

STATE OF WASHINGTON
BEFORE THE MARINE EMPLOYEES' COMMISSION

DISTRICT NO. 1 MARINE)	MEC Case No. 11-94
ENGINEERS BENEFICIAL)	
ASSOCIATION on behalf of)	
THOMAS KNOWLTON,)	
)	DECISION NO. 134 - MEC
Grievants,)	
)	
v.)	DECISION AND ORDER
)	
WASHINGTON STATE FERRIES,)	
)	
Respondent.)	
<hr/>		

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 Robert McIntosh, Assistant Attorney General, appearing for and on behalf of Washington State Ferries.

THIS matter came on regularly before the Marine Employees' Commission (MEC) on August 15, 1994 when the District No. 1 Marine Engineers Beneficial Association (MEBA) filed a request for grievance arbitration pursuant to RCW 47.64.150 and RCW 47.64.280 and WAC 316-02 and WAC 316-65.

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 applications of said Collective Bargaining Agreement and that the arbitrator's award shall be final and binding.

This matter was docketed as MEC Case No. 11-94 and assigned to Commissioner John P. Sullivan to act as arbitrator pursuant to WAC 316-65-090.

The hearing in MEC Case No. 11-94 was initially scheduled for October 4, 1994. At the request of MEBA and with WSF approval, the hearing was rescheduled on November 3, 1994. Thereafter, at the request of WSF and with the approval of MEBA, the hearing was rescheduled for November 4, 1994. Hearing was held on November 4, 1994.

Hearing transcripts were received on November 23, 1994. Receipt of briefs was scheduled for December 16, 1994. At the request of MEBA and with the approval of WSF the filing of the briefs was extended to January 3, 1995. Briefs were timely received by MEC.

BACKGROUND

The Marine Engineers Beneficial Association alleges that WSF refused to pay Chief Engineer Thomas W. Knowlton for overtime worked in accordance with the District No. 1 MEBA/WSF Collective Bargaining Agreement, Section (6)(e) (EX 2) and a Settlement Agreement (EX 3) dated December 17, 1993 between WSF and MEBA (hereinafter Settlement Agreement"). The terms of the Settlement Agreement were reached as a result of negotiations in another grievance matter filed by MEBA and docketed as MEC Case 2-93. MEBA and WSF held lengthy negotiations toward settlement of MEC Case No. 2-93, and on December 17, 1993, prior to hearing, the parties reached a settlement on the issues.

By letter dated January 13, 1994, MEBA withdrew its request for overtime grievance arbitration in MEC 2-93. On January 25, 1994, MEC entered Decision No. 1-7, MEC Case No. 2-93, Order of Dismissal. The December 17, 1993 Settlement Agreement between MEBA and WSF was attached to MEC's order.

The Settlement Agreement did something new and unprecedented: it created a way for WSF engineroom employees to be paid at the overtime rate for work beyond a regularly scheduled or assigned work shift on their next paycheck. Senior Port Engineer Ben Davis testified:

Q. Now, does this Agreement create a right to overtime for a regular scheduled shift length of greater than 12 ½ hours?

A. Yes, any time work beyond 12 ½ hours will be compensated for at the overtime rate.

Q. Prior to this Agreement was there anything in the collective bargaining agreement that gave MEBA members a right to overtime for a regularly scheduled shift?

A. No. [TR 81]

Before the Settlement Agreement of December 17, 1993, WSF could schedule the workday up to 14 hours without having to pay the employee for overtime during that pay period. Ben Davis further testified:

Q. Yes. Prior to the Settlement Agreement, it was the ferry system's position that it could require an individual to work any number of hours in a given day, and I'll use the example of 14, without the requirement that it pay that individual overtime for that pay period. Is that correct?

A. Yes, my understanding of the collective bargaining agreement at that point was that there was no time limit set on maximum shift length, that's correct. [TR 107]

On January 26, 1994, after the Settlement Agreement was signed, a memo was prepared by the Clark Dodge, Staff Chief Engineer of the M/V WALLA WALLA:

M.V. WALLA WALLA Work Schedule

This is in response to Ben Davis's memo January 4, 1994 regarding MEC Case #2-93, between WSF & MEBA.

For the record, Ben Davis has stated, that only the time after the initial 12.5 hours is to be paid at OT rate in the present work week. This time will be paid at ¼ hour OT for the first 15 minutes after the 12.5.

