

STATE OF WASHINGTON  
BEFORE THE MARINE EMPLOYEES COMMISSION

In Arbitration  
Before Commissioner John P. Sullivan

INLANDBOATMEN'S UNION OF	)	MEC Case No. 29-00
THE PACIFIC on behalf of	)	
RICHELLE GREGORY,	)	
	)	DECISION NO. 276 – MEC
Grievant,	)	
	)	DECISION AND AWARD
v.	)	
	)	
WASHINGTON STATE FERRIES,	)	
	)	
Respondent.	)	
	)	

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Schwerin, Campbell and Barnard, attorneys, by *Elizabeth Ford* and *Dmitri Iglitzin*, appearing for and on behalf of the Inlandboatmen's Union of the Pacific and Richelle Gregory (Ms. Gregory attended the hearing.)

Christine Gregoire, Attorney General, by *David Slown*, Assistant Attorney General, appearing for and on behalf of the Washington State Ferries.

This matter came on regularly before John P. Sullivan of the Marine Employees' Commission (MEC) on August 11, 2000, when the Inlandboatmen's Union of the Pacific (IBU) filed a request for grievance arbitration on behalf of Ms. Richelle Gregory. IBU asserted that Washington State Ferries (WSF) unjustly demoted Ms. Gregory in violation of the applicable Collective Bargaining Agreement between WSF and IBU.

IBU has certified that the grievance procedures in the IBU/WSF Collective Bargaining Agreement (CBA) were utilized and exhausted. IBU has also certified that the arbitrator's decision shall not change or amend the terms, conditions or application of said collective bargaining agreement; and that the arbitrator's award shall be final and binding.

The parties' agreement as to the parameters of the dispute to be resolved by said Arbitrator is binding on them and on him. Such agreement is accepted, therefore, as the test for determining the rights, in the material circumstances of the parties here, including those of Ms. Gregory.

A hearing in this matter was conducted on February 15 and March 19, 2001, pursuant to RCW 47.64.150 and 47.64.280; chapter 316-02 and 316-65 WAC. Briefs were timely filed by May 30, 2001.

## POSITIONS OF THE PARTIES

### Position of Washington State Ferries

Ms. Gregory came to work on Saturday, February 5, 2000 at Pier 52 in Seattle. She arrived around 9:35 a.m., as her shift was to start at 9:45 a.m. She picked up her working funds from her personal safe in the safe room and went to work in her ticket seller booth.

At 11:40 a.m., Ms. Gregory took her break. She went up to the second floor of the building where the agent's office is located and gave Sue Lowery, the Terminal Agent on duty, her Doctor's slip stating that she was disabled from work as of February 4, 2000 and that she could stand/walk only five minutes out of each half hour. The report stated she could do light work as of February 5, 2000 and return to regular work March 5, 2000.

Ms. Gregory's left knee had been injured at work several days earlier. When she saw Sue Lowery, her left knee was swollen and painful. Sue Lowery told her to do a final count of her funds and to make a final deposit and go home as soon as a relief ticket seller showed up, which was expected about 12:30 p.m. Ms. Gregory closed down her booth and put her funds away in her personal safe in the safe room.

At the end of the day shift, Terminal Agent Irene Schafer checked the "drop safe" and found that Ms. Gregory had not made a \$500 drop that should have been made. Ms. Lowery attempted to contact Ms. Gregory, but could not reach her Saturday night, February 5. She left a message with

Ms. Gregory's friend, but received no reply from Ms. Gregory on Sunday, February 6. On Monday, February 7, 2000, WSF still had not heard from Ms. Gregory. Mike Anderson, the South Terminal Manager, determined that an audit of Ms. Gregory's personal safe should be conducted.

Kathy Booth from WSF Internal Control, Sue Lowery, Terminal Agent and Jim Olson, Terminal Agent were present when Richelle Gregory's safe was opened and the audit completed. The audit discovered that the \$500 that should have been in the "drop safe" was in Gregory's personal safe. The audit disclosed that Gregory's working fund was \$813.90 short. The working fund should have been \$1,000, but instead was only \$186.10. The \$1,000 was entrusted to Ms. Gregory at the start of her shift at 9:45 a.m. on Saturday and when she closed down around noon, she was to have \$1,000 back in her working fund.

Ms. Gregory was unable to pose any reason why the funds were not in her personal safe. She speculated the funds might have been lost or stolen by persons unknown. The investigation continued. A notice was given; a pre-disciplinary hearing was scheduled and held. WSF also considered some previous counseling and discipline of Ms. Gregory for deficiencies in her performance as a ticket seller. After the pre-disciplinary hearing, based upon all of the above, Ms. Gregory was demoted from a ticket seller to a traffic attendant for three (3) years.

