

STATE OF WASHINGTON
BEFORE THE MARINE EMPLOYEES' COMMISSION

INLANDBOATMEN'S UNION
OF THE PACIFIC,

Grievant,

v.

WASHINGTON STATE FERRIES,

Respondent.

MEC CASE NO. 3-10

DECISION NO. 589 - MEC

DECISION AND AWARD

APPEARANCES

Schwerin, Campbell, Barnard and Iglitzin, by *Robert Lavitt*, Attorney, appearing for the Inlandboatmen's Union of the Pacific.

Rob McKenna, Attorney General, by *Don Anderson*, Assistant Attorney General, appearing for the Washington State Ferries.

NATURE OF THE PROCEEDINGS

On October 6, 2009, the Inlandboatmen's Union of the Pacific (IBU) filed the above matter with the Marine Employees' Commission as an unfair labor practice complaint, charging WSF with unilateral implementation of a new payroll overpayment procedure. The complaint was scheduled for settlement conference and hearing. On March 2, 2010, the parties notified the MEC that they had agreed to convert the complaint to a grievance for resolution. Settlement efforts were unsuccessful. On April 21, Arbitrator John Cox conducted a grievance arbitration hearing.

ISSUE

Did Washington State Ferries (WSF) violate the Collective Bargaining Agreement (CBA) when it notified Dina Hilberg that it was seeking to recover the overpayment of wages for August 1 through 15, 2009, which Ms. Hilberg had received following her on the job injury?

RECORD BEFORE THE ARBITRATOR

The MEC has the following record before it:

1. Complaint Charging Unfair Labor Practices, filed October 6, 2009 and docketed as MEC Case 3-10.
2. The IBU/WSF Collective Bargaining Agreement for the period July 1, 2009 through June 30, 2011.
3. Notice of Cancelled Answer Date, dated March 26, 2010.
4. Transcript of the hearing conducted on April 21, 2010.
5. Exhibits 1—10 accepted into evidence from the parties during the hearing.
6. Post-hearing briefs from both WSF and IBU, filed July 9, 2010, completing the record.

POSITIONS OF THE PARTIES

IBU's Position

Ms. Hilberg acted in good faith and reasonably relied on the actions and statements of WSF. RCW 49.48.210(10) requires that an overpayment dispute involving a union member be resolved under the grievance procedures of the collective bargaining agreement. This particular section negates WSF's argument that RCW 49.48.210 provides the employer with unrestricted authority to collect the sum allegedly overpaid to Ms. Hilberg. She would suffer serious financial harm if required to repay WSF the \$1726.40 at issue here.

WSF's Position

Ms. Hilberg was never eligible for the \$1726.40 in wages she was paid for August 1—15, 2009. She knew that Marivic Feliciano, WSF payroll clerk, did not have authority to extend wages. Ms. Hilberg's reliance on information provided by Ms. Feliciano was unreasonable.

WSF is obligated to recover wage overpayments under state law. If WSF is allowed to recoup the wages by deduction from subsequent wage payments, pursuant to RCW 49.48.210, each deduction is limited to five percent of the employee's disposable earnings in a pay period, which will minimize the financial impact on Ms. Hilberg.

