

STATE OF WASHINGTON

BEFORE THE MARINE EMPLOYEES COMMISSION

In the matter of the notice of)	
labor dispute filed by:)	
)	
GERALD J. SULLIVAN)	
)	
Under the terms of the collective)	FINDINGS OF FACT,
bargaining agreement between)	CONCLUSIONS OF LAW,
)	AND ORDER
WASHINGTON STATE FERRY SYSTEM)	
)	
and)	
)	
MARINE ENGINEERS BENEFICIAL)	
ASSOCIATION)	
)	
)	

Michael Patterson, Attorney at Law, appeared on behalf of the grievant.

Preston, Thorgrimson, Ellis & Holman, by J. Markham Marshall, Attorney at Law, appeared on behalf of the union.

Kenneth Eikenberry, Attorney General, by Gregory Duras, Legal Intern, appeared on behalf of the employer.

On April 4, 1982, Gerald J. Sullivan filed a notice of labor dispute with the Public Employment Relations Commission, alleging that the Washington State Ferry System improperly discharged him. The Commission docketed the matter as Case No. 4033-A-82-335, and Kenneth J. Latsch, a member of the Commission staff, was designated to serve as Arbitrator. A hearing was conducted on September 30, 1982. The parties submitted post-hearing briefs.

Chapter 15, Laws of 1983, transferred jurisdiction for the administration of Chapter 47.64 RCW from the Public Employment Relations Commission to the Marine Employees Commission. Pursuant to notice issued to the parties, the Marine Employees Commission took action to accept jurisdiction over all cases which had been pending before the Public Employment Relations Commission under Chapter 47.64 RCW on the effective date of Chapter 15, Laws of 1983. Subsequently, the Marine Employees Commission designated Kenneth J. Latsch as Arbitrator under its

rules for the purpose of the above-entitled case.

BACKGROUND

The Washington State Ferry System (employer) operates a number of motor vessels which transport passengers and vehicles across Puget Sound at a variety of locations. The employer has collective bargaining relationships with several employee organizations, including the Marine Engineers Beneficial Association (union). The collective bargaining agreement in effect from July 1, 1980 through June 30, 1983 specifies that the union is the exclusive bargaining representative of all "licensed engineer officers". The licensing qualification relates to certification issued by the United States Coast Guard for the operation of different types of motor vessels.

The union operates a "hiring hall" to provide qualified marine engineers to a variety of employers. The ferry system routinely announces available positions through the hiring hall. The announcement procedure requires the employer to inform the union of any type of work available, the duration of the work, and any special qualifications required. The vacancy is posted on a board in the union hall, and interested applicants bid for the position by submitting a "shipping" card. The card contains the applicant's name, qualifications to operate different types of motor vessels, and seniority date. Cards with the oldest seniority date are given first priority in the selection of an application for a position. Once qualifications and seniority dates are verified, the most senior qualified applicant is referred to the employer.

Typically, each company using the union's hiring hall for referrals establishes its own set of requirements for new marine engineers. The ferry system requires that a new engineer must complete a "break-in" period of at least 80 hours on the vessel to which the engineer is assigned. During the break-in, the new engineer observes operation of the vessel's propulsion and

emergency systems under the supervision of the vessel's staff chief engineer. Once the break-in period is completed, the newly hired engineer assumes a regular position on the vessel.

The dispute raised in this matter commenced on March 24, 1983, when Bud Byrne, port engineer for the ferry system, was informed that an emergency had arisen on the ferry M.V. Hiyu, a small ferry operating on the Point Defiance-Tahlequah run in the southern portion of Puget Sound. A chief engineer on the Hiyu had been injured, and a replacement was needed immediately. Byrne had already anticipated hiring a permanent "vacation relief" engineer to work on a number of vessels as needed. With the emergency arising on the Hiyu, Byrne decided to revise the vacancy notice to reflect that the successful applicant would have to assume duties on the Hiyu immediately and later work as vacation relief on other ferry vessels. Because of the emergency, Byrne desired to find a qualified chief engineer with prior ferry system service who would not have to go through any break-in period. Byrne notified the union of the vacancy on March 24, 1983, with the understanding that the position would be posted the next day.

On March 25, 1982, Gerald J. Sullivan (grievant), a union member licensed as a chief engineer, went to the union hall for the regular "job call". Sullivan noticed the ferry system position posted on a board with other vacancies, and decided to "throw in his card". The position was listed as "vacation relief", but did not specifically address the emergency nature of the vacancy. Sullivan's employment history indicated prior service in the ferry system, from March 11 through July 27, 1977, on the M.V. Hyak as assistant engineer. He had not worked on the Hiyu.