WSF feels confident that the evidence will demonstrate, first of all that there was a rational basis for discipline at the time the discipline was imposed; and secondly, that the amount of discipline imposed in this case was reasonable under all the facts and circumstances of the case.

#### Position of IBU and Richelle Gregory

Richelle Gregory was disciplined for falsification of her funds when she said she had \$1,000 in her working fund when it was discovered she only had \$186.10. The other reason WSF found for disciplining her was poor work performance that included not only the incident of February 5, 2000, but also other incidents that happened years before.

Gregory was in pain on February 5, 2000, from the injury to her left knee; it was swollen and stiff. She could not bend her knee and was in fact unfit for duty as a ticket seller based upon her doctor's unfit for duty slip.

WSF violated the CBA when WSF personnel entered Ms. Gregory's personal assigned safe on Monday, February 7, 2000 and audited the contents. They did not wait until the ticket seller, Richelle Gregory, could be present as required in Appendix B, Terminal and Information Department, Rule 2 – Working Conditions:

**2.09** The seller and Agent shall be present when an audit is made of their tickets or cash. A copy of the audit report shall remain in the safe for the seller's review.

At the pre-disciplinary hearing on May 12, 2000, WSF personnel were asked if there was no theft proven, what would happen and Gregory was advised they were not going to discipline her. Ultimately, WSF conceded that there was no theft, but disciplined her anyway and quite harshly.

The allegation of theft could not be substantiated, nor could the allegation of improper use of ferry system cash. Therefore, WSF did not discipline her for those allegations. WSF disciplined Gregory for two things: falsification of documents and poor work performance. Gregory was punished much more severely than others who had done the same thing she was charged with or had committed more serious offenses.

#### STATEMENT OF THE ISSUE

Ms. Gregory was a ticket seller in a WSF ticket seller booth at Pier 52, Seattle. The allegation of "Removal of Funds, Rule #3" which amounted to theft and the allegation of improper use of Ferry System cash, "Rule #8 – Cash/Check Handling Procedures" both set out and referenced in the *WSF Employee Code of Conduct*, could not be substantiated by the investigation and hearing.

Ms. Gregory was disciplined for partial falsification of her cash report when she left work early on February 4, 2000, because of her physical condition from a recent injury, and for poor work performance in handling the revenue she was responsible for at her booth.

1. Did WSF violate the CBA by demoting Ms. Gregory from ticket seller to traffic attendant for three years?
2. Was there just cause for discipline and was the amount of discipline imposed reasonably related to misconduct?
3. If so, what is/are the remedy/remedies?

## DISCUSSION

Richelle Gregory began working for WSF in January 1991 as an on-call ticket seller.

Upon arriving for her shift as a ticket seller, Ms. Gregory routinely goes to the safe room located under the Terminal Agent's Office first. (This building is separate and south of the main terminal at Pier 52.) The safe room is locked with only the ticket sellers, terminal agents and internal control having keys.

Each ticket seller has his/her own personal combination in the safe room. Only the ticket seller and the internal control manager know the combination. To start the shift, the ticket seller removes a working fund of \$1,000, tickets and commuter passes from the personal safe. The seller proceeds to the assigned toll booth, counts the cash, tickets and commuter tickets; enters the information into the POS (point of sale) machine which tracks monetary activity; and then places the drawer into the machine. This operation is called "declare."

At the end of the shift, the ticket seller bundles the excess money over \$1000, places it in a blue deposit bag and into a "drop safe" inside the safe room. This is noted on the POS machine.

In addition to the excess money above the \$1,000 working fund at the end of the shift, the ticket seller counts all the tickets and money, checks and passes which they call “media” and enters the figures into the POS machine and hits the “declare” button. The machine signifies if the count on the machine matches the ticket seller's tally, but it does not indicate a variance, whether it is a shortage or an overage. The ticket seller then takes the drawer from the tollbooth, goes to the safe room, opens the assigned personal safe and places the drawer with the \$1,000 working fund and the tickets in the safe and relocks it. The money in excess of the \$1,000 working fund is placed in the “drop safe” with a receipt prepared by the POS machine as well as the ticket seller. The drawer with the working fund and tickets would be ready when that ticket seller reports for the next scheduled shift.

