

STATE OF WASHINGTON  
BEFORE THE MARINE EMPLOYEES' COMMISSION

In Arbitration  
Before Commissioner John Sullivan

INLANDBOATMEN'S UNION  
OF THE PACIFIC on behalf of  
SALLY KAY THOMAS,

Grievant,

v.

WASHINGTON STATE FERRIES,

Respondent.

MEC CASE NO. 25-03

DECISION NO. 366 – MEC

DECISION AND AWARD

**APPEARANCES**

Schwerin, Campbell and Barnard, by *Dmitri Iglitzin*, Attorney, appearing for the Inlandboatmen's Union of the Pacific and Sally Kay Thomas.

Christine Gregoire, Attorney General, by *David Slown*, Assistant Attorney General, appearing for the Washington State Ferries.

THIS MATTER came on regularly before the Marine Employees' Commission (MEC) on November 27, 2002, when the Inlandboatmen's Union of the Pacific (IBU) filed a request for grievance arbitration on behalf of Sally Kay Thomas. IBU asserts that Washington State Ferries (WSF) failed to pay Ms. Thomas overtime after the grievant worked a scheduled shift and then was released prior to starting a new shift, in violation of Rule 11.05 of the IBU/WSF Collective Bargaining Agreement (CBA).

IBU has certified that the grievance procedure in the IBU/WSF Collective Bargaining Agreement 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 Ms. Thomas.

John P. Sullivan, a Commissioner of the Marine Employees' Commission, conducted a hearing in this matter on March 10, 2003, pursuant to RCW 47.64.150 and 47.64.280, chapter 316-02 and 316-65 WAC. At the end of the hearing, counsel representing the parties presented oral argument.

### **THE ISSUES**

Did WSF properly pay Ms. Thomas overtime for the three hours she worked beyond her regular shift on August 13 and 14, 2002, pursuant to Rule 11.02, or was she entitled to a minimum of eight hours overtime for the period worked, under Rule 11.05?

### **POSITIONS OF THE PARTIES**

#### **IBU and Sally Thomas**

Ms. Thomas has been employed by WSF for 25 years. She is a member of the IBU, was promoted to AB relief employee three years ago, and has continued to serve in that capacity.

On August 13, 2002, Ms. Thomas was working as an AB relief on the ferry SPOKANE, starting her shift in Kingston at 12:45 p.m. (1245) on the Kingston/Edmonds route. Her shift ended at 9:30 p.m. (2130) in Kingston. During Ms. Thomas's shift that day, her supervisor, Dispatcher Bob Wheeler, asked her if she would work a short three-hour shift on the

PUYALLUP, following her shift on the SPOKANE. Ms. Thomas volunteered to accept this assignment.

As it turned out, the ferry SPOKANE was substituted for the PUYALLUP and Ms. Thomas worked her three-hour shift on the SPOKANE. At the end of her regular shift on August 13, 2002, Ms. Thomas was released at 9:30 p.m. (2130) and was waiting on the dock for the PUYALLUP to arrive in Kingston. Ms. Thomas completed her three-hour shift when the ferry SPOKANE tied up in Kingston at 12:17 a.m. (0017) on August 14, 2002.

Ms. Thomas was called back to work after completing her first shift and then started a second shift.

Pursuant to Rule 11.05 of the CBA, she is entitled to the minimum of eight hours of overtime.

### **Washington State Ferries**

Bob Wheeler is the Crew Resource Manager for WSF and Ms. Thomas's Dispatch Supervisor. On August 13, 2002, Mr. Wheeler spoke to Ms. Thomas during her regular assigned workday from 12:45 p.m. (1245) to 9:30 p.m. (2130), asking her to work another three-hour shift. Ms. Thomas volunteered to extend her watch, on holdover, for three hours from 9:30 p.m. to 12:30 a.m. (2130—0030). She was to be paid three hours of overtime.

Ms. Thomas was to do this on the ferry PUYALLUP when it arrived in Kingston. A crewmember on the PUYALLUP had called in sick and Ms. Thomas was to be the replacement for three hours.

Ms. Thomas finished her regular shift on the SPOKANE in Kingston, and waited on the dock or parking area until the PUYALLUP arrived so she could continue with her shift on the

PUYALLUP. It turned out that the SPOKANE was substituted for the PUYALLUP for the three hours of extended work agreed to by Ms. Thomas.

Ms. Thomas agreed to work the extended three hours sometime in the early evening of August 13, 2002. She was as she said, “on the clock” continuously from 12:45 p.m. to 12:30 a.m. She was never released from work by WSF during that period of time.

Ms. Thomas was paid for three hours of overtime, pursuant to Rule 11.02. She was never released by WSF. She could have been released by the SPOKANE, but her time remained continuous and she was not released by WSF as she was committed to work the extended three hours.

She was not called back to work from her home, which would have entitled her to a minimum of eight hours overtime for her three hours extending her regular assigned workday.