At hearing, Thomas W. Knowlton, a Chief Engineer serving on the M/V WALLA WALLA, was questioned about when he first became aware of the memo prepared by Staff Chief Engineer Dodge:

Q. When did you first see Exhibit 4, Mr. Dodge's memo?

A. Well, I guess - actually he typed this up a little before the 26th, I'm not exactly sure. I was on watch shortly after he typed it up. [TR 49]

* * * * *

Q. . . Now, the next - so from the time you saw this memo, you knew that your staff chief was saying that time beyond 12 ½ hours will be paid at one quarter of an hour overtime for the first 15 minutes, right?

A. Yes.

Q. And you saw that sometime shortly before the 26th of January?

A. Yes. [TR 50-51]

Chief Engineer Knowlton discovered there was confusion between MEBA and WSF about the payment of overtime for the first 15 minutes of work after working 12 ½ hours. He testified that the union sent out a memorandum indicating any overtime should be paid at the overtime rate of one hour. TR 51. Thereafter, Knowlton put in for one hour overtime for working 15 minutes past the 12 ½ hours, once in February and once in March 1994, for which he was paid at the rate

of one hour of overtime. Senior Port Engineer Davis testified, however, that the payment of one hour of overtime pay for working 15 minutes past 12½ hours was in error. TR 99-100.

Although Chief Engineer Knowlton claimed one hour of overtime for working 15 minutes or less past his 12½ hour work shift for March 26; April 8, 9, 12, 23; May 6 and 10, 1994, he was paid at the rate of one quarter (1/4) hour of overtime for each date. It is the union's contention is that C/E Knowlton should be paid one hour overtime for the 15 minutes or less he worked beyond the 12 ½ hour work day on the dates since December 17, 1993.

POSITION OF THE PARTIES

Position of MEBA

The Settlement Agreement between MEBA and WSF established the principle that when an engineroom employee works beyond 12 hours and 30 minutes, that time is overtime and must be paid on the employee's next pay check. For the first time, the parties agreed how many hours would constitute a regularly scheduled or assigned work day, and after how many hours overtime would be paid, pay period by pay period. The Settlement Agreement between MEBA and WSF, stated in part:

I. Rules Applicable to All Vessels

1. Overtime shall be payable, pay period by pay period for time worked beyond 12½ hours.

Prior to the Settlement Agreement, WSF could assign, for instance, a work day of 14 hours after which no overtime pay would appear on the employee's next paycheck. Rather, the employee's time would be "cycled" over four pay periods, amounting to eight weeks. Over-

time would only be paid if the employees' total hours worked, minus compensatory time, exceeded 320 hours. However, the execution of this Agreement entitled an engineroom employee to be paid overtime in excess of 12½ hours on his or her next check.

MEBA maintains that the work period beyond 12 hours and 30 minutes, but less than 12 hours and 46 minutes, should be paid in one hour increments pursuant to CBA Section 6(e):

(e) Minimum payment for any overtime work performed shall be periods of one hour, except as follows: When work is extended fifteen (15) minutes or less beyond the regular assigned work day, such time shall be paid at the overtime rate in increments of one quarter of an hour . . .

An exception to CBA Section 6(e) is Section 9(b)(3):

(3) When an Employee works fifteen (15) minutes or less beyond the Employee's scheduled shift, the work will be compensated for at the overtime rate for one quarter (¼) of an hour.

For example, if Chief Engineer Knowlton works 12 hours and 45 minutes or less, he is entitled to one hour of overtime, defined as double his straight time rate, and he should not be paid at the rate of 15 minutes of overtime pursuant to the exception in CBA 9(b)(3).

Chief Engineer Knowlton is seeking overtime in the amount of one hour for working beyond 12½ hours by 15 minutes or less on the following dates in 1994: March 26; April 12, 13, and 18; May 6 and 10; June 3, 7 and 18; July 1, 15 and 16; August 26, 27 and 30; September 19, 23 and 27; and October 8.

Position of WSF

Prior to the Settlement Agreement there was no set time when overtime came into force other than when the employee has worked beyond his regular scheduled work assigned day. The work day could be 12, 13 or 14 hours, and after those hours were worked then the extended hours or minutes beyond the assigned work day became overtime.

The Settlement Agreement established that over time would be obtained by working a regularly-scheduled shift longer than 12½ hours.

There is no question that if the work is 16 minutes beyond the 12½ hours that, that 16 minutes will be compensated at the rate of one hour of overtime. If it is one hour and one minute beyond the 12½ hours, the overtime rate will be two hours of overtime. One extra minute puts the overtime into the second hour.

WSF believes that work performed beyond the 12½ hours from one minute of fifteen minutes shall be paid under CBA 9(b)(3), the exception to CBA 6(e) which states that overtime will be paid at the rate of a quarter hour or 15 minutes of overtime, not at the rate of one hour of overtime.

The 15 minute rule as set out in 9(b)(3) should apply for work of 15 minutes or less beyond the new base of 12½ hours as set out in the Settlement Agreement.