Ms. Gregory was involved in incidents in May 1994 and December 1997 concerning her handling of duties as a ticket seller, which resulted in disciplinary action prior to the incident of February 5, 2000. In May 1994, a WSF investigation disclosed some irregularities including issuing \$0.00 receipts for the amount paid, \$7.10 on May 9, 10 and 20, 1994. She was suspended without pay beginning May 27, 1994 following a fact-finding meeting on May 27, 1994. On June 30, 1994, a pre-disciplinary hearing was conducted and on July 5, 1994, Gregory was terminated.

Ms. Gregory indicated she had some personal problems during the first five months of 1994 that contributed to her irregularities in handling funds and tickets in May 1994. In January 1994, Ms. Gregory stopped smoking and her marriage ended. She was not herself. In March, April and May 1994, she suffered from domestic violence, being stalked, and receiving harassing phone calls at work. She was distracted at work; however, she did feel safe at work.

When Ms. Gregory, assisted by her IBU Representative, furnished additional information concerning distracting personal problems to WSF, the employer rescinded her termination under date of February 1, 1995 by means of the Settlement Letter and Settlement Agreement.

The settlement agreement provided that the termination was converted to 60 days suspension without pay and Gregory was placed on a leave of absence without pay for 6 months following the suspension; after that was completed she could return to work. Gregory acknowledged the

violation of WSF Rules and Regulations, falsification of time records and issuing of \$0.00 receipts to customers paying cash. She was advised that further violations of WSF Rules and Regulations would be grounds for discipline up to and including termination. The terms of settlement met with the approval of Richelle Gregory, Dennis Conklin, IBU Representative, and Jim Yearby, Director of Human Resources for WSF, as each of the above named parties signed the Settlement Agreement.

Ms. Gregory returned to work as a ticket seller after May 20, 1995 and had no problems working as a ticket seller until December 24, 1997. On December 24, 1997, Ms. Gregory was working as a ticket seller at the Fautleroy Terminal and an audit was conducted by WSF. A \$99.31 shortage was discovered in Ms. Gregory's working fund.

A pre-disciplinary hearing was held on December 30, 1997 attended by Ms. Gregory and her IBU Representative, Dennis Conklin. Ms. Gregory, at the hearing, described the audit as "fine and correctly done." Traci Brewer, WSF South Region, Terminal Operations Manager conducted the pre-disciplinary hearing. As the result of this hearing, an agreement was reached as to disciplinary action between Brewer, Gregory and Conklin.

The agreement between the parties was stated in a letter from Traci Brewer to Gregory under date of January 7, 1998.

Brewer pointed out that Gregory should pay closer attention to the procedures outlined in the POS Policies and Procedures by being more organized and attentive and not cutting corners in the transaction and declare process. Gregory was provided with further training as a ticket seller.

Brewer advised that if Gregory was not following the established POS Policies and Procedures, then further disciplinary actions would be sought, up to and including suspension and/or demotion.

Gregory worked as a ticket seller without incident from December 24, 1997 until Saturday, February 5, 2000.

While Ms. Gregory was a ticket seller in a five-day shift, she worked one day as a traffic attendant. On January 28, 2000, she was working as a traffic attendant in the area where the bridge spans the space between the dock and the vessel and she injured her left knee while directing traffic. Ms. Gregory had worked Thursday, February 3, 2000, but asked for a relief for Friday, February 4, 2000 and someone else was dispatched to cover her shift on Friday.

When Ms. Gregory returned to work after visiting the doctor, she had a duty status report that indicated she was disabled from work as of February 4, 2000, that she could return to regular work on March 5, 2000 and she could do light work as of February 5, 2000 with the comment that she could “stand/walk only 5 min, of each ½ hour.” On Saturday, February 5, 2000, she reported to WSF, Pier 52 at 9:35 a.m. to start work as a ticket seller in her tollbooth at 9:45 a.m. At this time she could not bend her left knee, which was also swollen, and she was limping and going upstairs was extremely painful. In addition to her left knee problem, she was suffering from fluids in her ears.

Ms. Gregory first went to the tollbooth where she placed her personal belongings, then she went to the safe room, which she had to unlock to enter. In the safe room, her safe was located on the floor. She had to keep her left knee straight and kneel on her right knee to work the combination to open the safe. This whole procedure was very painful.

From her personal safe, she removed her box containing the working fund of \$1,000 plus the tickets she would be selling and then limped to her tollbooth to start work at 9:45 a.m. selling tickets.

At 11:40 a.m., Ms. Gregory took her break, left the tollbooth and locked her door, went to the Terminal Agent’s office on the second floor above the safe room, which required her to go up at least 30 steps, which was painful. The Terminal Agent was Sue Lowery. Ms. Gregory showed her the medical duty status report from the doctor.