Ms. Thomas was paid three hours of overtime, which she is entitled to, not eight hours of overtime, pursuant to Rule 11.05.

## **DISCUSSION**

Rules 11.02 and 11.05 of the IBU/WSF CBA have been with the parties since the 1983-1985 CBA.

Rule 11.02 refers to when the regular assigned workday is extended by more than 15 minutes and states as follows: “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.”

The next sentence in Rule 11.02 read as follows in the 1983-1985 IBU/WSF CBA: “If the extended assignment exceeds four (4) hours, pay for such work shall be at the overtime rate

with a minimum of eight (8) hours.” This sentence was removed from the 1985-1987 IBU/WSF CBA.

Pete Jones was employed by WSF in the deck department for 34 years; the last five years, he was the Regional Director of the IBU. Mr. Jones testified that the second sentence, noted above, was removed, the result of a public interest issue in that some deck department workers were working beyond the regular assigned workday by four hours and two or three minutes and collecting the minimum under the 1983-1985 IBU/WSF CBA of eight hours at the overtime rate, which is double the straight time rate.

There was a general hue and cry from the public that this amounted to “featherbedding” and it was removed in the next contract between the parties.

Rule 11.05 has been the same since the 1983-1985 contract to the present 1999-2001 contract between the IBU and WSF. It reads as follows: “Employees called back to work after completing a scheduled shift and released prior to starting their next scheduled shift shall be paid at the overtime rate, with a minimum of eight (8) hours.”

On August 13, 2002, Pam Parini, deck crewmember of the PUYALLUP called in sick and did not report aboard the PUYALLUP. Patrick Eakes, a deck crewmember on the PUYALLUP on an earlier watch, was held over to cover Pam Parini’s position on the ferry pursuant to Rule 11.02. The ferry PUYALLUP was on the opposite run from the SPOKANE on the Kingston/Edmonds route.

Bob Wheeler, WSF Crew Resource Manager and Dispatch Supervisor issuing assignments to Ms. Thomas, made telephone calls to shore side off duty AB crewmembers, to try and find a replacement for Patrick Eakes, who was holding over for the sick Pam Parini. Mr.

Wheeler received no calls back from any possible replacements. Mr. Wheeler knew he had two AB relief employees on the SPOKANE, Dan Webster and Sally Thomas.

Mr. Wheeler called AB relief Dan Webster, but he was unable to replace Patrick Eakes. Webster mentioned to Ms. Thomas that he could not take over the assignment, the D-watch on the PUYALLUP, to replace holdover Patrick Eakes.

Ms. Thomas telephoned Mr. Wheeler who explained he needed a holdover for three hours of overtime on the D-watch of the PUYALLUP to replace Patrick Eakes who was holding over from replacing Pam Parini who called in sick. Mr. Wheeler explained that when Ms. Thomas finished her regular assigned work day on the SPOKANE at 9:30 p.m. in Kingston, she could wait for the arrival of the PUYALLUP in Kingston and that she would be continuously “on the clock,” meaning there would be no gap in her pay while waiting for the arrival of the PUYALLUP.

Ms. Thomas volunteered to accept the three hour of holdover overtime on the PUYALLUP.

The SPOKANE arrived in Kingston at the end of its regular work day and tied up at 9:03 p.m. (2103) and at 9:14 p.m. (2114) shut the engine down by indicating FWE (Finished With Engine). For all practical purposes the SPOKANE was tied up and secured for the night and was not expected to make any more runs that night.

Ms. Thomas had made a commitment to Bob Wheeler that she would continue to work the “holdover” three hours on the PUYALLUP, so she was not released to return home.

Ms. Thomas went to her truck and moved it further down the dock in Kingston. The SPOKANE crew and officers had left the vessel to return to their homes. Ms. Thomas was sitting in her truck waiting for the arrival of the PUYALLUP for approximately 20 minutes.

The PUYALLUP docked in Kingston at 9:43 p.m. (2143) and tied up for the night. The second mate on the PUYALLUP, Patty Whaley, told Ms. Thomas to go back on the SPOKANE, which was being substituted for the PUYALLUP.

The SPOKANE sailed from Kingston at 10:02 p.m. (2202) on the Kingston/Edmonds route. The SPOKANE tied up in Kingston at 12:12 a.m. (0012) August 14, 2002, and shut the engines down at 12:17 a.m. FWE (0017). The SPOKANE was shut down for the night.

The crew and officers, including Ms. Thomas, departed for their homes.

### **CONTRACT LANGUAGE**

From the 1999-2001 IBU/WSF CBA:

#### **RULE 1 – DEFINITIONS**

**1.14 RELIEF EMPLOYEE.** 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.

#### **RULE 11 – MINIMUM MONTHLY PAY AND OVERTIME**

**11.02** When work is extended fifteen (15) minutes or less beyond the regular assigned work day, such time shall be paid at the overtime rate for one quarter (1/4) 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. Such extended work shifts shall not be scheduled on a daily or regular basis. . . .

. . . .