STATEMENT OF THE ISSUES

1. Did WSF violate the Collective Bargaining Agreement and the Settlement Agreement by not paying Chief Engineer Thomas W. Knowlton overtime pay in increments of one hour on work days upon which he was scheduled to work more than 12½ hours and less than 12 hours and 46 minutes?
2. If so, what is/are the remedy/remedies.

Having read and carefully considered the entire record, the Marine Employees' Commission now hereby enters the following findings of fact.

FINDINGS OF FACT

1. Thomas W. Knowlton is a 16-year employee of Washington State Ferries. At the time of the filing of this grievance, he held the position of Chief Engineer on the M/V WALLA WALLA.
2. In 1994, Chief Engineer Knowlton claimed overtime pursuant to CBA Section 6(e) and Section 9(b)(3) and the Settlement Agreement for March 26; April 8, 9, 12 and 23; May 6 and 10; June 3, 7 and 18; July 1, 15 and 16; August 26, 27 and 30; September 19, 23 and 27; and October 8. On each of these dates, he worked 15 minutes beyond the 12½ hour base. Knowlton was paid in one-quarter hour overtime increments for those dates.
3. Overtime is paid pursuant to Section 6(e) and Section 9(b)(3) of the Collective Bargaining Agreement:

SECTION 6 - WAGES AND OVERTIME

. . .

(e) Minimum payment for any overtime work performed shall be periods of one hour, except as follows: when work is "extended" fifteen (15) minutes or less beyond the "regular assigned work day," such time shall be paid at the overtime rate in increments of one quarter of an hour. Should work be extended by more than fifteen (15) minutes, the time worked beyond the regular assigned work day shall be paid at the overtime rate in increments of one (1) hour, unless otherwise specified herein. Such extended work shifts shall "not" be scheduled on a daily or regular basis. Work performed during the third eight (8) hour shift shall be paid for at triple time, unless a six (6) hour break has been granted. Exceptions to this subsection are specified in Section 9.

* * *

Section 9 - HOURS

. . . .

(b) The Employer agrees that vessels (other than Passenger-only vessels) running sixteen (16) or more hours per day will be manned by Engineer Officers working under the following work schedules:

. . . .

(3) When an Employee works fifteen (15) minutes or less beyond the Employee's scheduled shift, the work will be compensated for at the overtime rate for one quarter ($\frac{1}{4}$) of an hour.

The Settlement Agreement addressed:

- I. Rules Applicable to All Vessels;
- II. Vessels on Regular Routes that have been Transferred to a Temporary Route Assignment;
- III. Relief Vessels; and
- IV. General Provisions.

This grievance covers only the question of overtime. The applicable sections of the Settlement Agreement are:

I. RULES APPLICABLE TO ALL VESSELS

1. Overtime shall be payable, pay period by pay period, for time continuously worked beyond 12½ hours.
2. Overtime shall be payable, pay period by pay period, for time worked beyond the scheduled shift.

. . . .

* * *

IV. GENERAL PROVISIONS

. . . .

2. This Settlement Agreement shall take effect immediately as a Memorandum of Understanding. As part of negotiations for the 1993-95 CBA, the parties agree to modify the language of the CBA as necessary to comply with this settlement.
4. For the first time in the collective bargaining relationship between MEBA and WSF, the Settlement Agreement set a base or foundation from which to calculate overtime, to-wit, after 12½ hours of regularly assigned or scheduled work. Overtime was payable when the scheduled or assigned work day was more than 12½ hours. Prior to the Agreement, overtime was only payable "beyond the regular assigned work day" (Section 6(e)) or "beyond the Employees' Schedule Shift" (Section 9(b)(3)).
5. The only reference in the Agreement to specific hours of work noted is found in Section 9(b)(2):

. . . . If the Employee works continuously beyond sixteen (16) hours, the Employee shall be compensated for that additional time at the triple-time rate unless a six (6)-hour break has been granted.

6. The Settlement Agreement which created the work base of 12½ hours before overtime was payable was a new principle.

Under CBA Section 6(e), overtime was payable when the employee worked "beyond regular assigned work day." This was changed under the Settlement Agreement to overtime was payable when the employee worked "beyond 12½ hours."

Under CBA Section 9(b)(3), overtime was payable "when the Employee worked fifteen (15) minutes or less beyond the Employee's scheduled shift." This was changed under the Settlement Agreement to overtime was payable when the employee worked "beyond 12½ Hours."

By the Settlement Agreement, 12½ hours was substituted for "beyond regular assigned work day" and "beyond the Employee's Schedule Shift." Everything else remained the same in these two paragraphs.