Terminal Agent Lowery advised Ms. Gregory that there was no light work available in line with the doctor's comments and that Ms. Gregory should close down her tollbooth and go home and a relief would be available by 12:30 p.m.

Ms. Gregory, at 11:55 a.m., the end of the break, returned to her tollbooth and started to close down, which required her to account for the money she had to start the shift with, the money she had taken in and balanced with the tickets sold as well as with the POS machine, and in effect close down her shift or workday.

Ms. Gregory, on February 5, 2000, at 12:24 on her Seller's Remittance Report, stated she had a working fund of \$1,000. When her personal safe in the safe room was unlocked and opened, the working fund was found to be only \$186.10 and thus \$813.90 short.

It is Ms. Gregory's best recollection that she made two trips from the tollbooth to the safe room. The first trip was when she bundled a \$500 in a deposit bag and she thought she put it in the drop safe in the safe room, when she in fact placed the deposit in her personal safe and left the safe unlocked. The second trip she brought in the drawer with her working fund and tickets and placed them in her personal safe in the safe room. Ms. Gregory is unsure if she followed WSF Rules and Regulations and her own policy, for approximately 10 years, of locking her personal safe or if she left her personal safe unlocked. She believes she might have put her personal safe on "sleep." Her definition of "sleep" is to dial in all four numbers of the combination and then you only have to pull the handle on the safe to open the safe door. This method would mean the safe was unlocked and anyone could open the safe by just pulling the handle.

Ms. Gregory left Pier 52 between 12:30 p.m. and 1:00 p.m. She was not feeling well and did not believe she was in condition to safely drive home which is located in Tacoma, so she stayed with a friend in Seattle.

Irene Schafer relieved Ms. Lowery as Terminal Agent at Pier 52. Ms. Schafer was the one who checked the drop safe and discovered that Ms. Gregory had not placed her bundled \$500 in the blue deposit bag and it had not been placed in the drop safe. Ms. Schafer attempted to call Ms.

Gregory, but one listed telephone number for her did not work. A message was left at the second number for Ms. Gregory to call the Terminal Agent at Pier 52.

Terminal Agent Lowery was on duty the next day, Sunday, February 6, 2000. She double checked the drop safes and did not find the \$500 cash pick-up that should have been in the drop safe. Ms. Lowery called Ms. Gregory's primary number given to WSF and found it had been disconnected. The woman who answered at the secondary number said she had never heard of Richelle Gregory and had had the phone number for two and one-half years.

Ms. Lowery was able to contact Romaine Jackson who is also a terminal employee at WSF and a close friend of Ms. Gregory. He would not give out Ms. Gregory's telephone number, but said he would advise Ms. Gregory to call the Terminal Agent.

Ms. Lowery notified Assistant Terminal Manager Steve Rodgers, Terminal Operations Manager, Michael Anderson (both for WSF South Region Office), and Internal Control Manager, Kathy Booth, as well as other Terminal Agents of the \$500 shortage coupled with a low impact cash fall of \$4.25 made a total shortage of \$504.25. A variance of this amount is considered of high impact, as it exceeds \$100 and thus requires the notification of all concerned parties.

On Monday, February 7, 2000, Steve Rodgers called Terminal Agent Sue Lowery and asked her to contact Kathy Booth, the Internal Control Manager to arrange an audit of Ms. Gregory's personal safe.

The WSF/IBU Collective Bargaining Agreement (CBA) for 1997-1999 had been rolled over for the 1999-2001 period and was applicable in February 2000. Appendix B Terminal and Information Department, beginning on page 68 of the CBA includes the following rules:

2.08 Only authorized accounting personnel of the employer shall be allowed access to safes assigned to individual sellers. Lock combination numbers shall not be issued to any other person.

2.09 The seller and Agent shall be present when an audit is made of their tickets and cash. A copy of the audit shall remain in the safe for the seller's review.

Because of the high impact of the shortage or variance and the fact that no one at WSF had heard from Ms. Gregory, on Monday, February 7, 2000, Assistant Terminal Manager Steve Rodgers the directed Terminal Agent Sue Lowery to start the procedure to audit Ms. Gregory's safe and locker. The audit was began at 1:00 p.m.

The audit team consisted of two Terminal Agents, Sue Lowery and Jim Olson and the Manager of Internal Control, Kathy Booth. Only Ms. Booth had access to the combination to the safe. All three are members of the IBU. Three independent witnesses were present when the safe was unlocked and opened. Ms. Gregory received the same protections as if she was in attendance at the audit. When the locked safe was opened, WSF procedure required that a complete audit be conducted of the safe's contents, even after the missing \$500 deposit was found in Ms. Gregory's personal safe and not in the drop safe.

