

STATE OF WASHINGTON  
BEFORE THE MARINE EMPLOYEES' COMMISSION

In Arbitration  
Before Commissioner John P. Sullivan

INLANDBOATMEN'S UNION  
OF THE PACIFIC on behalf of FRANK  
BERGSTROM,

Grievant,

v.

WASHINGTON STATE FERRIES,

Respondent.

MEC Case No. 12-03

DECISION NO. 360 - MEC

DECISION AND AWARD

**APPEARANCES**

Schwerin, Campbell and Barnard, attorneys, by *April Upchurch*, appearing for the Inlandboatmen's Union of the Pacific and Frank Bergstrom. (Mr. Bergstrom 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 the Marine Employees' Commission (MEC) on September 18, 2002, when the Inlandboatmen's Union of the Pacific (IBU) filed a request for grievance arbitration on behalf of Frank Bergstrom. IBU asserted that Washington State Ferries (WSF) failed to pay Mr. Bergstrom travel time and mileage for daily round trips from Edmonds to Anacortes from June 26, 2002 until the summer season was completed on September 21, 2002. In addition, it is claimed that WSF violated Rule 21.02 pertaining to seniority and assignment.

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 applications 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. Bergstrom.

John P. Sullivan, a Commissioner of the Marine Employees' Commission conducted a hearing in this matter on December 11, 2002, pursuant to RCW 47.64.150 and 47.64.280, chapter 316-02 and 316-65 WAC. Briefs were timely filed on February 12, 2003.

### **THE ISSUES**

The parties stipulated to the following issue statement:

1. Is Frank Bergstrom entitled to travel time and mileage from Edmonds to Anacortes from June 26, 2002 until September 21, 2002?
2. Did WSF violate the Collective Bargaining Agreement, Rule 21—Seniority and Assignments, when it transferred/assigned Mr. Bergstrom to Anacortes?
3. If so, what is the remedy?

### **POSITIONS OF THE PARTIES**

#### **Washington State Ferries**

Mr. Bergstrom had been a marine electrician for 25 years when he first went to work for WSF on April 22, 2002, as a terminal employee and was assigned to Fauntleroy Terminal. His status was as a part-time, on-call employee.

On June 10, 2002, Mr. Bergstrom was assigned to the Edmonds Terminal. His position at Edmonds was eliminated on June 25, 2002. He was offered an open position on the graveyard shift at the Anacortes Terminal. Mr. Bergstrom was told that if he did not take the position his only alternative was to resign from WSF since his position in Edmonds had been eliminated. Mr. Bergstrom accepted the permanent, full-time assignment at Anacortes and remained there completing the 2002 summer season.

Before Mr. Bergstrom started at the Anacortes Terminal, he talked with Ms. Shelley Burnett, Assistant Terminal Manager for the North Region including Anacortes, who assigned him to the Anacortes Terminal. Mr. Bergstrom asked Ms. Burnett if he would receive travel time and mileage from Edmonds for daily round trips to Anacortes. Ms. Burnett advised him he was not entitled to such travel time and mileage.

WSF points out that under the IBU/WSF CBA, Rule 10A.02, “No travel time or mileage pay shall be paid to part-time or on-call employees . . . .” This was Mr. Bergstrom’s status during his employment with WSF. WSF is confident that the evidence will demonstrate that Mr. Bergstrom, a part-time and on-call, probationary employee, was not entitled to the travel time and mileage he presently claims.

It is WSF’s position that Mr. Bergstrom did not possess or hold any seniority rights when he was assigned to Anacortes under Rule 21.02 of the parties’ CBA.

### **IBU and Frank Bergstrom**

Mr. Bergstrom started his employment with WSF on April 22, 2002, by being assigned to the Fauntleroy Terminal where he started his training as a part-time on-call terminal employee—his first employment with WSF.

On June 10, 2002, Mr. Bergstrom was assigned to the Edmonds Terminal for the scheduled summer season.

Terminal Agent, Mark Roden, transferred Mr. Bergstrom to the Anacortes Terminal to start June 26, 2002. Ms. Shelley Burnett, WSF Assistant Terminal Manager for the North Region, made the final decision to transfer Mr. Bergstrom to Anacortes Terminal. Mr. Bergstrom stated it was his understanding that he would not be assigned a terminal more than 60 miles away from his home in Renton; Anacortes is 93 miles from Renton. This transfer would create an extreme hardship for Mr. Bergstrom, a single father of a 14-year old son.

