

STATE OF WASHINGTON  
BEFORE THE MARINE EMPLOYEES' COMMISSION

PAUL ARROYO,	)	MEC Case No. 9-96
	)	
Grievant,	)	DECISION NO. 164 - MEC
	)	
v.	)	
	)	ORDER AFFIRMING
WASHINGTON STATE FERRIES,	)	DECISION NO. 161 - MEC
	)	
Respondent.	)	
_____	)	

THIS MATTER, having come regularly before the said Commission, on grievant's petition for review of Decision No. 161-MEC, dated January 7, 1997 and consideration having been duly accorded to the related files and records in such arbitration case, and good cause appearing therefore, it is hereby determined that:

(1) The essence of the labor dispute placed in issue here is whether Paul Arroyo was separated properly from employment with the Washington State Ferries (WSF) during his period of probation, under a collective bargaining contract, between WSF and District No. 1 MEBA.

(2) Accordingly, the description of the case submitted for record by Arroyo, in his formalized and essential request for grievance arbitration (copy attached), states, in Paragraph 6 thereof:

Wrongfully discharged (by letter from Ben Davis, Senior Port Engineer, dated May 14, 1996) for "poor job performance." Grievant was a probationary employee and not entitled to Union representation (Rule 33 of expired contract). Grievant was never counseled by anyone concerning job performance. No substantiation was ever provided grievant regarding any "written reports" about poor job performance. No other information has been made available.

(3) The arbitrator, Commissioner John P. Sullivan, remains ready and willing to hear the issues as expressed by Arroyo in the written request for arbitration set forth verbatim, in relevant part, hereinabove. However, in objecting now to the Decision for which review is sought, Arroyo, by counsel, seeks to raise additional allegations under statutes of the state of Washington relating to "crime victims, survivors, and witnesses," as "whistleblowers." (RCW 7.69, 42.40, 42.41). Rightfully, in the view of this Commission, such arbitrator declined to extend and enlarge the arbitral inquiry beyond the request submitted with the underlying and above-quoted written request for arbitration signed by the grievant himself.

(4) Importantly, the alleged basis for grievant's attempted invocation of statutes as to "whistleblowing" and protection for "witnesses", not only goes far beyond the questions presented by the grievant's "arbitral pleadings," but has been lodged, untimely, before the wrong tribunal and lacks the factual references necessary to generate ground for the claim asserted.

(5) Certainly then, the Commission cannot hear those "issues" declined advisedly by Commissioner Sullivan. Indeed, as noted by Owen Fairweather, at the veritable outset of his authoritative text, Practice and Procedure in Labor Arbitration 13 (2d ed. BNA):

that awards should be vacated when the arbitrator resolves issues not presented in a stipulated question is now clear law. For example, in Local 1078 United Automobile, Aircraft and Agricultural Implement Workers of America, AFL-CIO v. Anaconda America Bross Co. [182 A2d 623], the award was vacated because the arbitrator did not confine his award to a simple "yes" or "no" answer. The arbitrator developed a different question and then ruled on it, thereby exceeding the scope of the question. Likewise, in Sperry Division, Sperry Rand Corp. v. Int'l Union of Electrical Workers, Local 445 [88 LRM 256], the award was vacated because the arbitrator did not confine his award to the questions submitted for decision. He also developed a different question and then ruled above it, thereby exceeding the scope of the parties' submission.

(Emphasis added.)

NOW, THEREFORE, IT IS HEREBY ORDERED, that the said Decision No. 161-MEC, in MEC Case No. 9-96, should be and hereby is affirmed, ratified and sustained, in all respects and particulars, and

IT IS FURTHER ORDERED that this case be heard on the merits relative only to the questions advanced by the content of the required request for grievance arbitration heretofore executed and placed of record by the grievant Arroyo.

DATED this 21<sup>st</sup> day of February 1997.

MARINE EMPLOYEES' COMMISSION

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

/s/ DAVID E. WILLIAMS, Commissioner