Sullivan was selected for the position and was directed to report to the ferry system office. Typically, Sullivan would have reported to Byrne, but he was absent, so Sullivan reported to

Mary Liuska, fleet maintenance coordinator. Liuska noticed that Sullivan was to be assigned to the Hiyu, but he had not worked on that vessel before. Liuska mentioned the emergency on the Hiyu and expressed a concern to Sullivan that he lacked sufficient break-in time on the vessel to immediately assume the position. After some discussion, Liuska decided to dispatch Sullivan to the vessel the next morning.

After completing the employment forms and receiving his assignment, the grievant returned to his residence. Shortly after his arrival, he received a telephone call from Byrne, who had learned of Sullivan's assignment to the Hiyu. Byrne initially told Sullivan not to report to the Hiyu because he did not have adequate break-in time. After discussing the situation with the grievant, Byrne relented and told Sullivan to report at 6:00 AM. The grievant then telephoned the union to seek advice. Mario White, a union official, told Sullivan to report as directed and the union would "back him up" if the employer raised further objections.

After his conversation with the grievant, Byrne contacted Earl Nilsen, staff chief on the Hiyu. Byrne explained the situation and ordered Nilsen to stay on duty to evaluate Sullivan's qualifications and his ability to operate the vessel.

On March 26, 1982, Sullivan reported to the Hiyu as ordered, and Nilsen showed him around the vessel for about one hour. The vessel made two runs with the grievant observing the normal operations. After the completion of the second run, Nilsen telephoned Byrne and informed him that Sullivan could not take over the vacant position because the grievant lacked sufficient break-in. Acting upon Byrne's order, Nilsen directed Sullivan to return to the union hall. While the grievant was enroute, Byrne telephoned the union to inform union officials that Sullivan was not qualified and that the position on the Hiyu was still

available for a qualified engineer. When Sullivan returned to the union hall, he spoke with several union officers who explained the situation to him. The vacant engineer position was subsequently posted again and given to Dan Smith, a union member with extensive experience with the ferry system.

POSITIONS OF THE PARTIES

The grievant argues that he was an employee of the Washington State Ferry System as a result of his assignment to M.V. Hiyu, and that he was improperly dismissed from his position. The grievant contends that the position was not listed as an emergency vacancy, and he should have been afforded the opportunity to complete the 80 hour break-in period.

The employer maintains that it acted properly when it discovered that the grievant did not possess sufficient break-in experience to operate the Hiyu. The employer contends that it advertised for a chief engineer possessing prior experience on the Hiyu because of an emergency, and the grievant did not possess sufficient break-in time. The employer further maintains that it took reasonable steps to inform the grievant of the 80 hour break-in requirement, and it was willing to allow the grievant to demonstrate his abilities.

The union argues that the grievant was never an employee of the ferry system because he had been improperly dispatched, and the employer took steps to return the grievant to the union hall before he completed any work. In the event the grievant is found to have been a ferry system employee, the union maintains that the grievant was not qualified to hold the position on the Hiyu.

ISSUE

The parties were unable to stipulate to the issue to be decided, and the Arbitrator reserved determination of the issue for a later date. The issues for resolution are:

1. Was Gerald J. Sullivan an employee of the Washington State Ferry System?
2. If Sullivan was an employee, was he improperly discharged from employment? If so, what is the appropriate remedy?

PERTINENT CONTRACT PROVISIONS

Section VI

(k) In emergencies, when it has been ascertained that no qualified Chief Engineer is available from the Offices of the Union, the Employer may make transfers within the fleet on a temporary basis under provisions contained in Section IX. No Chief Engineer Officer so transferred shall suffer any loss of pay or other benefits. A "qualified Chief Engineer Officer" is a Chief Engineer Officer who, by reason of license and satisfactory shipboard breakin, is approved to stand watch. This provision will not apply to seasonal cutbacks. (Emphasis added)

DISCUSSION

Employment Status

Before the employer's actions can be examined, it is necessary to determine whether the grievant was an employee of the Washington State Ferry System. Examination of the facts indicates that Sullivan did hold employment status with the employer. Sullivan not only completed a set of employment records at the employer's office, but he was also dispatched to a vessel. The Arbitrator notes the potential confusion in the type of employment offered, both in the notice posted in the hiring hall and when Sullivan arrived at the ferry system terminal, but the record clearly

indicates that the employer had several opportunities to return the grievant to the union hall before the assignment was given. It is thus concluded that Sullivan was an employee as of March 26, 1982.

