

STATE OF WASHINGTON

BEFORE THE MARINE EMPLOYEES' COMMISSION

In Arbitration
Before Commissioner John P. Sullivan

DISTRICT NO. 1, MARINE)	
ENGINEERS BENEFICIAL)	MEC Case No. 12-00
ASSOCIATION on behalf of)	
NORBERT MUELLER,)	
)	DECISION NO. 263 - MEC
Grievant,)	
)	DECISION AND AWARD
v.)	
)	
WASHINGTON STATE FERRIES,)	
)	
Respondent.)	

Mario Micomonico, MEBA/WSF Union Representative, appearing for and on behalf of District No. 1 Marine Engineers Beneficial Association and Norbert Mueller. (Mr. Mueller attended the hearing.)

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 John P. Sullivan of the Marine Employees' Commission (MEC) on June 28, 2000, when District No. 1, Marine Engineers Beneficial Association (MEBA) filed a request for grievance arbitration on behalf of Norbert Mueller. MEBA asserted that Washington State Ferries (WSF) paid Mr. Mueller the hourly rate as an Assistant Engineer when working as a replacement for Staff Chief Engineer Costello, as the Watch Engineer at Pier 46 in Seattle for the Passenger Only Vessel (POV). Norbert. Mueller worked as a replacement from April 7 to 13, 1999, working 12 hours per day. Mr. Mueller holds a Chief Engineers' License. He replaced a Chief Engineer, Staff Chief Engineer Costello.

MEBA has certified that the grievance procedures in the MEBA/WSF Collective Bargaining Agreement (CBA) 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 parties' agreement as to the parameters of the dispute to be resolved by said Arbitrator is binding on them and on him. Such agreement is accepted, therefore, as the test for determining the rights, in the material circumstances of the parties here, including those of Mr. Mueller.

The Arbitrator conducted a hearing in this matter on February 12, 2001. Briefs were not requested.

POSITIONS OF THE PARTIES

Position of MEBA

Norbert Mueller held a license, issued by the U.S. Coast Guard, as Limited Chief Engineer for unlimited horsepower for inland waters.

Mr. Mueller was dispatched as a replacement for William Costello, Staff Chief Engineer for the Passenger Only vessels (POVs) at Pier 46. The watch that Mr. Mueller worked was 12 hours for 7 days, from April 7 to 13, 1999.

The pay Mr. Mueller received was the rate of an Assistant Engineer, although he was replacing a Chief Engineer. He should have been paid the same rate as a Chief Engineer receives, not the same rate as a Staff Chief Engineer.

The next month, May 1999, Norbert Mueller again worked as replacement for Staff Chief Engineer Costello and was paid as a Chief Engineer, not as an Assistant Engineer for May 19-25, 1999.

Position of WSF

While Mr. Mueller holds a U.S. Coast Guard license, issued as a Limited Chief Engineer for inland waters for any horsepower, he holds seniority as a Relief Assistant Engineer. He works in that position throughout the WSF fleet on those vessels that carry an Assistant Engineer.

In the applicable CBA between MEBA and WSF, Section 2.1 Engineer Vacancies (b) and (c) sets out the standard to work as a Chief Engineer. The Chief Engineer must be “qualified” as set out in paragraph (c). Norbert Mueller had not been checked and signed-off by the Staff Chief Engineer or completed a break-in period and the requirements associated with it.

Mr. Mueller was not “qualified” per the CBA to be a Chief Engineer and to be paid as a Chief Engineer when he replaced Staff Chief Engineer Costello, April 7-13, 1999.

In addition, the work that Mr. Mueller performed when he stood Staff Chief Engineer Costello’s watch in April 1999, was the normal work performed by an Assistant Engineer for the POVs when they are tied up at Pier 46.

ISSUE

When Norbert Mueller stood a 12-hour per day watch at Pier 46 to work with the POVs from April 7 to 13, 1999, he was standing the watch that was normally Staff Chief Engineer William Costello’s watch. Did WSF violate the collective bargaining agreement when it paid Norbert Mueller at the Assistant Engineer rate rather than the Chief Engineer rate for the assignment in question?

DISCUSSION

Norbert Mueller is an experienced Marine Engineer, licensed by the U.S. Coast Guard. In 1982, based upon his prior experience and his earlier licenses, he was able to take the USCG test and he was issued a first Assistant Engineer’s License for unlimited horsepower for both steam and motor vessels.

Mr. Mueller started with WSF on March 31, 1988, his seniority date. In 1996, Mueller raised his license from the USCG to “Limited Chief Engineer for motor vessels in inland waters for unlimited waters.”

