

STATE OF WASHINGTON  
BEFORE THE MARINE EMPLOYEES' COMMISSION

INLANDBOATMEN'S UNION  
OF THE PACIFIC on behalf of  
PATRICIA DOWLING,

Grievant,

v.

WASHINGTON STATE FERRIES,

Respondent.

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INLANDBOATMEN'S UNION  
OF THE PACIFIC on behalf of  
RICHARD PETERS,

Grievant,

v.

WASHINGTON STATE FERRIES,

Respondent.

MEC CASE NO. 45-03

MEC CASE NO. 15-04

DECISION NO. 405 - MEC

DECISION AND AWARD

**APPEARANCES**

*Dennis Conklin* and *Stuart Downer*, Union Representatives, appearing for the Inlandboatmen's Union of the Pacific on behalf of Patricia Dowling and Richard Peters.

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

**NATURE OF THE PROCEEDING**

The Inlandboatmen's Union of the Pacific, Puget Sound Region (IBU) brought these matters before the Marine Employees' Commission (MEC) by filing two requests for grievance

arbitration, MEC Case No. 45-03 on May 23, 2003 and MEC Case No. 15-04 on August 15, 2003.

The MEC consolidated the two cases for the purpose of holding a combined or consolidated hearing. Neither counsel objected to the consolidation.

Both Case 45-03 and Case 15-04 concern the request for reimbursement cost in attending navigation school and writing the examination. The grievants, Dowling and Peters, both obtained their “Original Inland Mate’s License, but did not obtain a “First Class Pilot’s License” with pilotage for four (4) ferry routes operated by Washington State Ferries.

Because neither party obtained the “First Class Pilot’s License with pilotage for four ferry routes operated by Washington State Ferries (WSF), WSF denied both parties, Dowling and Peters, any reimbursement because they had not completed “Rule 31—Allowance for Schooling and Upgrading.”

IBU has certified that the grievance procedure in the IBU/WSF CBA were utilized and exhausted. IBU also certified that the Arbitrator’s decision shall not change or amend the terms, conditions or applications of said collective bargaining agreement, and that the Arbitrator’s award shall be final and binding.

John P. Sullivan, a Commissioner of the Marine Employees' Commission, conducted a hearing in this matter on February 10, 2004, pursuant to RCW 47.64.150 and 47.64.280, chapters 316-02 and 316-65 WAC. Counsel chose to present oral argument at the conclusion of the hearing instead of filing briefs.

#### **RECORD BEFORE THE MARINE EMPLOYEES’ COMMISSION**

The Arbitrator considered the following record in making Findings of Fact, Conclusions of Law and Decision and Award in these consolidated cases:

1. The Notice of Scheduled Settlement Conference and Hearing for Case 45-03, issued by the MEC on June 20, 2003, and including a copy of the request for grievance arbitration.
2. The Notice of Scheduled Settlement Conference and Hearing for Case 15-04, issued by the MEC on September 3, 2003, and including a copy of the request for grievance arbitration.
3. The Order Consolidating Case 45-03 and Case 15-04 for Hearing on October 10, 2003. (The previously scheduled settlement conference and hearing in Case 15-04 were cancelled.)
4. Notice of Cancelled (Consolidated) Hearing Date issued October 2, 2003.
5. Notice of Continued Hearing Date, issued December 16, 2003. Consolidated hearing was rescheduled for February 10, 2004.
6. The official hearing transcript and exhibits from February 10, 2004. Counsel for the parties presented oral argument at the hearing instead of filing briefs.

### **ISSUES**

Both parties, Ms. Dowling and Mr. Peters, were qualified and pre-approved by WSF's training department and they did obtain their "Original Inland Mate's License."

1. Were they in addition, also required to obtain a "First Class Pilot's License" with pilotage for four ferry routes operated by Washington State Ferries, per Rule 31.01 of the IBU/WSF CBA, in order to receive reimbursement for costs associated with obtaining their Original Inland Mate's License?
2. Did Washington State Ferries violate CBA Rule 31.02 when it failed to reimburse the grievants for their "Original Inland Mate's License?"

