

STATE OF WASHINGTON
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

DONALD DOWNING,)	MEC CASE NO. 2-83
)	
Grievant,)	PERC CASE NO. 4548-A-83-382
)	
vs.)	
)	
WASHINGTON STATE FERRIES,)	DECISION NO. 4-C MEC
)	
Respondent.)	MOTIONS FOR RECONSIDERATION
)	
_____)	

On April 18, 1986 the Superior Court of Washington, Kitsap County, entered an order vacating Decision No. 4-B MEC and remanded the case of Donald Downing vs. Washington State Ferries to the Marine Employees' Commission for further proceedings (Docket No. 85-2-00800-8).

By vacating Decision No. 4-B MEC, the matters at hand are the motions by Mr. Downing (Grievant), filed on July 9, 1984 and on November 9, 1984, for reconsideration of Decision of No. 4 MEC.

Decision No. 4 MEC contained an Order dismissing Downing's grievance on the grounds that Grievant had not utilized the remedies available to him in Rule 15.02 of the WSF/IBU Agreement before filing the grievance with the Public Employment Relations Commission.

WSF had raised that failure as an affirmative defense and presented certain evidence that the prescribed grievance conference had not been held. Grievant did not respond to that evidence, but MEC acknowledged in response to Grievant's first Motion for Reconsideration "that there may have been some confusion about whether . . . (Downing) needed to present testimony demonstrating that Rule 15 had been utilized."

Subsequently, a hearing on Grievant's Second Motion for Reconsideration was limited to MEC's eligibility to reconsider under the terms of Hall v. Seattle, 24 Wn. App. 357, 602 P 2d 366 (1979). The Court held that MEC's interpretation of Hall v. Seattle was improper, and remanded the matter to MEC for further proceedings consistent with the Court's findings of fact and conclusions of law.

MEC considers the circumstances in this decision to be unique, in that MEC had acknowledged that there may have been some confusion regarding Grievant's need to present evidence, and with reference to the Court's requirement that the respective burdens of proof be established.

NOW, THEREFORE, the Marine Employees' Commission enters the following order.

ORDER

1. The Motions for Reconsideration of Decision No. 4 MEC filed on July 9, 1984 and on November 9, 1984 respectively by Donald Downing are hereby granted.
2. A hearing limited to Grievant Downing's use of or failure to use the grievance procedures specified in Rule 15.02 of the WSF/IBU Agreement shall be held as soon as practicable. At the hearing the burden of proof will lie with the Washington State Ferries (WSF) to establish that Grievant did not utilize the procedures in said Rule 15.02. The burden of coming forward to offset evidence presented by WSF lies with Grievant Downing.

Dated at Olympia, Washington, this 17th day of June, 1986.

MARINE EMPLOYEES' COMMISSION

/s/ DAVID P. HAWORTH, Chairman

/s/ LOUIS O. STEWART, Commissioner

/s/ DONALD E. KOKJER, Commissioner