, the union may bring new matters, if any, remaining in the dispute, on for hearing as a new case, under the contractual disputes procedure.

DONE this 9th day of August, 1995.

/s/ DAVID E. WILLIAMS, Commissioner

