

STATE OF WASHINGTON
BEFORE THE MARINE EMPLOYEES' COMMISSION

INLANDBOATMEN'S UNION
OF THE PACIFIC on behalf of
JAMES BRICKLEY,

Grievant,

v.

WASHINGTON STATE FERRIES,

Respondent.

MEC CASE NO. 22-07

DECISION NO. 542 – MEC

ORDER CLOSING
SETTLED GRIEVANCE

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

Rob McKenna, Attorney General, by *David Slown*, Assistant Attorney General, appearing for Washington State Ferries.

THIS MATTER came on regularly before the Marine Employees' Commission (MEC) on April 20, 2007, when the Inlandboatmen's Union of the Pacific (IBU) filed a request for grievance arbitration, docketed as MEC Case No. 22-07. The IBU's grievance alleged that in November 2006, WSF's Port Captain unjustly removed James Brickley from his AB position, based solely upon a breathing test administered by Dr. Zimmerman of Health Force and the subsequent restriction that he could only wear a respirator while doing sedentary work.

Commissioner John Sullivan was assigned to act as Mediator for the settlement conference scheduled on June 5, 2007. Commissioner Elizabeth Ford was designated to act as Arbitrator and a hearing scheduled for July 19, 2007.

The parties were unsuccessful at resolving the issue during the June 5 settlement conference. Due to issues over the availability of WSF's primary witness, the July 19 hearing was cancelled, continued to November 9 and then later continued again to January 18, 2008. The

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January 18 hearing was cancelled when Arbitrator Elizabeth Ford announced she had accepted a new position with King County and would depart the Commission the end of January.

Commissioner Patricia Warren, appointed to fill Ms. Ford's position on the Commission, was substituted as Arbitrator and a hearing rescheduled for June 12, 2008.

During MEC's May 30, 2008 public meeting, Paul Ganalon, WSF Labor Relations, reported that the parties had signed an agreement resolving this matter. IBU withdrew the grievance the same day. WSF provided the Commission with a copy of the parties' signed settlement agreement. That agreement is appended to and becomes a part of this Order by reference.

ORDER

It is hereby ordered that the request for grievance arbitration, filed by the IBU and docketed as MEC Case No. 22-07, is closed in acknowledgement of the parties' settlement agreement.

DATED this 20th day of June 2008.

MARINE EMPLOYEES' COMMISSION

/s/ JOHN SWANSON, Chairman

/s/ JOHN SULLIVAN, Commissioner

/s/ PATRICIA WARREN, Commissioner

JUN 05 2008
MARINE EMPLOYEES COMMISSION
OLYMPIA, WA

Settlement and Release Agreement
Re: IBU and WSF, MEC Case No. 22-07 (James Brickley)

The Inlandboatmen's Union of the Pacific (IBU or Union) and the Washington State Ferries division of the Washington Department of Transportation (WSF or Employer), collectively the Parties, desire to resolve the above referenced case scheduled for arbitration before the Marine Employees' Commission. The parties along with the grievant, James Brickley, also wish to execute a release of any existing or potential individual claims Mr. Brickley may have against the Parties under law.

Recitals

A. James Brickley has been a WSF employee since 1981 and currently works as a full time AB Sailor. He is represented by the IBU.

B. A question arose regarding Mr. Brickley's fitness for duty when he reported for fire fighting training in the fall of 2006. A preliminary initial health exam determined Mr. Brickley was unfit to participate in fire fighting training due to an existing cardiovascular condition. His last day of work was November 17, 2006.

C. To address concerns over his fitness for duty Mr. Brickley arranged for follow up examinations from his medical specialist. Although ultimately cleared for duty, because of scheduling and administrative delays Mr. Brickley did not resume work until February 10, 2007. From November 17 until February 10 Mr. Brickley used 54 days of sick leave.

