

STATE OF WASHINGTON
BEFORE THE MARINE EMPLOYEES' COMMISSION

INLANDBOATMEN'S UNION
OF THE PACIFIC,

Complainant,

v.

WASHINGTON STATE DEPARTMENT
OF TRANSPORTATION, FERRIES
DIVISION,

Respondent.

MEC CASE NO. 15-09

DECISION NO. 585 - MEC

DECISION AND ORDER

APPEARANCES

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

Robert McKenna, Attorney General, by *David Slown*, Assistant Attorney General, appearing for the Washington State Department of Transportation, Ferries Division (WSF).

NATURE OF PROCEEDING

On May 29, 2010, the Inlandboatmen's Union (IBU) filed a complaint charging the Washington State Ferries (WSF) with violating RCW 47.64.130 by failing to comply with previous Marine Employees Commission rulings regarding Romaine Jackson.

RECORD BEFORE THE MARINE EMPLOYEES' COMMISSION

The Hearing Examiner considered the following records in deciding the issues.

1. The IBU's complaint charging unfair labor practices dated May 29, 2010.
2. WSF's Answer to the complaint filed November 4, 2009.
3. The official hearing transcript and six (6) WSF Exhibits and seven (7) IBU exhibits.
4. Post-hearing brief of Complainant IBU.
5. Post-hearing brief of Respondent WSF.

ISSUE

Did WSF commit an unfair labor practice by refusing to treat Romaine Jackson as eligible for rehire pursuant to MEC Decisions 518-MEC and 518-A-MEC?

FINDINGS OF FACT

On the basis of the evidence and the record of proceedings, the Hearing Examiner hereby makes the following findings of fact.

1. The WSF and the IBU are parties to collective-bargaining agreement(s) governing the terms and conditions of certain employees of the WSF.

2. Pursuant to the terms of those Agreement(s), the IBU filed a grievance on behalf of Romaine Jackson alleging the Employer violated the terms of the Agreement by terminating Romaine Jackson for theft.

3. On June 14, 2007, Arbitrator Liz Ford issued decision No. 518 – MEC, wherein she found the WSF had proven theft. Ms. Ford also ruled the WSF, due to its overzealous treatment of Mr. Jackson, must consider Mr. Jackson eligible to apply for an open Traffic Attendant position.

4. On June 25, 2007, the IBU moved for clarification of the award. On August 1, 2007, Ms. Ford clarified her previous decision in No. 518 – A – MEC. Ms. Ford’s decision stated, in part:

The WSF asserts that on-call work requires the employee to be available for Ticket Seller as well as Traffic Attendant jobs, arguing this renders Mr. Jackson ineligible . . . This is not the result the arbitrator intended. Thus, Mr. Jackson may apply for, and should be considered eligible for a position as an on-call employee and the WSF will be required to permit Mr. Jackson to work in an on-call capacity limited to Traffic Attendant assignments.

5. In December, 2008, Mr. Jackson applied for employment with the WSF.

6. The WSF labeled Mr. Jackson’s application with a note which read “Not Qualified Terminated from WSF for theft”.

ANALYSIS

Ms. Ford's decision in this matter clearly directed the WSF to consider Mr. Jackson eligible for employment. She also clearly found that the WSF had proven Mr. Jackson engaged in theft. The direction to consider an employee terminated for theft to be eligible for re-employment is highly unusual.

Ms. Ford's ruling was in response to the WSF's overzealous enforcement of its finding of theft. Rather than deal with employee misconduct in an administrative manner, the WSF had four employees handcuffed and paraded through a public area of Colman dock. While she found the WSF had proven theft, the amount of money involved was relatively insignificant and she was rightly offended at the over-the-top actions of the WSF.

The WSF clearly disregarded Ms. Ford's direction. Employer Exhibit 1 on its face included a notation that they considered Mr. Jackson ineligible for rehire due to theft. They repeated the same arguments here.

While Ms. Ford was rightly offended, her order was inappropriate. She found the WSF had proven its contention that Mr. Jackson had engaged in theft. Arbitrators as a rule uphold terminations where an employer has proven theft. Where theft has been proven, arbitrators generally hold that the employee has broken the trust of his/her employer, regardless of how small the value of the theft, and employers are reluctant to take back someone they cannot trust. In addition to arbitral standards, the WSF is a public employer charged with safeguarding taxpayer dollars. It is inappropriate to require a public employer to re-employ an employee who has broken the public trust by a theft.

CONCLUSIONS OF LAW

On the basis of the record before her, the findings of fact and analysis, the Hearing Examiner makes the following conclusions of law:

1. The Marine Employees' Commission has jurisdiction over the parties and the subject matter pursuant to RCW 47.64.280 and 47.64.130.
2. The case is properly before the Marine Employees Commission for decision.
3. In Decision No. 518, the MEC found that the WSF had proven Mr. Jackson to have engaged in theft.

4. The Decisions issued in No. 518 and No. 518 – A – MEC inappropriately ordered the WSF to consider Romaine Jackson eligible for employment.

5. Decision Nos. 518 and 518 – A are hereby vacated as they related to the re-employment of Mr. Jackson.

RECONSIDERATION

Pursuant to the provisions of RCW 34.05.470, any party may file a petition for reconsideration with the Commission within ten days from the date this final order is mailed. Any petition for reconsideration must state the specific grounds for the relief requested. Petitions that merely restate the party's previous arguments are discouraged. A petition for reconsideration does not stay the effectiveness of the Commission's order. If no action is taken by the Commission on the petition for reconsideration within twenty days from the date the petition is filed, the petition is deemed to be denied, without further notice by the Commission. A petition for reconsideration is not a prerequisite for seeking judicial review.

DATED this 23rd day of July 2010.

MARINE EMPLOYEES' COMMISSION

/s/ PATRICIA WARREN, Hearing Examiner

Approved by:

/s/ JOHN SWANSON, Chairman

/s/ JOHN COX, Commissioner