The \$500 deposit of pickup cash was found in the personal safe, when it should have been in the drop safe. The \$1,000 working fund maintained in the personal safe was included in the audit and it was found to be short \$813.90.

Kathy Booth did not have the combination to the personal locker where Ms. Gregory locked her tickets. Tim Olson had to use bolt cutters to remove the combination lock. All the tickets matched the inventory .

Ms. Gregory called in February 7, 2000 at 1605 and talked with the Terminal Agent Darren Shapley. She then talked with Michael Anderson, Terminal operations Manager for the South Region, who placed Ms. Gregory on sick leave because of her knee injury and advised a pre-disciplinary investigation meeting would be scheduled for her and that her sick leave would continue until after that meeting.

*WSF Human Resource Handbook, The Code of Conduct and The Revenue Collection and Control Policies and Procedures* relate to the orderly, efficient and safe operation of WSF business as well as the performance that WSF might properly expect of employee, which would qualify as “reasonable rules” as well as “notice” or forewarning of the possible or probable consequences of the employees disciplinary conduct.

WSF had in force, *Washington State Ferries, Revenue Collection and Control, Policies and Procedures* manual that set out the duties and obligations of the ticket seller’s generally and specifically in Section 2, Accounting Functions and Section 8, Security.

In addition, there is the *WSF Code of Conduct*, which includes Section 19, which reads:

Washington State Ferries has established the following Rules of Conduct that are necessary to maintain an efficient and productive work environment. These rules apply to all WSF employees regardless of position. Upon acceptance of employment, each individual agrees to abide by these and all other lawful rules and regulations.

### The Investigation

The investigation began at the end of the day shift on Saturday, February 5, 2000. On February 5, 200, Terminal Agent Schafer took over at the end of the day shift at Colman dock and discovered that Ms. Gregory did not make the \$500 drop into the drop safe. Ms. Schafer double-checked all the drop bags downstairs and the other drops to make sure the \$500 drop was not misfiled and she also attempted to contact Ms. Gregory at the telephone numbers she had given to WSF.

Sunday, February 6, 2000, Terminal Agent Sue Lowery was back on duty and continued the investigation started by Ms. Schafer, by checking all the drop safes upstairs and downstairs, as well as Ms. Gregory’s tollbooth. The \$500 pick-up or drop was not found. She also attempted to contact Ms. Gregory by telephone, but could not contact her. She sent a variance report covering Ms. Gregory’s short shift on February 5 to Steve Rodgers, Mike Anderson and Melissa Johnson

in Internal Control, as well as the appropriate Terminal Agents at Colman Dock showing the \$500 shortage.

On Sunday evening, February 6, 2000, Steve Rodgers returned home, checked his voicemail regarding the missing \$500 and that they were trying to contact Ms. Gregory, he decided to wait until Monday to see if they heard from Ms. Gregory. He contacted Mike Anderson and advised him of developments.

On Monday, February 7, 2000, Steve Rodgers called Sue Lowery and asked that she contact Kathy Booth, Internal Control Manager and schedule an audit of Ms. Gregory's personal safe and locker. Booth, Lowery and Terminal Agent Jim Olson conducted the audit at 1:00 p.m.

The \$500 pick-up for the drop safe was found in Ms. Gregory's personal safe. An audit was made of the \$1,000 working fund and it was found to be short by \$813.90. The tickets were all accounted for in the ticket locker and no money was found in this locker.

Kathy Booth, Internal Control, worked in her office that afternoon, attempting to resolve the revenue variance that had been generated by the Colman Dock Terminal Agents for this missing work fund of \$813.90. After extensive research, she could find no offsetting reason for this shortage.

On Monday, February 7, 2000, Ms. Gregory telephoned the Terminal and talked with Mike Anderson, South Region Terminal Operations Manager. He advised Sue Lowery that Ms. Gregory would be receiving a letter regarding a meeting to discuss the incident of February 5, 2000. In addition, Ms. Gregory was not to return to work until after the meeting and was considered to be on sick leave because of her knee injury until after the meeting.

#### Notice of Hearing

Ms. Gregory was advised under date of February 10, 2000 that there would be a meeting scheduled to consider "Fact-finding/Pre-disciplinary/Termination Conference Concerning Work

Performance” on Friday, February 18, 2000 at 9:30 a.m. at WSF’s office of Human Resources, 2911-2<sup>nd</sup> Avenue, Seattle.

At Ms. Gregory’s request and for health reasons, this meeting was continued to April 14 and was finally held on May 12, 2000.