D. Mr. Brickley has announced his plans to retire this year.

E. This matter is scheduled for arbitration before the Marine Employees Commission.

Agreements

In order to avoid the uncertainties, delays and further costs of arbitration, the parties and Mr. Brickley hereby agree as follows:

1. The Employer shall credit Mr. Brickley 13.5 days of annual leave at the straight time rate, within 10 days of the conclusion of the consideration and revocation periods described in ¶ 7 of this Agreement. The Employer shall also remit to Mr. Brickley the sum of one hundred (\$100) dollars as consideration for the full release of claims described herein. The Employer further agrees to notify Mr. Brickley, the IBU and its counsel once it has credited Mr. Brickley with the additional leave and remitted the foregoing sum.

2. The parties and Mr. Brickley all acknowledge that the items described in the previous paragraph constitute something of value above and beyond what Mr. Brickley would have otherwise been entitled to receive.

3. The IBU agrees that upon receipt of the notice described in ¶ 1 to notify the MEC that this matter has been settled and to withdraw with prejudice the underlying grievance in MEC Case No. 22-07.

4. In exchange for the promises of the Employer contained in this Agreement, Mr. Brickley agrees and promises to release and forever discharge the Employer, its officials, employees, and agents, as well as the Union, its officers, employees, and agents, from all claims of discrimination he may have against the Employer or Union, whether known or unknown, arising out of or related in any way to his employment with WSF through the effective date of this Agreement. It is understood that this release includes, but is not limited to, claims brought pursuant to the IBU-WSF Collective Bargaining Agreement, the Marine Employees Public Employment Relations Act, the Washington Law Against Discrimination, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Family and Medical Leave Act, Age Discrimination in Employment Act, as well as under common law, tort law, and the duty of fair representation. To the extent that Mr. Brickley has asserted any such claims or grievances, prior to signing this Agreement, he agrees that he will cease to pursue the claim(s) and take all necessary steps to have the claim(s) dismissed and/or withdrawn.

5. This waiver and release shall not waive or release claims where the events in dispute first arise after execution of this Agreement, nor shall it preclude either party from filing a lawsuit for the exclusive purpose of enforcing his or its rights under this Agreement.

6. Mr. Brickley agrees that he has read this Agreement, understands its terms and the fact that it releases any claim he might have against the Employer or the Union, and acknowledges that he has had full opportunity to consult with his own counsel of choice, and enters into this Agreement voluntarily, without duress or coercion from any source.

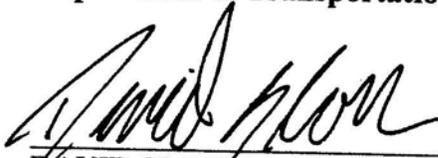
7. Mr. Brickley acknowledges that he has been given 21 days to consider the terms of this Agreement. The terms of this offer remain regardless of what portion of the consideration period Mr. Brickley uses. In other words, he may, but is under no obligation to, wait 21 days before deciding to sign. Mr. Brickley further understands and acknowledges that he has seven (7) days after signing this Agreement to revoke it. This Agreement will not be effective until this seven (7) day revocation period has expired.

8. The provisions of this Settlement Agreement are severable, and if any part of it is found to be unlawful or unenforceable, the other provisions of this Settlement Agreement shall remain fully valid and enforceable to the maximum extent consistent with applicable law.

9. This Settlement Agreement shall be governed by and construed in accordance with the laws of the State of Washington without application of the principles of conflicts of law, and venue for any proceeding hereunder shall be in King County, Washington.

IN WITNESS WHEREOF, the parties to this Settlement Agreement have executed the same as of the dates indicated below.

**Washington State Ferries,
Department of Transportation**



DAVID SLOWN W SBA 24943
Assistant Attorney General

Dated May 13, 2008

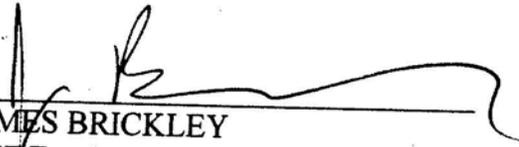
Inlandboatmen's Union of the Pacific



DENNIS CONKLIN
Regional Director

Dated May 9, 2008

Grievant



JAMES BRICKLEY
WSF Employee and IBU Member

Dated May 13, 2008

