

STATE OF WASHINGTON
BEFORE THE MARINE EMPLOYEES' COMMISSION

In Arbitration
Before Chairman John D. Nelson

INLANDBOATMEN'S UNION
OF THE PACIFIC on behalf of
PATRICK BENNETT,
RANDY LODELL and
RODOLFO NUMANAP,

Grievants,

v.

WASHINGTON STATE FERRIES,

Respondent.

MEC Case No. 41-02

DECISION NO. 340 - MEC

DECISION AND AWARD

APPEARANCES

Schwerin, Campbell and Barnard, attorneys, by *Robert Lavitt* and *April Upchurch*, appearing for and on behalf of the Inlandboatmen's Union of the Pacific and Patrick Bennett, Randy Lodell, Rodolfo Numanap.

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 D. Nelson of the Marine Employees' Commission (MEC) when the Union, Inlandboatmen's Union of the Pacific filed grievances on behalf of employees Patrick Bennett, Randy Lodell, and Rodolfo Numanap designated case No. MEC 41-02. There followed efforts to settle the grievances which failed and the matter was heard in arbitration on July 22, 2002.

IBU has certified that the grievance procedures in the IBU/WSF collective bargaining agreement have been 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.

Following the hearing in this matter, briefs were timely filed by the parties.

THE ISSUES

Were employees Patrick Bennett, Randy Lodell and Rodolfo Numanap entitled to travel pay and mileage as relief employees under Rule 10A.07 of the IBU/WSF collective bargaining agreement?

If so, what is the remedy?

POSITIONS OF THE PARTIES

IBU

The IBU contends that the duties of the grievants herein make it clear that the definition found at Rule 1.14 of the definitions section of the collective bargaining agreement requires a finding that such employees are relief employees. This rule states:

The term "relief employee" shall be an employee working on a year around basis, guaranteed at least forty (40) hours of straight time pay per week, to relieve year around employees who are not scheduled for work."

Further, IBU claims that Rule 10A.07 applies to the grievants. This rule states:

Employees designated by the Employer as relief personnel shall be assigned home terminals as close as possible to the employee's residence. Such employees shall be paid mileage and travel time, in accordance with Schedule A for the distance between the home terminal and the terminal to which assigned.

Finally, IBU claims that when the grievants submitted claims for mileage and travel time after bidding the North Sound relief schedules, they were, for a time, paid in accordance with their claims.

WSF

The WSF maintains that the employees who bid the North Sound relief watch were like any other regular employee bidding a regular, ongoing watch. While WSF concedes that the designation of this watch was unfortunate in that it contains the word relief, it could have just as easily named it the “Z” watch, and that the particular name given cannot define the nature of the duties. Further, distinguishing the duties of the North Sound relief employees from those of employees recognized as relief employees under the WSF interpretation of the contract, is the fact that North Sound relief employees have the same duties at the same locations for each week of the sailing schedule. Thus, they work the Anacortes/San Juan Islands route for three days of the week, and the Clinton/Mukilteo route the other two workdays of the week. In this manner claims the WSF, the grievants herein are no different from any other employee working a set schedule, and are paid mileage and travel pay in accord with Rule 10A.09 of the contract which states:

Employees assigned to more than one route or terminal shall be assigned a regular relieving terminal and, when working away from the regular relieving terminal, will be paid mileage and travel time in accordance with Schedule A, for the distance between the regular relieving terminal or the terminal nearest their home and the other assigned terminal, whichever is less.

While WSF concedes that some claims for travel pay were paid to the grievants, it explains in its position and through testimony that such payments were made when the payroll audit team missed such claims during regular auditing of payroll records. Once the practice was discovered, some time in February 2002, the practice of approving such claims was halted.

Further evidence that the grievants were not considered relief employees, claims WSF, is found in the contractual requirements which specify that a fixed number of relief ABs must be agreed to and identified by both parties. That number is currently fixed at 31 during the normal

sailing year, and 35 during the summer schedule. WSF maintains that the agreed number of reliefs are identified and do not include any of the North Sound relief watch employees.

DISCUSSION

Uncontradicted testimony established that the North Sound relief schedule is one of many schedules posted which establish a regular course of assignment to more than one route or one vessel. In none of the other multi-location duty sites are the employees treated as relief employees as the IBU here maintains the grievants should be treated. Moreover, in the case of each of the grievants, the claim for travel pay was based not on their travel from home to the designated homeport, but from the designated homeport to the terminal located closer to their actual residence. This certainly could not have been the intent of the parties to the contract provisions covering travel time and mileage.

If WSF erred in misdesignating Anacortes as the home terminal for the North Sound relief crew, such misdesignation should have been challenged at the time. It apparently was not, and cannot now be raised in this grievance over mileage and travel pay.

FINDINGS OF FACT

1. Inlandboatmen's Union of the Pacific and Washington State Ferries are parties to an extended collective bargaining agreement covering terms and conditions of employment.
2. Patrick Bennett, Randy Lodell, and Rodolfo Numanap are employees of the WSF holding the position of AB Seaman, a classification each has held for some time.
3. Each of the Grievants was, at the time of the grievance filing herein, employed as part of the North Sound Relief crew, wherein they worked three days a week on the Anacortes-San Juan Islands route and two days a week on the Mukilteo-Clinton route.

4. The position of North Sound Relief crew is a bid position under the parties' collective bargaining agreement. By securing this bid position, the grievants have a set, unchanging schedule for the duration of the bid, which coincides with the sailing schedule published by WSF.

5. The designated home terminal for purposes of this bid is Anacortes, although each of the grievants lives in geographic proximity to the Clinton-Mukilteo terminals.

6. While each of the grievants claimed travel pay and mileage from their designated home terminal of Anacortes to Clinton for days that their schedule required them to work the Clinton-Mukilteo run, those claims were not sanctioned by the clear wording of the contract.

7. Although the payroll audit team apparently missed some of the claims for mileage/travel time submitted by the grievants, there came a time when each of the grievants was denied any further such claim by the audit team redlining their payroll sheets.

8. While each of the grievants held a position of North Sound Relief crew, they worked a set schedule and knew each day of the week where they would report to work.

9. Employees designated as relief employees under the parties' collective bargaining agreement are assigned to different locations depending upon need.

On such findings, the Commission reaches the following:

CONCLUSIONS OF LAW

1. The payment to each of the grievants of travel time/mileage from Anacortes to Clinton does not establish a practice, as WSF through its payroll audit team, corrected this situation when it was discovered. The WSF decided not to pay the travel time/mileage after approximately five months.

2. The grievants herein do not qualify as relief employees under the contractual definition. They work a set schedule assigned to the Anacortes-San Juan Islands and the Clinton-Mukilteo routes. This schedule is repeated each week of the posted watch and does not change unless one of the position holders is sick or otherwise requires relief from a relief employee.

3. The contract between the parties describes the manner in which the employees of the North Sound Relief crew watch are to be paid travel and mileage at 10A.09 (cited above). Each of the grievants herein was paid thusly, and there has been no violation of the contract.

AWARD

The grievances filed by IBU on behalf of Patrick Bennett, Randy Lodell, and Rodolfo Numanap are hereby denied.

DATED this ____ day of October 2002.

MARINE EMPLOYEES' COMMISSION

JOHN NELSON, Arbitrator

Approved By:

JOHN SULLIVAN, Commissioner

JOHN BYRNE, Commissioner