Mr. Bergstrom questioned Ms. Burnett about his selection to be “transferred” to Anacortes. Ms. Burnett advised that his position at Edmonds was being eliminated and if he did not wish to accept the Anacortes position, he would have to consider resigning from WSF. Mr. Bergstrom asked Ms. Burnett if he would be entitled to travel time and mileage each day for a round trip from Anacortes to Edmonds. Ms. Burnett advised him he would not be entitled to travel time and mileage.

Mr. Bergstrom worked at Anacortes from June 26, 2002 to the end of the summer season when he claims his work ended on September 21, 2002. Calculation would have to be made as to the actual days he worked at Anacortes. Mr. Bergstrom is entitled to travel time and mileage for each round trip from Edmonds to Anacortes that he made while working at the Anacortes Terminal.

## **DISCUSSION**

The applicable rules as found in the CBA main body and in the Appendix follow:

### **RULE 1 – DEFINITIONS**

**1.12 TEMPORARY POSITION.** The term “temporary position” or “temporary assignment” is any position and/or assignment which is not defined as a year around position or assignment.

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**1.15 PART-TIME EMPLOYEE.** The term “part-time employee” shall be an employee who may or may not be working on a year around basis, and is not guaranteed forty (40) hours of straight time pay per week. The employee should be scheduled to work the greatest number of hours per work week based on their hire date. The part-time employee may work, on a daily basis, any additional non-scheduled hours at the applicable rate of pay. When requested by a part-time employee, their schedule will include at least two (2) consecutive days off each work week.

**1.16 ON CALL EMPLOYEE.** The term “on call employee” shall be an employee who may or may not be working on a year around basis, and who is not guaranteed forty (40) hours of straight time pay per week. The employee will be assigned work based on their date of hire and availability.

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## **APPENDIX B** **TERMINAL AND INFORMATION DEPARTMENT**

The following rules are in addition to Rule 1 through Rule 36 and apply to the Terminal and Information Personnel only.

### **TERMINAL AND INFORMATION DEPARTMENT**

#### **RULE 1 – HOURS OF EMPLOYMENT, OVERTIME, AND ASSIGNMENT**

**1.03** Part-time and on-call employees shall be allowed to work ten (10) consecutive hours per day. Employees reporting to a shift shall be paid not less than four (4) hours and hour for hour thereafter not to exceed ten (10) hours. Overtime shall be paid whenever the employee works more than ten (10) hours per day or eighty (80) hours per two-week work schedule.

Mr. Bergstrom was hired by WSF on April 22, 2002 as a temporary, part-time, on-call, extra employee for the busy 2002 scheduled summer season. He was assigned to the Fauntleroy

Terminal department where he obtained his training. Mr. Bergstrom testified that his training agent, Darry Moats, told him he would not be assigned to a terminal more than 60 miles from his home in Renton, which is 93 miles from Anacortes.

Under date of May 9, 2002, it is noted on page 5 of the single page exhibit, "Seniority June 16, 2002" where Mr. Bergstrom is listed as No. 213.

WSF prepared documents that are identified as "Permanent/Temporary 2002 Summer Assignments Effective June 16, 2002, Version #4". Version #5 is also identified as June 16, 2002, while Version #6 is dated June 30, 2002.

The terminals are identified by number series, listing employees with their job number and their seniority number. The 100 series represents Anacortes, 500 Clinton, 600 Edmonds and 1100 is Fauntleroy. Mark Roden, a WSF Agent, assigned Mr. Bergstrom to Edmonds on June 10, 2002.

<b>2002 VERSION</b>		<b>June 16</b>	<b>June 16</b>	<b>June 30</b>
<b>Seniority</b>	<b>Name</b>	<b>#4</b>	<b>#5</b>	<b>#6</b>
213	Bergstrom, Frank	693	693	162
214	Williams, Marilyn	191	191	191
215	Bowen, Erika	Terminated		
216	Lowe, Keith	Resigned		
217	Halvorson, TonyAlee	591	591	591
218	Kiefaber, Michael	192	192	192
219	Self, Kaleena	1193	1193	1193
220	Harless, Mathew	582	582	582

All three versions of the Permanent/Temporary 2002 Summer Assignments indicate Mr. Bergstrom was on temporary assignment while in Edmonds and Anacortes.

As a new employee, Mr. Bergstrom, as is the custom and practice, did not have a "preference bid sheet" to indicate where he would like to be assigned. For new employees, a preference bid sheet would be filled out at the end of the summer season when he would be

bidding for a position for the fall season. Mr. Bergstrom did fill out a preference bid sheet at the end of the summer season for the fall season.