**11.05** Employees called back to work after completing a scheduled shift and released prior to starting their next scheduled shift shall be paid at the overtime rate, with a minimum of eight (8) hours

Rule 11.02 from the 1983-1985 IBU/WSF CBA:

**11.02** When work is extended fifteen (15) minutes or less beyond the regular assigned work day, such time shall be paid at the overtime rate for one quarter

(1/4) 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. If the extended assignment exceeds four (4) hours, pay for such work shall be at the overtime rate, with a minimum of eight (8) hours. Such extended work shifts shall not be scheduled on a daily or regular basis.

Rule 11.02 from the 1985-1987 IBU/WSF CBA:

**11.02** When work is extended fifteen (15) minutes or less beyond the regular assigned work day, such time shall be paid at the overtime rate for one quarter (1.4) 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. ~~If the extended assignment exceeds four (4) hours, pay for such work shall be at the overtime rate, with a minimum of eight (8) hours.~~

### **FINDINGS OF FACT**

1. The Inlandboatmen's Union of the Pacific and Washington State Ferries are entities covered by chapter 47.64 RCW. Grievant IBU is the exclusive collective bargaining agency for WSF deck employees under the cited statute.

2. During Ms. Thomas regular assigned work day on August 13, 2002, she was in contact with Bob Wheeler, Crew Resource Manager, and Supervisor Dispatcher, who assigned her jobs in the ferry fleet.

3. Mr. Wheeler told her they had to replace a "holdover" who worked a second assigned work day for Pam Parini, a deck department employee who called in sick. Mr. Wheeler needed an AB relief employee to work "holdover" for three hours of overtime after Ms. Thomas completed her regular assigned work day at 9:30 p.m. on August 13, 2002, so she would be working from 9:30 p.m. to 12:30 a.m. on August 14, 2002.

4. Ms. Thomas was advised the assignment would be on the ferry PUYALLUP on the same Kingston/Edmonds route, that she could wait for the PUYALLUP to arrive in Kingston and



would be continuously “on the clock” without a pay gap. Her regular assigned work day would end in Kingston at 9:30 p.m.

5. Ms. Thomas volunteered to work this “holdover” for three hours of overtime.

6. After Ms. Thomas completed her regular assigned work day at 9:30 p.m., she had to wait approximately 20 minutes for the arrival of the PUYALLUP. During this time, she moved her truck down the dock and waited in her truck for the PUYALLUP to dock in Kingston.

7. Upon the arrival of the PUYALLUP, Ms. Thomas was advised the SPOKANE was going to be substituted for the PUYALLUP and that she would work her “holdover” three hours of overtime on the SPOKANE.

8. Ms. Thomas completed her “holdover” three hours of overtime from 9:30 p.m., Tuesday August 13, 2002 and 12:30 a.m. on Wednesday, August 14, 2002 and left the Kingston dock to return home.

9. Ms. Thomas had made a commitment on a promise or pledge to Mr. Wheeler when she volunteered to work the “holdover” three hours of overtime after her regular assigned work day. This commitment was made during her regular work day.

10. When Ms. Thomas completed her regular assigned work day at 9:30 p.m. on August 13, 2002, she could not leave and go home like the other crewmembers and officers for she had promised to work the next three hours, “on the clock” for overtime pay. She was not released from her obligation to work the three hours of overtime for WSF.

11. Ms. Thomas “holdover” three hours of overtime extended her regular assigned work day on August 13, 2002. She was never released from her obligation to work the three hours of overtime.

12. There was no call-back to work. Ms. Thomas work was continuous. Nor was there a release from work. Her regular assigned work day was extended pursuant to Rule 11.02.

13. Ms. Thomas was paid overtime for three hours she worked from 9:30 p.m., August 13 to 12:30 a.m., August 14, 2002.

### **CONCLUSIONS OF LAW**

On the basis of the record before the Marine Employees' Commission, the above findings of fact and the contractual and legal analysis, the Commission makes the following conclusions of law:

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

2. Rule 11.02 is clear, unequivocal and unambiguous. Ms. Thomas is entitled to the three hours of overtime that she has been paid, but no more.

3. Rule 11.05 is not applicable to the circumstances and the work that Ms. Thomas was performing on August 13 and 14, 2002 aboard the ferry SPOKANE (substituted for the ferry PUYALLUP).

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**AWARD**

The Marine Employees' Commission hereby determines that the Washington State Ferries did not violate the CBA when it failed to pay Ms. Thomas eight hours of overtime, pursuant to Rule 11.05 for the three hours of overtime she worked in extending her regular work day.

As a result of the above findings and conclusions, the MEC hereby orders that the grievance, filed herein by the Inlandboatmen's Union of the Pacific and Sally Thomas, be dismissed.

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

MARINE EMPLOYEES' COMMISSION

\_\_\_\_\_  
JOHN SULLIVAN, Arbitrator

Approved by:

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JOHN NELSON, Chairman

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JOHN BYRNE, Commissioner