Sullivan's Release from Employment

The grievant maintains that his Coast Guard license and personal experience gave him sufficient qualification to perform the engineering duties on the Hiyu. However, the grievant acknowledges that he did not have 80 hours of break-in time on the vessel. While Coast Guard certification serves as a basis for employment qualification, the employer can properly require additional qualifications to operate on specific ferry vessels. The employer presented undisputed testimony that the 80 hour break-in requirement had existed for at least seven years. Reference to the break-in period is found in the collective bargaining agreement, and the union was cognizant of the requirement when Sullivan was dispatched. The only exception for break-in periods arises where an emergency takes place, and the employer can then make assignments or transfers to provide qualified engineers.

The initial employment request was not communicated accurately. The grievant believed that he was applying for a "vacation relief" position that could have led to an opportunity for a break-in period. Given this mistake, the employer took extra steps to review the grievant's qualifications. The emergency on the Hiyu required a marine engineer with break-in time already completed. The employer did not have time to assign Sullivan to a regular break-in period. The grievant's prior ferry system experience was on a different vessel, and he did not have any familiarity with the Hiyu's engine plant. Because of the emergency, the employer was compelled to return Sullivan to the

union hall and find a qualified engineer to start work immediately on the Hiyu.

REMEDY

Although the employer had legitimate reasons to return Sullivan to the union hall, the grievant was dispatched to the M.V. Hiyu and he worked on the vessel for approximately two hours. In this instance, the grievant is entitled to one day's wage to reflect the dispatch and time spent on the Hiyu.

FINDINGS OF FACT

1. The Washington State Ferry System operates a number of motor vessels to provide transportation services in the Puget Sound area.
2. The Marine Engineers Beneficial Association has a bargaining relationship with the ferry system. The collective bargaining agreement in effect from July 1, 1980 through June 30, 1983 recognizes the union as exclusive representative of all "licensed engineer officers". Apart from license requirements mandated by the United States Coast Guard, the employer further requires marine engineers to complete a 80 hour break-in period on the vessel to which an engineer is assigned.
3. On March 24, 1982, Bud Byrne, Port Engineer, notified the union that the employer had a vacancy for a qualified engineer to immediately assume the position of Chief Engineer on the M.V. Hiyu due to an emergency. The successful applicant would thereafter be assigned to "vacation relief" work throughout the ferry fleet.

4. On March 25, 1982, the grievant, Gerald J. Sullivan, reported to the union hall to see what work was available. The grievant noticed a position titled "vacation relief" with the ferry system and applied for it. Awarded the position, the grievant proceeded to the ferry system office to complete the employment procedure.
5. At the ferry system office, Sullivan spoke with Mary Liuska, fleet maintenance coordinator. Liuska noticed that the grievant had been sent to fill the emergency vacancy on the Hiyu and questioned Sullivan's lack of break-in time. After discussions, Liuska told the grievant to report to the Hiyu the next morning.
6. When the grievant returned to his residence, Byrne telephoned him and initially told him not to report to the Hiyu. Byrne relented and directed him to report as ordered. Byrne then discussed the situation with Ed Nilsen, staff chief on the Hiyu and ordered Nilsen to stay on duty to evaluate Sullivan.
7. Sullivan reported to the Hiyu on March 26, 1982 at 6:00 AM. Nilsen showed him through the vessel for approximately one hour, and the vessel completed two runs while the grievant was being familiarized with the operation.
8. At approximately 8:00 AM Nilsen telephoned Byrne and informed him that Sullivan did not have sufficient experience to assume the position on the Hiyu. Acting upon Byrne's order, Nilsen told the grievant to return to the union hall.
9. Sullivan returned to the union hall, and discussed his situation with union officials. The matter was not resolved to the grievant's satisfaction. The position at issue was

subsequently given to another union member with considerable experience in the operation of Ferry vessels.

CONCLUSIONS OF LAW

1. The Marine Employees Commission has jurisdiction in this matter pursuant to Chapter 47.64 RCW as amended by Chapter 15, Laws of 1983.
2. By completing employment forms and being dispatched to a vessel, Gerald J. Sullivan was an employee of the Washington State Ferry System.
3. By returning the grievant to the union hall, the employer did not violate the terms of the collective bargaining agreement, but is obliged to pay the grievant one day's wage for the day Sullivan was dispatched to the M/V Hiyu.

AWARD

The grievance is sustained in part and denied in part.

The Washington State Ferry System shall pay Gerald J. Sullivan a full day's wage at the appropriate rate in effect on March 26, 1982, since the grievant was ordered to report to the M.V. Hiyu.

DATED at Olympia, Washington this 1st day of November, 1983.

MARINE EMPLOYEES' COMMISSION

/s/ KENNETH J. LATCH, Arbitrator