

STATE OF WASHINGTON
BEFORE THE MARINE EMPLOYEES' COMMISSION

DAN GAGE,

Grievant,

v.

WASHINGTON STATE FERRIES,

Respondent.

MEC CASE NO. 30-02

DECISION NO. 372 - MEC

ORDER DISMISSING
ADJUSTED GRIEVANCE

Carla Kiiskila, Attorney, for complainant, Dan Gage.

Davies, Roberts and Reid, by *Thomas Leahy*, Attorney, for intervenor Teamsters Local 174.

Christine Gregoire, Attorney General, by *David Slown*, Assistant Attorney General, for Washington State Ferries.

BACKGROUND

THIS MATTER came on regularly before the Marine Employees' Commission (MEC) on February 5, 2002 when Dan Gage, a member of Teamsters Union Local 174, filed a request for grievance arbitration regarding his separation from employment with the Washington State Ferries (WSF). Mr. Gage filed the grievance with the Marine Employees' Commission after his union informed him that his earlier grievance protesting the employment decision could not be pursued under the contract grievance procedure.

Mr. Gage certified that the grievance procedures in the pertinent Metal Trades/WSF Collective Bargaining Agreement had been utilized and exhausted. In addition, he 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 request for grievance arbitration was docketed as MEC Case No. 30-02. On February 19, 2002, the MEC issued an Order to Show Cause inviting interested parties to argue the issue of

the Commission's jurisdiction over Mr. Gage's arbitration request. Following responses to the Order to Show Cause, MEC scheduled the Gage matter for hearing on the jurisdictional issue for July 12, 2002. Commissioner John Byrne was designated as Examiner.

On July 9, 2002, Carla Kiiskila, counsel for Dan Gage, requested the hearing be continued. The hearing was rescheduled for October 4, 2002.

On October 2, 2002, Thomas Leahy, counsel for Teamsters 174, requested the October 4 hearing be continued and Case 30-02 be consolidated with MEC Case 6-03, Dan Gage's unfair labor practice complaint (ULP), filed on July 15, 2002. (Case 6-03 contained charges against both WSF and Teamsters 174. The Commission dismissed that portion of Mr. Gage's ULP charge alleging a violation by WSF. The portion of the complaint alleging a violation by the union was found to state a potential claim and placed in the scheduling process.)

The MEC granted the Teamsters' request for a continuance and consolidation, scheduling the grievance and the complaint for a consolidated hearing on January 23, 2003.

Teamsters 174 and Dan Gage reached a settlement of the unfair labor practice complaint (Case 6-03) on January 21, 2003; Mr. Gage confirmed his withdrawal of the ULP at the January 23 hearing. (MEC dismissed Case 6-03 on January 24, 2003.)

HEARING ON JURISDICTION

Teamsters 174 appeared as intervenor at the January 23, 2003 hearing in Case 30-02, for the purpose of assisting, but not representing Mr. Gage. The three parties present at the hearing, agreed that the hearing would focus solely on the issue of whether or not the MEC has jurisdiction over the request for grievance arbitration filed by Mr. Gage. The MEC scheduled an additional hearing date for May 15, 2003, so that it would be available in the event it was needed following the decision on the jurisdictional issue.

On March 21, 2003, Examiner Byrne issued Decision No. 362-MEC, which ruled that the MEC has jurisdiction over the issues raised by Mr. Gage's grievance and ordered the parties to present their facts and arguments regarding the substantive issues in the case at the hearing scheduled for May 15.

SETTLEMENT

On May 13, 2003, Mr. Gage's attorney requested that the May 15 hearing date be converted to a settlement conference. Examiner Byrne granted the request. On May 15, with Commissioner John Sullivan acting as Mediator, Dan Gage and WSF reached an agreement resolving the matter. Commissioner Sullivan forwarded the parties' signed settlement agreement, which constitutes a request for withdrawal of the grievance, to the MEC office. That agreement (received May 16), as well as the parties' Memorandum (received May 29) correcting three minor errors in the agreement are appended to and become a part of this Order by reference.