FINDINGS OF FACT

1. WSF and the IBU are parties to a collective bargaining agreement covering deck personnel aboard its vessels.
2. On July 31, 2009, Deck Department employee Dina Hilberg injured her elbow on the job. Following her injury, she filed a Jones Act claim, as required. Ms. Hilberg was eligible for and received maintenance and cure in a timely manner.
3. Shortly after Ms. Hilberg's injury, she contacted WSF's Payroll Department to find out how long she could expect to receive wages while recovering from her injury. Marivic Feliciano, WSF Payroll personnel, told Ms. Hilberg she had been approved to receive wages for the pay period August 1 to August 15, 2009. Ms. Hilberg received the paycheck in the amount of \$1726.40 for that period on August 25.
4. In early October 2009, Ms. Hilberg received a letter dated September 28, 2009 from the Washington State Department of Transportation (WDOT) notifying her that she had been mistakenly overpaid the amount of \$1726.40 for the period August 1—15, a period of time when she was not actually working on board a WSF vessel. WSF Payroll received Ms. Hilberg's timely appeal of the overpayment notification on October 9, 2009.
5. On October 6, 2009, the IBU filed an unfair labor practice with MEC. Ultimately, the parties agreed to convert the unfair labor practice to a grievance. Pursuant to RCW 49.48.210(10), the dispute would be resolved using the grievance procedure contained in the collective bargaining agreement between WSF and IBU.
6. The WSF Vessel Employee Work-Related Injury Information brochure (WSF Ex. 8) provides, "Jones Act benefits differ from traditional Worker's Compensation. You will receive time loss, also called unearned wages, for the time you are unable to work as a result of your injury, or until the end of the pay period in which the injury occurred, whichever comes first."
7. The parties' Collective Bargaining Agreement contains the following provision:
21.05 Whenever an employee is injured or contracts a contagious or infectious disease in the line of duty, the employee's wages **may** be extended by the Employer.

Emphasis added.

8. RCW 49.48.200(1) and 49.48.200(2) provide for state agencies to recoup the overpayment of wages:

Debts due the state or a county or city for the overpayment of wages to their respective employees may be recovered by the employer by deductions from subsequent wage payments as provided in RCW 49.48.210, or by civil action. If the overpayment is recovered by deduction from the employee's subsequent wages, each deduction shall not exceed: (a) Five percent of the employee's disposable earnings in a pay period other than the final pay period; or (b) the amount still outstanding from the employee's disposable earnings in the final pay period. The deductions from wages shall continue until the overpayment is fully recouped.

Nothing in this section or RCW 49.48.210 or 49.48.220 prevents: (a) An employee from making payments in excess of the amount specified in subsection (1)(a) of this section to an employer; or (b) an employer and employee from agreeing to a different overpayment amount than that specified in the notice in RCW 49.48.210(1) or to a method other than a deduction from wages for repayment of the overpayment amount.

9. RCW 49.48.210(10) applies to the overpayment of wages to employees covered by a collective bargaining agreement:

When an employer determines that an employee covered by a collective bargaining agreement was overpaid wages, the employer shall provide written notice to the employee. The notice shall include the amount of the overpayment, the basis for the claim, and the rights of the employee under the collective bargaining agreement. **Any dispute relating to the occurrence or amount of the overpayment shall be resolved using the grievance procedures contained in the collective bargaining agreement.**

Emphasis added.

CONCLUSIONS OF LAW

On the basis of the record before him, the findings of fact and contractual and legal analysis, the Arbitrator makes the following conclusions.

1. The parties' 2009-2011 Collective Bargaining Agreement was in force and effect at the time of the grievant's injury.
2. The Arbitrator has jurisdiction over the parties and the dispute (RCW 47.64.280, chapter 316-65 WAC).

3. Rule 21.05 of the Collective Bargaining Agreement provides that the employer may extend wages when an employee is injured in the line of duty. The rule does not require the employer to extend wages.

4. Ms. Hilberg injured herself on the last day, July 31, 2009, of the pay period, and according to the WSF Jones Act brochure (WSF Ex. 8) she should have been paid unearned wages only through that date.

5. Ms. Hilberg did nothing wrong; WSF admittedly made an error. However, RCW 49.48.200 and 49.48.210(10) sets forth the manner in which WSF can rectify the overpayment of wages. As a responsible steward of the state's financial resources, WSF is seeking to recoup the \$1726.40 mistakenly paid to Dina Hilberg.

AWARD

1. Based on the record and evidence presented, the IBU's grievance is denied.
2. The Arbitrator remands the matter of Ms. Hilberg's repayment of \$1726.40 in wages to the parties to determine a fair and reasonable method for repayment to WSF.
3. The Arbitrator will retain jurisdiction until a payment schedule is established.

DATED this 10th day of September 2010.

MARINE EMPLOYEES' COMMISSION

/s/ JOHN COX, Arbitrator

Approved by:

/s/ JOHN SWANSON, Commissioner

/s/ PATRICIA WARREN, Commissioner