Ms. Shelly Burnett is the Assistant Terminal Manager for the North Region, which includes terminals at Edmonds-Kingston, Mukilteo-Clinton, Keystone-Port Townsend, Anacortes-San Juan Islands. She has been with WSF's Terminal Department since 1978 and was personally aware of the assignment of new employees for both the North and South Regions for the past five summer seasons.

Ms. Burnett testified that Mr. Bergstrom's position at Edmonds in Job 693 was being eliminated for business reasons and he was being assigned to Anacortes. Mr. Bergstrom complained to Ms. Burnett about the move to Anacortes. He lived in Renton and was a single father of a 14-year-old son. Renton to Anacortes is a 93-mile trip one way, which would cause him a huge hardship. He further said that his training agent, Darry Moats, had told him he would not be assigned more than 60 miles from his home. He also asked if he would be paid travel time and mileage from Edmonds to Anacortes for a round trip each day.

Ms. Burnett said that they tried not to have employees travel more than 60 miles from their home, but it happens. She further advised that Mr. Bergstrom would not receive travel time and mileage and further that he had a choice: accept the Anacortes assignment or resign. She told him he had until the following morning to decide. Ms. Burnett stated that travel time and mileage was not paid to part-time and on-call terminal department employees, pursuant to Rule 10A.02.

#### **RULE 10A – TRAVEL AND MILEAGE PAY**

**10A.01** All travel time shall be paid at the employee's regular straight time rate of pay.

**10A.02** No travel time or mileage pay shall be paid to part-time or on-call employees, except that when an on-call deck or part-time deck employee is

assigned to a temporary assignment and that assignment includes travel to another location which would entitle a year around non-relief employee to travel time and mileage, the on-call or part-time deck employee shall be entitled to such travel time and mileage.

Mr. Bergstrom expressed a concern that people with less seniority than he had (as 213) were working at terminals closer to Seattle: they included Kaleena Self - 219 at Fauntleroy and Mathew Harless - 220 at Clinton.

Kaleena Self was the last part-time on-call at Fauntleroy. Ms. Burnett talked with the terminal agent at Fauntleroy about their need for an on-call person, but did not pursue eliminating an on-call position at Fauntleroy. Ms. Burnett assigned Mr. Bergstrom to Anacortes starting on June 26, 2002. She placed him in a 40-hour position over Ms. Williams - 214 and Mr. Kiefaber - 218, both part-time on-call employees assigned to Anacortes. Her stated reason for doing so was because Mr. Bergstrom had more seniority.

Ms. Burnett did not allow Mr. Bergstrom to exercise seniority rights with respect to two employees in the same classification as Mr. Bergstrom. These two employees, Ms. Self - 219 at Fauntleroy and Mr. Harless - 220 at Clinton had less seniority than Mr. Bergstrom. One or the other could have been assigned to Anacortes or Mr. Bergstrom could have been allowed bump one or the other. Ms. Burnett did not approach Ms. Self or Mr. Harless regarding the open assignment at Anacortes, nor did she allow Mr. Bergstrom the opportunity to be assigned to Fauntleroy or Clinton based on his seniority.

Ms. Burnett gave an example of how seniority works. If there were five on-call persons at Fauntleroy and the fifth employee was not getting any work and Colman Dock Terminal has a need for an extra on-call person, they would take the lowest seniority part-time, on-call person from Fauntleroy and assign that person to the Colman Dock Terminal.



Those part-time, on-call temporary summer season employees are a classification group that has their own seniority that is set out in Rule 21 – Seniority and Assignments.

**RULE 21 – SENIORITY AND ASSIGNMENTS**

**21.01** The Employer recognizes the principle of seniority in the administration of promotions, transfers, layoffs and recalls. In the application of seniority under this Rule, if an employee has the necessary qualifications and ability to perform in accordance with the job requirements, seniority by classification shall prevail.

**21.02** In reducing or increasing personnel in the respective departments, seniority shall govern. When layoffs or demotions become necessary, the last employee hired in a classification shall be first laid off, or demoted to a lesser classification for job retention. When employees are called back to service, the last laid off or demoted in a classification shall be the first restored to work in that classification.

At WSF's initiative or request, Mr. Bergstrom left Anacortes at the end of his graveyard shift at 7:15 a.m. on June 28, 2002, to drive to the Edmonds Terminal and settle up his cash account, this was carrying out WSF business. Mr. Bergstrom was paid the appropriate travel time and mileage and Ms. Burnett approved payment for this one time incident, pursuant to Rule 10A.06 and 10A.08.