In 1998, the Fast Passenger Only Vessel (FPOV), the new CHINOOK, was put into operation for WSF. Initially, the CHINOOK had an engineer and an oiler on the vessel. Mr. Mueller served a short time as one of the engineers. WSF removed the engineer, and had him stationed ashore at Pier 46 to service the FPOVs and POVs as necessary. This was the result of changing the manning schedule.

The FPOVs and POVs making up the passenger only fleet were the CHINOOK, SNOHOMISH, KALAMA, SKAGIT and TYEE.

The watches at Pier 46 are divided into “A” week and “B” week. Each watch is 12 hours long. For “A” week, the Staff Chief Engineer works a week of days and the Assistant Engineer works nights. The next time they work, their shifts are reversed, with the Staff Chief working the night shift. For “B” week, the Alternate Staff Chief Engineer works days and the Assistant Engineer works nights, followed by a reversal of the shifts as noted above in “A” week.

Section G “Class” of the WSF time sheet includes two columns, “worked” and “paid.” For the period April 7-13, 1999, Mr. Mueller indicated the number “410” in the “worked” column, meaning Chief Engineers’ work. This was crossed out and “430” was added to indicate Assistant Engineer. Mr. Mueller was paid at the Assistant Engineer rate. He had not filled in the column “paid” for the rate of pay he thought he was entitled to. The auditor noted, “Mr. Mueller was not doing C.E. work while on relief. M.N.”

The next time Mueller worked at Pier 46, May 19 to 25, 1999, he filled in his time sheet as before, but he was paid as a Chief Engineer. WSF testified that every two weeks the two auditors have to review 450 time sheets and they must have overlooked the work code and paid columns. In other words, it fell through the “cracks.”

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

FINDINGS OF FACT

1. The U.S. Coast Guard enforces the Code of Federal Regulations as they apply to vessels and the manning on board those vessels. The crewmembers serving on vessels must have familiarity with the vessels characteristics, as well as basic safety training.

2. Code of Federal Regulations (CFR) 46 CFR excerpts:

§ 15.1105 Familiarization and basic safety-training.

(a) After January 31, 1997, on board a seagoing vessel, no person may assign any person to perform shipboard duties, and no person may perform those duties, unless the person performing them has received

(b) After January 31, 1997, on board a seagoing vessel, no person may assign a shipboard duty or responsibility to any person who is serving in a position that must be filled as part of the required crew complement, and no person may perform any such duty or responsibility, unless he or she is familiar with it and with all vessel's arrangements, installations, equipment, procedures , and characteristics relevant to his or her routine or emergency duties or responsibilities, in accordance with STCW Regulations 1/14.

(c) After January 31, 1997, on board a seagoing vessel, no person may assign a shipboard duty or responsibility to any person who is serving in a position that must be filled as part of the required crew complement or who is assigned a responsibility on the muster list, and no person may perform any such duty or responsibility, unless the person performing it can produce evidence of having . . .

.....

§ 15.405 Familiarity with vessel characteristics.

Each licensed, registered, or certificated individual must become familiar with the relevant characteristics of the vessel on which engaged prior to assuming his or her duties. As appropriate, these include but are not limited to: general arrangement of the vessel; maneuvering characteristics; proper operation of the installed navigation equipment; firefighting and lifesaving equipment; stability and loading characteristics; emergency duties; and main propulsion and auxiliary machinery, including steering gear systems and controls.

(Emphasis added.)

3. The Collective Bargaining Agreement between the Licensed Engineer Officers represented by MEBA and WSF for 1997-1999 which has been rolled over for 1999-

2001 sets out the “qualifications” necessary for a USCG Licensed Chief Engineer that must be met before a Chief Engineer could serve in that capacity.

MEBA, the Union, and WSF, Management, have agreed to these qualifications and requirements as spelled out in the CBA.

4. The contract entered between MEBA and WSF regarding a Chief Engineer include the following excerpts under SECTION 2.1 ENGINEER OFFICER VACANCIES:

(b) A temporary vacancy in the position of Chief Engineer shall be filled in the following manner; provided that it is understood that any temporary vacancy period or portion there of may be filled by an unassigned Vacation Relief Engineer:

- 1) For a period of less than three (3) months:

First by a qualified Assistant Engineer assigned to the same vessel and scheduled to be on duty or by an unassigned Vacation Relief Chief Engineer, then by a qualified Assistant Engineer, if any, in order of seniority on the Licensed Assistant Engineers Promotional Roster who accepts the temporary promotion. If none of the above is possible then by reassignment of a Vacation Relief Engineer.

- 2) For a period of more than three (3) months:

By a qualified Assistant Engineer in order of seniority on the Licensed Assistant Engineers’ Promotional Roster who accepts the temporary promotion or by an unassigned Vacation Relief Chief Engineer.