## **POSITIONS OF THE PARTIES**

### **Position of the IBU**

The contract Rule 31.01 gives a person the choice of two different licenses, an original license as an Inland Mate, or a First Class Pilot's License with pilotage for four (4) routes. Any claim by WSF of past practice must be disregarded as inconsistent with the plain, clean and unambiguous words in Rule 31.01.

The two grievants, Ms. Dowling and Mr. Peters, have obtained Original Inland Mate's Licenses and have wrongfully been denied reimbursement in accordance with Rules 31.01, 31.02, 31.03 and 31.04.

This is a simple straight-forward case of contract interpretation and an English lesson, the lesson on the use of coordinating and correlative conjunctions, a lesson on the word "or."

"Or," is a word used as a functioning word to indicate an alternative, a word used as a logical operator, a word that requires either of two inputs to be present or either of two conditions to be met for an output to be made. A word used to connect dramatically equal elements. A word that is used to draw equal attention to two or more ideas. A word used when parallel ideas need to be linked.

That is what the word "or" is used for and that's what it was used for in the contract between IBU and WSF in Rule 31.01.

### **Position of the WSF**

The facts in this case really are not in dispute. Both of the grievants, Ms. Dowling and Mr. Peters, were ABs working for WSF and had three (3) years seniority.

Both of them obtained pre-approval to attend school to obtain their Original Inland Mate's License. Neither of them sought to obtain a First Class Pilot's License with pilotage for four ferry routes operated by Washington State Ferries.

The rules that are applicable are as follows: "Rule 31—Allowance for Schooling and Upgrading" which then includes Rules 31.01, 31.02, 31.03 and 31.04.

The IBU definition of the word "or" is quite correct, but it ignores the fact that this parallel construction has a distributive prepositional clause at the end, that is, "with pilotage for four ferry routes." It is an inherently ambiguous construction and it has to be explained by prior practice. The prior practice is plain, clear and unambiguous.

There are two things, an original license as an Original Inland Mate or a First Class Pilot's License. You then have the prepositional phrase at the end, "with pilotage for four ferry routes operated by Washington State Ferries." There is no way in the world that you can tell whether the prepositional phrase was intended to apply to both of those or only to one without either context or prior practice. Context is unclear because there are no further references in the Rules, 31.01 to 31.04 inclusive.

Past practice is perfectly clear. Those who have received an original license as an Original Inland Mate's License have never been reimbursed until they obtained a First Class Pilot's License with pilotage for four ferry routes operated by Washington State Ferries. This has been the past practice and custom for over 30 years.

Ms. Dowling obtained her original license as an Original Inland Mate on September 28, 2000, and filed her request for reimbursement on December 13, 2002.

Mr. Peters obtained his original license as an Original Inland Mate on May 23, 1997 and filed his request for reimbursement, which was denied, on December 4, 2002. His license was good for five years, so it lapsed or ended on May 23, 2002, prior to requesting reimbursement.

### **CONTRACT LANGUAGE**

July 1, 1999 through June 30, 2001 current contract between IBU and WSF (Exhibit 1):

#### **RULE 31 – ALLOWANCE FOR SCHOOLING AND UPGRADING**

**31.01** Washington State Ferries will participate in a program which will enable qualified unlicensed vessel employees who have three (3) years seniority with the Washington State Ferries to secure an Original License as an Original Inland Mate or First Class Pilot's License with pilotage for four (4) ferry routes operated by Washington State Ferries.

**31.02** The Washington State Ferries, subject to the employee receiving prior approval, shall reimburse an employee who qualified under the provisions of this Agreement for the employee's tuition at an approved school upon proper presentation of receipt, and payment for wages lost while attending school, not to exceed thirty (30) days pay at the employee's prevailing straight-time wage. An additional five (5) days pay at the same rate will be allowed while employee is writing examination, for a total of thirty-five (35) days pay. Such payment will be made only when the employee successfully completes the examination and presents the License for not less than those capacities stated above.

**31.03** An employee to be qualified under this Agreement must have not less than three (3) years of continuous service in the employ of Washington State Ferries and must be in the employ of Washington State Ferries at the time of applying for the License.

**31.04** While this is an endeavor to help an employee secure the Original License, it in no way implies any obligation on the part of Washington State Ferries to guarantee placement as a Licensed Officer but is to provide a reservoir for selecting future officer replacements.

Emphasis added.