Following are the issues to be discussed concerning the incident of Saturday, February 5, 2000 in determining whether or not Ms. Gregory violated the *WSF Employee Code of Conduct*:

- Rule 3: Theft
- Rule 5: Falsification of Documents or Disclosure of Confidential Records
- Rule 8: Cash/Check Handling Procedures
- Rule 19: Poor Work Performance

She was also advised that disciplinary action or termination might result from this conference. She was advised she was entitled to representation at this meeting. Dennis Conklin, IBU Representative, was copied by this letter so he could be of assistance to her. The letter was signed by W. Michael Anderson, Terminal Operations Manager, South Region.

The Fact Finding/Pre-disciplinary/Termination  
Conference Concerning Work Performance

The conference was held on May 12, 2000. Michael Anderson, Terminal Operations Manager, South Region of the WSF system was presiding. In attendance were the following:

1. Richelle Gregory
2. Dennis Conklin, IBU Representative
3. Terrence Kellog, Attorney for Ms. Gregory
4. Carol Mack, National Association for Advancement of Colored People (NAACP)
5. Joyce Clark, Secretary to NAACP
6. Janice Fleming, Ms. Gregory’s Mother

7. Michael Manning, WSF Labor Relations Manager
8. Steve Rodgers, Assistant Terminal Operations Manager, South Region, WSF

Concerning the allegation of violation of Rule 3 “Theft,” Ms. Gregory’s representatives claimed that at the start of the pre-hearing conference on May 12, 2000, they asked if the allegation of theft was not proven or substantiated, would the rest of the allegations be dismissed. They asserted that Mike Anderson promised they would be.

The hearing officer, Mike Anderson denies he made such a promise. Steve Rodgers who was in attendance during the entire hearing confirms there was no such promise made by Mike Anderson.

As a result of the hearing, Mike Anderson, the hearing officer, found the following findings in regard to Richelle Gregory:

1. The evidence did not substantiate the allegation that there “removal of funds” in violation of Rule 3, “Theft.”
2. The evidence did not substantiate the allegation of improper use of ferry system cash in violation of Rule 8, “Cash/Check Handling Procedure.”
3. The evidence did support the allegation of violation of altering declaration of funds Rule 5, “Falsification of Documents or Disclosure of Confidential Records,” in part.
4. The evidence did support the allegation that her standard of performance was unacceptable as an employee of WSF and was a violation of Rule 19, “Poor Work Performance.” Her past history as a ticket seller was also taken into account.

As a result of these findings, Ms. Gregory was demoted from ticket seller to traffic attendant for three years. Her seniority in the ticket seller classification that she had accrued was frozen.

Ms. Gregory maintained at all times that she did not take the odd sum of \$813.90. The three-year period of demotion began as of May 24, 2000.

Mr. Anderson, in arriving at his discipline, took into consideration Ms. Gregory's long work record with WSF as her performance history in the classification of ticket seller, as well as the specific circumstances surrounding the incident of February 5, 2000.

#### Richelle Gregory: Recent Medical History

She has not returned to work since February 5, 2000 and has been under the Department of labor and Industries medical care. She continues under medical care with additional medical appointments scheduled after the hearing of March 19, 2001.

On February 4, 2000, she went to see her personal doctor, Dr. Leslie Becker, at Group Health. He found her disabled from regular work on February 4, 2000. Dr. Becker noted that Ms. Gregory could perform light work from February 5, 2000 until March 5, 2000. The light work designation carried the comment "stand/walk only 5 min. of each ½ hour."

On May 23, 2000, she saw Dr. James E. Manning at Virginia Mason Clinic whose duty status report stated she could perform her "regular work, no restrictions as ticket seller position" and noted "Diagnosis (L) knee-strain-possible meniscus tear." This written report does not indicate she was not released to work as a traffic attendant. It did indicate there were no restrictions on her returning to her regular work, which included one day a week as a traffic attendant.

Dr. Allan B. Wood, an Orthopedic Specialist, first saw Ms. Gregory on February 7, 2000 and continued to see her off and on until his report of January 30, 2001. He has seen her several times since that report and will see her following the May 12, 2001 hearing.

Dr. Woods report of January 30, 2001, which was not furnished to WSF, but to L&I states:



This letter is to provide you an update on Richelle Gregory, who was last seen by me on January 23, 2001. She continues to have pain in her left knee aggravated by stairs, squatting, kneeling, and walking. She has recently received a second opinion in Seattle from an orthopedic surgeon under whose direction an MRI arthrogram was performed. Based upon the results of that study in combination with the MRI of June 29, 2000, I no longer feel that surgery is likely to be of benefit to this patient. Her symptoms are in my opinion associated with patellofemoral pain that is now chronic. Her condition in my opinion is now medically fixed and stable. I am recommending that a sedentary work position be made available to her by the Washington State Ferry System. If her needs cannot be accommodated, then I would recommend vocational retraining for a sedentary occupation.