Prior to the Agreement, if the Chief Engineer Knowlton worked a schedule shift 13 hours and 45 minutes, he would have received no overtime until after the work shift of 13 hours and 45 minutes. Under the Agreement, after he worked 12 ½ hours he was entitled to overtime. In this example he would be entitled to one hour and 15 minutes which would be compensated at the rate of two hours of overtime pay.

7. After six months and many meetings, MEBA and WSF arrived at the Settlement Agreement, giving engineroom employees the right to regular overtime for scheduled shifts or a regularly assigned work day consisting of 12½ hours. By the Settlement Agreement, overtime became available after the basic work day, schedule shift or assigned work day of 12½ hours.

CBA Section 6(3) and Section 9(b)(3) clearly state that any work of 15 minutes or less beyond the "regular assigned work day" and the "Schedule Shift" is paid in an increment of a quarter ($\frac{1}{4}$) hour.

The new work base of $12\frac{1}{4}$ hours is a "cap" on the daily number of hours the engineroom employee may assigned or scheduled; after this "cap" is met, overtime is payable.

In their negotiations, MEBA and WSF did not discuss changing the incremental payment of time worked in excess of $12\frac{1}{2}$ hours. The Settlement Agreement does not change the way overtime is to be paid pursuant to CBA Section 6(e) and Section 9(b)(3). The two sections work together.

8. 8. The practice of paying overtime for the first 15 minutes "beyond a regular assigned work day" or "a Scheduled Shift" as covered by CBA Section 6(e) and Section 9(b)(3) is in the current CBA and has been in CBAs between MEBA and WSF for a number of years.

The Settlement Agreement did not alter how the first 15 minutes or less of overtime was paid; the Agreement set out when to start calculating the first 15 minutes, after $12\frac{1}{2}$ hours of work. The pay for this amount of overtime remains the same. The Settlement Agreement changes only when overtime starts after $12\frac{1}{2}$ hours.

The parties made no changes in the CBA as they negotiated the Settlement Agreement. The Settlement Agreement was effective as of the signing on December 17, 1993.

Having entered the foregoing findings of fact, the Marine Employees' Commission now hereby enters the following conclusions of law.

CONCLUSIONS OF LAW

1. The Marine Employees' Commission has jurisdiction over this matter. Ch. 47.64 RCW, particularly RCW 47.64.150 and 47.64.280.
2. MEC may not change or amend the terms, conditions or application of the Collective Bargaining Agreement (1991-1993) or the Settlement Agreement signed on December 17, 1993 by and between WSF and MEBA. RCW 47.64.150.
3. When the language of an agreement is clear and unequivocal and unambiguous, the MEC will enforce the clear meaning of the CBA. Elkouri and Elkouri, How Arbitration Works 348 (4th ed. 1985). Section 6(e) and Section 9(b)(3) and the Settlement Agreement, Rule I, 1 and 2 are clear and unambiguous.
4. CBA Section 6(e) and Section 9(b)(3) and the Settlement Agreement of December 17, 1993 must be read together. See, How Arbitration Works, supra, at 352-353. "[C]ollective bargaining agreements must be read in totality, with each section a part of, and interpreted within the whole. . . ." Mason County v. Teamsters Union Local 378, 97 LA 45, 48 (1991).
5. Chief Engineer Knowlton has been paid at the proper incremental rate for overtime pursuant to CBA Section 6(e) and Section 9(b)3 and the Settlement Agreement for March 26; April 8, 9, 12 and 23; May 6 and 10; June 3, 7 and 18; July 1, 15 and 16; August 26, 27 and 30; September 19, 23 and 27; and October 8, 1994. The record does not indicate any additional pay is due Chief Engineer Knowlton.

6. The MEC concludes that Grievant MEBA has failed to prove that WSF violated the Settlement Agreement signed December 17, 1993 and CBA Section 6(e) and Section 9(b)(3) of the Collective Bargaining Agreement. Further, Chief Engineer Knowlton has been paid at the proper incremental overtime rate and is not entitled to any additional payment. The grievance must be dismissed.

Having read and considered the entire record including, but not limited to, the initial request for grievance arbitration, the hearing transcript, the exhibits and briefs, and having entered its findings of fact and conclusions of law, this Commission now hereby enters the following order:

ORDER

The request for grievance arbitration filed by District No. 1 Marine Engineers Beneficial Association on behalf of Thomas W. Knowlton against Washington State Ferries on August 15, 1994, and docketed as MEC Case No. 11-94, is hereby dismissed.

DONE this 10th day of February 1995.

MARINE EMPLOYEES' COMMISSION

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

/s/ JOHN P. SULLIVAN, Commissioner