

STATE OF WASHINGTON
BEFORE THE MARINE EMPLOYEES COMMISSION

In Arbitration
Before Chairman Henry L. Chiles, Jr.

INLANDBOATMEN'S UNION OF)	MEC Case No. 13-99
THE PACIFIC on behalf of)	
RUSSELL HANSEN,)	
)	DECISION NO. 229 –MEC
Grievant,)	
)	DECISION AND AWARD
v.)	
)	
WASHINGTON STATE FERRIES,)	
)	
Respondent.)	
)	
)	

Schwerin, Campbell and Barnard, attorneys, by Elizabeth Ford, appearing for and on behalf of the Inlandboatmen's Union of the Pacific and its member, Russell Hansen.

Christine Gregoire, Attorney General, by David Slown, Assistant Attorney General, appearing for and on behalf of the Washington State Ferries.

This matter came on regularly before Henry L. Chiles, Jr., of the Marine Employees' Commission (MEC) on October 6, 1999 when the Inlandboatmen's Union of the Pacific (IBU) filed a request for grievance arbitration on behalf of Russell Hansen. Chairman Chiles was assigned to act as arbitrator to hear and decide a dispute between the parties relative to a denial of overtime pay for Mr. Hansen.

IBU has certified that the grievance procedures in the IBU/WSF collective bargaining agreement (CBA) were utilized and exhausted. IBU 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.

A hearing in this matter was conducted pursuant to RCW 47.64.150 and 47.64.280 and chapter 316-02 and 316-65 WAC on January 7, 2000 in Seattle, Washington. All parties were present. Briefs were timely filed on January 28, 2000.

STATEMENT OF THE ISSUE

1. Did WSF deny Mr. Hansen overtime pay, in violation of the contract, for hours worked in excess of 8 hours per day on the long day of a touring watch, when he took the second day of the touring watch off for union business?
2. If so, what is/are the remedy/remedies?

POSITIONS OF THE PARTIES

Position of IBU and Russell Hansen

Mr. Hansen was working as an on-call AB for WSF during the spring and summer of 1999. Mr. Hansen is a member of the IBU negotiation team representing on-call employees. From time to time he is called to meetings by the IBU. At such times, Mr. Hansen requests a relief from WSF Dispatch and it is provided.

Mr. Hansen worked a touring watch on vessels sailing in the San Juan Islands. The parties stipulated that at least nine times between April 7, 1999 and October 22, 1999, Mr. Hansen asked for one day off from a touring watch to attend to union business. If he worked the long day of the touring watch and took the short day off, he was paid straight time pay for the long day. Mr. Hansen is entitled to overtime pay for hours worked in excess of eight hours. Each time he requested overtime pay, it was denied.

Rule 12.02(3) of the collective bargaining agreement applies to this dispute. Mr. Hansen is entitled to overtime.

Position of Washington State Ferries

This is a matter of contract interpretation. Mr. Hansen's scheduled workdays and times were clearly set forth on the touring watch that he worked. Mr. Hansen did not work beyond his scheduled workday and should not be paid overtime. Rule 1.02 applies.

Having read and carefully considered the entire record, including the request for arbitration, the transcript of the hearing and the post-hearing briefs, the Arbitrator now hereby enters the following findings of fact.

FINDINGS OF FACT

1. Russell Hansen is employed by Washington State Ferries as an on-call Able Bodied Seaman.
2. Russell Hansen is a member of the Inlandboatmen's Union of the Pacific and a member of the union's contract negotiating committee representing on-call employees.
3. WSF and IBU are parties to a collective bargaining agreement that permits the MEC to serve as arbitrator of unresolved allegations of contract violations.
4. In the spring and summer of 1999, Russell Hansen was assigned to a ferry on the San Juan Island run. He worked a touring watch. The first day of the touring watch is the longer day. It is usually nine or ten hours long. The second day of the watch begins after a rest of about six hours. The hours worked on the second day were usually six or seven hours. The total hours worked over the two days is sixteen hours.
5. The parties stipulated that between April 7, 1999 and October 22, 1999, Mr. Hansen received nine days off to attend to his union duties. On seven occasions he took off the short day of the two-day touring watch. Twice, he took off the long day. Mr. Hansen was

not paid by WSF for the days he took off. He was paid eight-hours pay for each day that he served on the bargaining committee by bargaining unit members.

6. Mr. Hansen applied for overtime for the hours worked beyond eight hours on the seven long days that he worked. WSF denied the overtime. He was paid at the straight time rate.
7. The IBU relies on Rule 12.02, subparagraph 3 of the contract for its overtime claim.

RULE 12 – PART-TIME AND ON-CALL EMPLOYEES

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12.02 Part-time and on-call employees may be employed subject to the following conditions:

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3. All hours worked in excess of eight (8) hours in any day or eighty (80) hours in any two week work schedule shall be paid at the overtime rate, provided that employees who are working in positions which are affected by other overtime provisions in the Agreement or its Appendices shall be paid overtime as provided for in such provisions.

8. WSF relies on Rule 1.02 , Appendix A of the contract.

RULE 1 – HOURS OF EMPLOYMENT, OVERTIME AND ASSIGNMENT

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1.02 The Union and the Employer may agree to establish touring watches on vessels where the running schedules make such watches more practical. When touring watches are established, the employees involved shall be paid at straight time pay for not to exceed five (5) consecutive tours, followed by not less than two (2) consecutive tours off duty. This rule does not apply to designated relief personnel.

9. Mr. Hansen did not suffer any loss of pay for the time he voluntarily took off. He was paid straight time for the hours he worked for WSF and was paid eight hours pay for each day he worked for the union members. Mr. Hansen actually earned more income for himself working a long day for WSF and then working eight hours for the union.
10. WSF paid Mr. Hansen's relief overtime for the hours worked beyond eight hours on the long shift and paid a relief a full eight hours pay for the short day. It costs more for the

WSF to supply a relief person than it would have cost if Mr. Hansen remained on his shift.

Having entered the foregoing findings of fact, the Arbitrator now 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. The MEC may not change or amend the terms, conditions or applications of the IBU/WSF collective bargaining agreement. RCW 47.64.150.
3. Inlandboatmen's Union of the Pacific and grievant, Russell Hansen, did not prove by a preponderance of evidence that WSF had failed to pay him, in violation of the collective bargaining agreement.
4. Mr. Hansen worked the normal scheduled hours of his touring watch. He voluntarily took time off. He is not entitled to overtime pay for hours worked in excess of eight hours on the long day of a scheduled touring watch. Rule 1.02, Appendix A applies. Mr. Hansen has suffered no loss.
5. WSF paid Mr. Hansen properly in all of the days included in the stipulation. Therefore, the instant request for overtime pay should be denied and dismissed.

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AWARD

In accordance with the foregoing findings and conclusions, the grievance before the Arbitrator in these proceedings is denied. The grievance docketed as MEC Case No. 13-99, is hereby dismissed.

DATED this _____ day of February 2000.

MARINE EMPLOYEES' COMMISSION

HENRY L. CHILES, JR., Arbitrator

Approved By:

JOHN P. SULLIVAN, Commissioner

DAVID E. WILLIAMS, Commissioner