I wish to clarify for you that since she was first seen by me on February 7, 2000, she has in my opinion been unable to work at her previous position and has been on effective work restriction for the sedentary position of ticket seller. Any confusion that may exist relates not to the patient's condition, but rather to the nomenclature of the positions that I understood to be available through the Washington State Ferry System. In my letter of September 20, 2000, to Mr. Loen Ross, I attempted to make this clear.

At the MEC hearing in 2001, counsel for WSF and counsel for IBU and Ms. Gregory entered into the record the following stipulation:

And the stipulation is that from February 18, 2000 the date of the first scheduled pre-disciplinary hearing until May 12, 2000 the date on which the discipline—the pre-disciplinary hearing was actually held Richelle Gregory was unavailable to work on attend the hearing for health reasons which were not related to her knee injury and which are not attributable to Washington State Ferries.

She worked as a ticket seller on January 30 and 31, 2000. She was ill on February 3, 2000 and advised Terminal Agent Pat Whalen and requested a relief for Friday, February 4, 2000, which was provided. She came to work as a ticket seller on Saturday, February 5, 2000.

Under the direction and supervision of Labor and Industries (L&I) Ms. Gregory has seen numerous doctors several times, including those noted above and others. Dr. Lawrence Holland at Swedish Hospital gave a second opinion regarding her left knee, but that was not produced at the hearing.

Having read and carefully considered the entire record, including the request for arbitration, the transcript of the hearing and the post-hearing briefs, the Arbitrator now hereby enters the following findings of fact.

#### FINDINGS OF FACT

1. Ms. Gregory has been a ticket seller since the early 1990's.
2. Ms. Gregory was aware of her duties and obligations as a WSF ticket seller, as set out in the *WSF Human Resource Handbook, Code of Conduct* and the *Revenue Collection and Control Practice and Procedures*.
3. As a ticket seller that person is responsible for tickets that are sold and the money that is collected as well as a working fund of \$1,000.
4. The ticket seller at the end of their shift accounts for all the tickets that are sold, puts aside a working fund of \$1,000, notes the money over the \$1,000 and places that money in the drop safe.
5. The tickets and the \$1,000 working fund are kept in their personal safe in the safe room. Only the ticket seller and the Internal Control Officer know the combination of the personal safe. The ticket sellers, terminal agents and the night watchman hold keys to the safe room.
6. Ms. Gregory received and signed for working fund of \$1,000 on September 26, 1999 and this fund was never audited until February 7, 2000. This audit was the result of looking for and finding the missing \$500 that was not placed in the drop safe, but in Ms. Gregory's personal safe

7. On Saturday February 5, 2000, Ms. Gregory started to work at 9:45 a.m. as a ticket seller and at her break at 11:40 a.m. turned her doctor's medical status report in to Terminal Agent Sue Lowery. Based upon the doctor's report and Ms. Gregory's obvious poor physical condition, Ms. Lowery determined Ms. Gregory should go home as soon as she could close up her tollbooth.
8. In closing the tollbooth, Ms. Gregory accounted for all her sales and POS, point of sale computer, verified it and she indicated she had a working fund of \$1,000.
9. Ms. Gregory had a \$500 amount that was to go into the drop safe, but she inadvertently placed this in her personal safe on her first trip to the safe room when closing her tollbooth.
10. On the second trip to her personal safe, Ms. Gregory placed her tickets, change and the working fund in her safe and left for home.
11. While over the years Ms. Gregory has always locked her safe, on February 5, 2000, she had no recollection of locking the safe and her best belief is that she left the safe on "sleep." "Sleep" means the safe door is closed, but she did not spin the combination dial to lock the safe, thus the safe was left unlocked when she left for home around 12:30 p.m.
12. Ms. Gregory was aware that leaving her personal safe on sleep was a violation of WSF Revenue Collection and Control Policies and Procedures, as noted in ¶8.2.4 SAFE ROOM, "Safes will not be left 'on sleeper' (closing the door but not turning the dial) at any time." and ¶8.4.1. OPERATING SAFES CORRECTLY, "Closing the safe without locking it is called leaving the safe 'on sleeper.' Do not leave a safe on sleeper any time."
13. At the night check by the Terminal Agent on February 5, 2000, it was discovered that the \$500 was not in the drop safe. Attempts were made to contact Ms. Gregory on February 5, 6 and in the a.m. Monday, February 7, 2000, without success. Any lost, missing or, as in this case, misplaced funds over \$100, are of great concern to WSF.