ORDER

It is hereby ordered that the request for grievance arbitration, filed by Dan Gage against Washington State Ferries and docketed as MEC Case No. 30-02, be dismissed.

DATED this 4th day of June 2003.

MARINE EMPLOYEES' COMMISSION

/s/ JOHN NELSON, Chairman

/s/ JOHN SULLIVAN, Commissioner

/s/ JOHN BYRNE, Commissioner

**SETTLEMENT AGREEMENT
MEC Case No.30-02**

**Between
Washington State Ferries (WSF)
And
Dan Gage**

IN FULL AND COMPLETE SETTLEMENT of MEC Case No. 30-02, and of all underlying disputes concerning the release from employment at WSF of Dan Gage on or about July 11, 2003, the parties, Washington State Ferries and Dan Gage, do hereby agree as follows:

DAN GAGE AGREES:

1. To submit to WSF a letter of resignation effective January 11, 2003, not later than five working days from the date of this Agreement.
2. Not to seek employment with WSF in any capacity in the future.
3. To accept from WSF payment of 18 months full-time back wages, including vacation pay accrued, subject to normal deductions taken by payroll. Said payments will be subject to offset for any amounts paid to Dan Gage by the Department of Employment Security for periods after July 11, 2003.
4. That he has read this Agreement in conjunction with his attorney, Carla Kiiskila, and understands it.
5. To withdraw MEC Case No. 30-02. A copy of this agreement shall constitute a request for withdrawal.

WSF AGREES:

1. To accept the resignation of Dan Gates, effective January 11, 2003.
2. To pay to Dan Gage, 18 months full-time wages, together with accrued vacation pay, subject to normal deductions taken by payroll. Said payment shall be made in the next regularly scheduled payroll following the first payroll cut-off date following the date of this agreement, and shall be subject to offset of all amounts paid to Dan Gage by the Department of Employment Security for periods after July 11, 2003.
3. That, in response to any inquiries from prospective employers, WSF will respond with Dan Gage's date of hire, resignation date as established by this agreement, position, and rate of pay.
4. That all documents relating to this case and to the underlying facts surrounding Dan Gage's release from employment on July 11, 2001, shall be removed from Dan Gage's personnel file, and shall be retained in a separate administrative file, together with a copy of this Agreement.

Dated this 15th day of May, 2003.

/s/ Dan Gage

/s/ Carla Kiiskila WSBA #31693
Attorney for Dan Gage

/s/ David J. Slown, WSBA #24943
Attorney for WSF

MEMORANDUM REGARDING SETTLEMENT AGREEMENT

MEC Case No. 30-02

This memorandum is intended to correct three minor errors in the settlement agreement in this case, signed by the parties and their attorneys on May 15, 2003. The undersigned attorneys represent that the corrections listed below accurately reflect the intentions and understanding of the parties at the settlement conference. The errors were inadvertent and were not noticed by either counsel until the day after the settlement agreement was signed. The errors are:

1. In the first paragraph of the agreement, the date of Dan Gage's release from employment at WSF should be, July 11, 2001, rather than July 11, 2003.
2. In the third paragraph under the section titled, "Dan Gage Agrees," the date at the end of the paragraph should be July 11, 2001, rather than July 11, 2003.
3. In the second paragraph under the section titled, "WSF Agrees," the date at the end of the paragraph should be July 11, 2001, rather than July 11, 2003.

The undersigned attorneys agree that a copy of this Memorandum should be appended to the settlement agreement by all parties holding a copy of the Agreement, to avoid later confusion.

/s/ David J. Slown, WSBA No. 24943
Attorney for Washington State Ferries

Date: 5/19/03

/s/ Carla Kiiskila, WSBA No. 31693
Attorney for Dan Gage

Date: 5/22/03