(c) For the purpose of this Section, “qualified” means possessing the required license and having been signed off by the Staff Chief Engineer or by his/her designee as having successfully completed a break-in period and having completed all break-in requirements. This will also be required of any Assistant Engineer from the Union Hall. The Employer will provide break-in requirements and training opportunity for Assistant Engineers from the MEBA hall in conjunction with the MEBA school.

(Emphasis added.)

5. Qualification is a mandatory requirement to be designated as a Chief Engineer who can be assigned to a vessel as Regular or Relief Chief Engineer.

Qualification is defined as follows: “That which is required before a person is legally entitled to do something.” The Oxford Companion to Law 1022 (1980). Also, “Quality or circumstance that is legally or inherently necessary to perform a function (qualification for office).” West’s Legal Thesaurus/Dictionary 623 (1986).

Webster’s New International Dictionary (2d ed.) defines “qualified” as, *inter alia*, “Having complied with the specific requirements of precedent conditions for an office, appointment, employment, etc.”

6. Cases showing “qualification” as an important element include the following:

In *Defense Distribution Region West*, 114 LA329, 332, 333 (Goodman, 2000), grievant Yount was promoted to WL-08 position as Motor Vehicle Operator Leader. The Arbitrator's conclusions included the following:

One of the requirements of the WL-08 position was to be able to drive all vehicles including a semi. At the time of her selection Yount was not licensed to drive a semi. A review of the job description includes the requirement that she train others. She could not train others to drive a semi if she was not licensed to drive one herself.

....

The simple fact is that employees selected MUST meet the qualifications for the position at the time of selection, not most of the requirements, not some of the requirements, but ALL.

....

All that is required is that the person selected meets the qualifications of the position.

....

I have determined Yount was not qualified.

The Arbitrator ordered a rerun of the selection process declaring that Yount would not be considered, as she was not qualified at the time the vacancy was filled.

In *Bozer v. Central Pennsylvania Quarry, Strip & Const. Co.*, 73 F. Supp. 803, 811 (D.C.M.D. Penn. 1947), the court stated: “Petitioner was admittedly a competent truck

driver and qualified for the position offered but he was not qualified for the position demanded in view of the requirement that ‘all employees be members of the United Mine Workers of America.’”

In a Marion County, Indiana case, a position of surveyor carried the provision that the employee hired would be paid 50% more than his base salary if he was a qualified licensed engineer. Mr. Ryan took office on January 1, 1939, but he was not a licensed professional engineer under the laws of Indiana. Subsequently on February 7, 1929, he was licensed to practice professional engineering in Georgia. Mr. Ryan brought suit seeking the 50% increase in salary. The trial court found for Mr. Ryan. On appeal, the court reversed the holding, stating that he was not in fact a qualified licensed engineer in Indiana and thus not entitled to the 50% increase which applied to those who met the necessary requirements to engage in the profession in Indiana. *Ralston v. Ryan*, 29 N.E.2d 202, (1940).

7. Mr. Mueller has never been fully “qualified” pursuant to the CBA, Section 2.1 Engineer Officer Vacancies (b) 2) and (c). While he had the required Chief Engineer’s License, he had not been signed-off by the Staff Chief Engineer or by his/her designee as having successfully completed a break-in period and having completed all break-in requirements.

Having entered the foregoing findings of fact, the Arbitrator now enters the following conclusions of law.

CONCLUSIONS OF LAW

1. In reliance on particular evidence adduced at the hearing in this case, as reviewed with the foregoing paragraphs, and finding supportive foundation in the material facts, exhibits and the authorities cited above and in the arguments made by the parties at the end of the hearing, it is concluded that for April 7-13, 1999, Norbert Mueller was not “qualified” to

work as a Chief Engineer because he had not been signed off; nor had he completed the break-in period and the appropriate requirements.

2. Since Mueller was not “qualified” as required by the CBA, signed by MEBA and WSF, he could not work as a Chief Engineer for Staff Chief Engineer William Costello, but only as an Assistant Engineer. Therefore, Mr. Mueller was not entitled to be paid as a Chief Engineer, but only as a Assistant Engineer for the period April 7-13, 1999.
3. Had Mueller been “qualified” pursuant to the CBA, and had he worked as a replacement for Staff Chief Engineer William Costello, he would have been entitled to be paid as a Chief Engineer as would any other qualified Chief Engineer who replaced the Staff Chief Engineer or the Alternate Staff Chief Engineer at Pier 46.

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AWARD

The grievance of Norbert Mueller, to be paid as a Chief Engineer at \$32.35 per hour, instead of as an Assistant Engineer at \$23.15 per hour for working 12 hours per day from April 7-13, 1999, is denied.

DATED this _____ day of March 2001.

MARINE EMPLOYEES' COMMISSION

JOHN P. SULLIVAN, Arbitrator

Approved By:

JOHN D. NELSON, Chairman

DAVID E. WILLIAMS, Commissioner