

BEFORE THE MARINE EMPLOYEES' COMMISSION

STATE OF WASHINGTON

PAUL DAVILA,	)	
Grievant,	)	
	)	
v.	)	MEC No. 1-83
	)	
	)	PERC No. 4520-A-83-381
	)	
WASHINGTON STATE FERRIES.	)	FINDINGS OF FACT,
	)	CONCLUSIONS OF LAW,
Respondent.	)	AND ORDER
_____	)	

DECISION No. 4 - MEC

1. The Commission has authority to act as arbitrator in this matter.

The grievant claimed that his discharge from the position of temporary terminal employee at the Fauntleroy terminal of the Washington State Ferry Service was unjustified. He accordingly claims reinstatement to his former position and appropriate back pay.

2. The Commission finds that this grievant did indeed have job performance problems and that respondent followed a well documented evaluation and notice procedure which culminated in grievant's discharge. This action was fully justified under the circumstances and no remedy or reinstatement is appropriate.

THIS MATTER came on for hearing February 1, 1984, before

Donald E. Kokjer, Commissioner, on behalf of the Marine Employees' Commission. The purpose of the hearing was to take evidence concerning Mr. Davila's grievance contesting his dismissal by Washington State Ferries (WSF). The grievant, Paul Davila, was represented by Kelby D. Fletcher, and Washington State Ferries was represented by its attorney, Assistant Attorney General, ROBERT M. MACINTOSH.

The Marine Employees' Commission, having reviewed and considered the record, and the briefs of counsel and being fully advised in the premises, now enters the following decision.

#### INTRODUCTION

Paul Davila filed a complaint with the Washington State Public Employment Relations Commission (PERC) on February 24, 1983, alleging that he had been unfairly fired for being late to work. He requested reinstatement and payment of back wages.

Before PERC took any action on Mr. Davila's complaint, the Washington State Legislature passed a law creating the Marine Employees' Commission and giving the Commission authority to resolve grievances between WSF and its employees. Pursuant to chapter 47.64 RCW, the MEC assumed jurisdiction over all pending cases involving Washington State Ferry Employees and Washington State Ferries that had been filed with PERC.

#### BACKGROUND

Davila had previously been employed by WSF in a temporary

position. In November of 1981 he was hired as an oncall temporary terminal employee at the Fauntleroy dock. His responsibilities included serving as a ticket taker and a terminal watchman/attendant. Employees in the WSF terminal department are parties to an agreement between WSF and the Inlandboatmen's Union of the Pacific (IBU). Mr. Davila had substantial job performance problems in his employment. He had received verbal warnings, negative written job performance evaluations, and a prior 40 hour suspension. Mr. Davila did not contest the merits of the prior disciplinary proceedings. Instead he contested his December 30, 1982 termination from his WSF position which resulted from a late to work report on December 24, 1982.

#### FINDINGS OF FACT

1. The parties stipulated to the use of the temporary rules adopted by the MEC on August 26, 1983, but not filed with the Code Reviser as of the date of the hearing.

2. At the time of his dismissal, Davila was a temporary terminal employee whose responsibilities included serving as a ticket taker and terminal watchman/attendant. He had been employed in that position for approximately 13 months.

3. Mr. Davila's performance on the job over the 13 months was deficient in several areas: poor employee relations; being late to work; unsatisfactory duty fulfillment and poor work

performance.

4. Washington State Ferries properly utilized a system of progressive discipline in trying to upgrade Mr. Davila's performance. Mr. Davila was given verbal warnings, written warnings, was suspended for 40 hours and ultimately was terminated on account of his performance problems.

5. WSF's Notice of termination listed 2 grounds: 1) late to work; 2) poor work performance.

6. Providing assistance in the loading of newspapers is not a job responsibility of ticket taker or watchman. At the very infrequent times such assistance may be given, it is only given after the employee has finished his other duties.

7. Mr. Davila failed to begin work at his assigned time of 12:15 a.m. on December 25, 1982. Mr. Davila failed to load an extra service vessel, although it was part of his duties and he was supposed to be on shift at the time that the extra service vessel was being loaded. The fact that he was assisting in the loading of newspapers does not change the fact that he was not performing his duties at the time of the beginning of his shift.

From the foregoing findings of facts, the Marine Employees' Commission makes the following conclusions of law.

#### CONCLUSIONS OF LAW

1. The Marine Employees' Commission has jurisdiction in this matter under the provisions of chapter 47.64 RCW.

2. Plaintiff's Exhibit No. 4 was not admitted as evidence but was made a part of the record, the letter written over the signature of Roderick H. Spencer, a Post Intelligence dealer gives an opinion of grievant's qualifications and is not relevant to this proceeding.

3. The decision of the hearing examiner in the Employment Security's hearing is not relevant because it only reached the question of whether or not Mr. Davila was guilty of misconduct, as defined by Employment Security regulation, and because the determination was for a different purpose. Further, Washington State Ferries was not represented at that hearing. The determination by Employment Security that Mr. Davila was not guilty of misconduct is not inconsistent with a determination that his dismissal was justified.

4. WSF has the burden of proving by a preponderance of credible evidence that Mr. Davila was late for work and that the level of discipline imposed was appropriate.

5. The employer has demonstrated that Davila failed to begin work at his assigned time and failed to assist in loading an extra service vessel.

6. The level of discipline, dismissal, is appropriate under all the circumstances of this case since WSF carefully followed WSF policy concerning discipline and Davila had been counseled often in the past in an attempt to assist him in improving his

performance.

7. The action of WSF dismissing Paul Davila from his position of temporary terminal employee should be affirmed and this grievance dismissed.

ORDER

It is hereby ordered that the grievant's request that the Washington State Ferries System reinstate Paul Davila to his former position is denied, WSF's decision to dismiss Davila is affirmed and his grievance is dismissed.

DATED this 29<sup>th</sup> day of June, 1984.

MARINE EMPLOYEES' COMMISSION

/s/ DAVID P. HAWORTH, Chairman

/s/ DONALD E. KOKJER, Commissioner

/s/ LOUIS O. STEWART, Commissioner