**10A.06** Employees shall be paid mileage and travel time, both ways for the distance between the terminal nearest their home or their regular relieving terminal and the temporary relieving terminal whichever is less, in accordance with Schedule A, in the following circumstances:

- a. When vessels are temporarily assigned to repair yard or berth or to other than their regular routes and the regularly assigned employees are retained with the vessel.
- b. When employees are, at the Employer's initiative, taken off their vessel or away from their terminal and temporarily assigned to a vessel on a different route or to a different terminal.

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**10A.08** If the Employer requires an employee to use a private car for travel between terminals, travel pay, if any, and mileage will be paid in accordance with Schedule A.

Mr. Bergstrom status during his entire employment with WSF during 2002 scheduled summer season, which was the only time he worked for WSF was a temporary, extra part-time, on-call employee assigned to the Terminal Department.

**RULE 10A – TRAVEL AND MILEAGE PAY**

**Rule 10A.02** No travel time or mileage pay shall be paid to part-time or on-call employees, except that when an on call deck or part-time deck employee is assigned to a temporary assignment and that assignment includes travel to another location which would entitle a year around non-relief employee to travel time and mileage, the on-call or part-time deck employee shall be entitled to such travel time and mileage.

The above rule is clear, unequivocal and unambiguous. Mr. Bergstrom status and classification as noted does not entitle any part-time, on-call employee to be paid travel time and mileage except in certain circumstances involving deck department assignments as noted in the rule.

When WSF directs a part-time, on-call employee to attend school or training classes, travel time and mileage would be paid. Another example would be when Mr. Bergstrom at the direction of WSF traveled from Anacortes to Edmonds to complete his cash audit at the terminal.

Mr. Bergstrom, a member of the terminal group, is 213 on the seniority list for the classification of temporary, part-time, on-call, extra 2001 scheduled summer season employees. This is a special group as noted above, but there is a seniority list for the group.

At Edmonds, Mr. Bergstrom was the one with the lowest seniority. At Anacortes, he had more seniority than the two people from his terminal seniority group and he was promoted to a 40-hour position.

Mr. Bergstrom, at 213 on the seniority list when at Edmonds, had more seniority than Ms. Self at 219. Had Ms. Self been moved to Anacortes, she would have had to be trained at the

Anacortes Terminal, the same as Mr. Bergstrom was trained. Business-wise for WSF, they had to train one person and it should have been the person with the lowest seniority.

Elkouri and Elkouri, *How Arbitration Works* 807 (5<sup>th</sup> ed. 1997) has a very appropriate statement that applies to the seniority facts in this matter.

It should be kept in mind that “seniority is a relationship between employees in the same seniority unit, rather than a relationship between jobs.” As stated by Arbitrator Paul Prasow:

Seniority protects and secures an employee’s rights in relation to the rights of other employees in his seniority group; it does not protect him in relation to the existence of the job itself. By the use of an objective measure, length of service, the rights of one employee are balanced against other employees’ rights. (quoting *Axelson Mfg. Co.*, 30 LA 444, 448 (Prasow, 1958).

Seniority is established by the “date of hire” or the date the employee is assigned to year around employment in a designated department. Mr. Bergstrom was hired on April 22, 2002, and was assigned seniority number 213. There were seven people with less seniority than Mr. Bergstrom.

See the following Rules regarding establishing seniority on “date of hire”:

**21.04** Establishing Seniority:

1. An employee’s hire date shall become the employee’s seniority date on the date the employee is assigned to year-round employment in a designated department, or on the date on which the employee completes 1040 straight-time hours of work with the Employer, whichever occurs first. . . .
2. It is understood and agreed that the “date of hire” will be used, prior to an employee attaining seniority as provided in 21.04-1, for all non-year round assignments. . . .

**21.06** On-call Employee Lists. The Employer shall prepare and maintain supplemental lists in order of dates of hire by department and classification of on-call employees. These lists shall be furnished within ten (10) days when requested by the Union.