14. In the afternoon of Monday, February 7, 2000, it was decided that Ms. Gregory's personal safe should be opened and this was done by Kathy Booth, the Internal Control Manager with two Terminal Agents present, Ms. Lowery and Mr. Olson. While Ms. Gregory was not present, but the witnesses in effect protected her interest.
15. When Ms. Gregory's personal safe was opened, the missing \$500 deposit was found and her working fund was audited and found to be short by \$813.90.
16. Ms. Gregory was notified of the alleged violations of four rules of the *WSF Code of Conduct*. Due to her health, the hearing could not be held until May 12, 2000.
17. Mr. Anderson made no promise to Ms. Gregory's representatives that the other charges of violations would be dismissed or reduced if the allegation of a violation of Rule 3 "Theft" was not substantiated.
18. As a result of the May 12, 2000 hearing, Ms. Gregory was found to have violated *WSF Code of Conduct*, Rule 19 "Poor Work Performance" and part of Rule 5 "Falsification of Documents." Her past history as a ticket seller was also considered. She was demoted for three years to traffic attendant, by Mike Anderson, documented in his letter of May 24, 2000.
19. There was no evidence produced that indicted that the discipline given to Ms. Gregory was greater than the discipline that was given to other WSF employees for the same violations. The discipline Ms. Gregory received was in line with the collective bargaining agreement.
20. Ms. Gregory injured her left knee on January 28, 2000, was seen by Dr. Becker on February 4, 2000 and worked part of her shift on Saturday, February 5, 2000. She did not work from that date up to the hearing on March 19, 2000. She had medical appointments scheduled after that hearing.

21. Medically, Ms. Gregory has been under doctor's care and treatment since February 4, 2000 to at least March 19, 2001 and continuing to some unknown future date. There remains the question of whether she will become fit for duty based upon the job's physical requirements; whether she can return to work as a ticket seller or traffic attendant; or whether some accommodation must be made for her to work in a sedentary position.

#### CONCLUSIONS OF LAW

1. The requirements and basic elements for "just cause" hearing were met by WSF in conducting Ms. Gregory's hearing on May 12, 2000.
2. There was no promise made by the hearing officer, Mike Anderson, that if the theft allegation were not substantiated, the other allegations would be dropped.
3. In arriving at the discipline, demotion to traffic attendant for three years, it was appropriate not only to consider her present violations, but also her past work history as a ticket seller
4. There was no disparate treatment of Ms. Gregory in regards to her discipline as indicated in Mike Anderson's letter of May 24, 2000.

#### AWARD

Ms. Gregory was found to have violated two rules. The charge of violation of *WSF Code of Conduct*, Rule 5 "Falsification of Documents" was substantiated in part while the charge of "Poor Work Violation," a violation of Rule 19, was substantiated in whole. As a result of these violations, she was demoted back to a traffic attendant. Her seniority in the ticket seller classification that had accrued was frozen, but this seniority could not be exercised for a minimum of three years, from May 24, 2000. This is a three-year demotion to traffic attendant.

This amounts to a disciplinary demotion for a definite period of time, as it is to be corrective discipline rather than mere punishment.

The three-year period of demotion is too severe for the rules she was found to have violated. The period shall be reduced from three years to fifteen months from May 24, 2000, which would be August 24, 2001.

After August 24, 2001, if Ms. Gregory is found fit for duty, physically and mentally, and the doctors state she can perform the requirements of a ticket seller and/or traffic attendant, she may exercise her frozen seniority to return to work as a ticket seller. WSF shall provide what schooling and training program they feel is necessary for Ms. Gregory to return to work as a ticket seller, after August 24, 2001. If found fit for duty as a traffic attendant, she could return to work at that job immediately.

However, if Ms. Gregory's condition is such that she is not found fit for duty as a ticket seller or traffic attendant, then when her doctors declare she has reached her maximum recovery, possibly with some permanent partial disability, WSF shall consider what accommodation can be made so that she can return to work with the WSF in some appropriate sedentary position, after August 24, 2001.

Ms. Gregory is not entitled to any back pay.

THE GRIEVANCE, AS FILED, IS DENIED.

DATED this \_\_\_\_\_ day of June 2001.

MARINE EMPLOYEES' COMMISSION

\_\_\_\_\_  
JOHN P. SULLIVAN, Arbitrator

Approved By:

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JOHN D. NELSON, Chairman