## **FINDINGS OF FACT**

1. The Grievant and WSF are entities covered by chapter 47.64 RCW. IBU is the exclusive collective bargaining representative for a unit of WSF employees in accord with the cited statutes.
2. Frank Bergstrom was a temporary, part-time, on-call employee assigned to the terminal department for the 2002 scheduled summer season.
3. Mr. Bergstrom's date of hire was April 22, 2002 and he was 213 on the seniority list.
4. Mr. Bergstrom was assigned to the Fauntleroy Terminal where he obtained his training, which varies from 40 to 80 hours. During training he was advised that he would not be assigned more than 60 miles from his home in Renton.
5. On June 10, 2002, Mr. Bergstrom was assigned to a temporary position at Edmonds, and was given additional training specifically for the Edmonds Terminal.
6. Mr. Bergstrom's seniority by his hire date is noted in "Rule 21.04(1) Establishing Seniority." WSF recognizes the principle of seniority in Rule 21.01. Mr. Bergstrom's seniority did not become effective until after he was assigned and accepted a position at one of the WSF terminals—in this case, Edmonds.
7. Mr. Bergstrom's position at Edmonds was eliminated for business reasons. He had the least seniority at Edmonds and was to be assigned to Anacortes.
8. Mr. Bergstrom had several objections to being assigned to Anacortes.
  - a. Anacortes was more than 60 miles from his home in Renton; the trip would be 93 miles one way.
  - b. There were other employees (Ms. Self and Mr. Harless) with less seniority, assigned to Fauntleroy and Clinton less than 60 miles from his home.

c. Ms. Burnett advised him that he would not be paid travel time and mileage from Edmonds to Anacortes, pursuant to CBA Rule 10A.02.

8. Ms. Burnett told Mr. Bergstrom that he had until the next morning to decide if he wanted to accept the temporary assignment in Anacortes or resign from WSF.

9. Mr. Bergstrom accepted the temporary position in Anacortes, and started work on June 26, 2002, on the graveyard shift.

10. In Anacortes, Ms. Burnett assigned Mr. Bergstrom according to his seniority and advanced him over two temporary terminal employees, Ms. Williams-214 and Mr. Kiefaber-218.

11. Both Edmonds and Anacortes were temporary assignments for Mr. Bergstrom based upon the Permanent/Temporary 2002 Summer Assignments—Versions 4 and 5, issued on June 16, 2002 and Version 6, on June 30, 2002.

12. The temporary, part-time, on-call members for the 2002 summer schedule for the Terminal Department have their own seniority listing classification.

13. Mr. Bergstrom's seniority was not taken into consideration by Ms. Burnett in making assignments.

14. Mr. Bergstrom was a part-time on-call employee and is subject to Rule 10A.02, which states no travel time or mileage shall be paid to part-time, on-call employees which is Mr. Bergstrom's classification. There are some exceptions for special circumstances, but Mr. Bergstrom does not qualify for any of these exceptions.

15. None of the exceptions pertained to Mr. Bergstrom's travel to and from Anacortes, except for the trip on June 28, 2002 to Edmonds to audit his cash account.

16. Seniority is a relationship between employees in the same classification in relationship to assignments; seniority was not followed in Mr. Bergstrom's case.

17. There was no testimony presented by any of the parties in relation to probationary Rule 33.

### **CONCLUSIONS OF LAW**

1. The Marine Employees' Commission has jurisdiction over the parties and the subject matter herein.

2. Rule 10A.02 is clear, unequivocal and unambiguous. Mr. Bergstrom is not entitled to travel time and mileage from Edmonds to Anacortes from June 26, 2002 to September 21, 2002.

3. Mr. Bergstrom was denied his seniority rights within his classification in the Terminal Department in regard to desirable assignments within 60 miles of his residence in Renton.

### **AWARD**

1. There is no violation in Mr. Bergstrom not being paid travel time and mileage between Edmonds and Anacortes as this is pursuant to Rule 10A.02. Mr. Bergstrom's claim for travel time and mileage is denied.

2. WSF violated Rule 21.01 of the Collective Bargaining Agreement when it assigned Mr. Bergstrom to Anacortes and denied him the right to exercise his seniority to replace an employee in his classification with less seniority at Fauntleroy or Clinton. The only way to remedy this violation of Mr. Bergstrom's seniority is for WSF to pay general damages to compensate him. WSF shall pay Frank Bergstrom \$50.00 per day for each day he worked in Anacortes from June 26 to September 21, 2002.

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3. Mr. Bergstrom shall be paid the award for his damages within 45 days of the date of this award.

DATED this \_\_\_\_ day of March 2003.

MARINE EMPLOYEES' COMMISSION

\_\_\_\_\_/s/  
JOHN SULLIVAN, Arbitrator

Approved by:

\_\_\_\_\_/s/  
JOHN NELSON, Chairman

\_\_\_\_\_/s/  
JOHN BYRNE, Commissioner