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April 1, 1980—March 31, 1983 contract between IBU and WSF (Exhibit 15):

**RULE 28 – ALLOWANCE FOR SCHOOLING AND UPGRADING**

28.01 Washington State Ferries will participate in a program which will enable qualified unlicensed vessel employees who have three (3) years seniority with the Washington State Ferries to secure an Original License as Chief Engineer or Assistant Engineer of Motor Ferry Vessels of at least 2,000 H.P., and an Original Inland Mate or First Class Pilot's License with pilotage for four (4) ferry routes operated by Washington State Ferries.

28.02 The Washington State Ferries will further agree to reimburse an employee who qualified under the provisions of this Agreement for the employee's tuition at an approved school upon proper presentation of receipt, not to exceed two hundred seventy-five dollars (\$275.00) and payment for wages lost while attending school, not to exceed thirty days' pay at the employee's prevailing straight-time wage. An additional five (5) days' pay at the same rate will be allowed while employee is writing examination, for a total of thirty-five (35) day's pay. Such payment will be made only when the employee successfully completes the examination and presents the License for not less than those capacities stated above.

28.03 An employee to be qualified under this Agreement must have not less than three (3) years of continuous service in the employ of Washington State Ferries and must be in the employ of Washington State Ferries at the time of applying for the License.

28.04 While this is an endeavor to help an employee secure the Original License, it in no way implies any obligation on the part of Washington State Ferries to guarantee placement as a Licensed Officer but is to provide a reservoir for selecting future Officer replacements.

Emphasis added.

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April 1, 1977—March 31, 1980 contract between IBU and WSF (Exhibit 14):

**RULE 28 – ALLOWANCE FOR SCHOOLING AND UPGRADING**

28.01 Washington State Ferries will participate in a program which will enable qualified unlicensed vessel employees who have three (3) years seniority with the Washington State Ferries to secure an Original License as Chief Engineer or Assistant Engineer of Motor Ferry Vessels of at least 2,000 H.P.; or an Original

Inland Mate **and** First Class Pilot's License with pilotage for four (4) ferry routes operated by Washington State Ferries.

28.02 The Washington State Ferries will further agree to reimburse an employee who qualified under the provisions of this Agreement for the employee's tuition at an approved school upon proper presentation of receipt, not to exceed two hundred seventy-five dollars (\$275.00) and payment for wages lost while attending such school, not to exceed thirty days' pay at the employee's prevailing straight-time wage. An additional five (5) days' pay at the same rate will be allowed while employee is writing examination, for a total of thirty-five (35) day's pay. This is only predicated on the employee successfully completing the examination and presentation of the License for not less than those capacities stated above.

28.03 An employee to be qualified under this Agreement must have not less than three (3) years of continuous service in the employ of Washington State Ferries and must be in the employ of Washington State Ferries at the time of applying for the License.

28.04 While this is an endeavor to help an employee secure the Original License, it in no way implies any obligation on the part of Washington State Ferries to guarantee placement as a Licensed Officer but is to provide a reservoir for selecting future Officer replacements.

Emphasis added.

### **FINDINGS OF FACTS**

1. On September 28, 2000, Ms. Dowling secured her Original License as an Original Inland Mate that is good for five (5) years, until September 28, 2005.
2. On May 23, 1997, Mr. Peters secured his Original License as an Original Inland Mate that was good for five (5) years, until May 23, 2002.
3. Ms. Dowling has been employed in the deck department of WSF since 1993.
4. Mr. Peters worked for WSF for 30 years before he retired on March 1, 2003. His first 19 years were in the terminal department as a ticket seller. In 1992, he transferred to the deck department and in 1994 obtained his AB's ticket.



5. Ms. Dowling worked as a Second Mate for one day on the MV PUYALLUP and one day on the MV WALLA WALLA, both considered “Jumbo” ferries. Mr. Peters worked as a Second Mate on six (6) separate days, five (5) days on the WALLA WALLA, and one (1) day on the WENATCHEE, both considered “Jumbo” ferries.

6. The “Jumbo Mark II Class” ferries are the TACOMA, WENATCHEE and PUYALLUP. The “Jumbo Class” ferries are the SPOKANE and WALLA WALLA.

7. These five ferries are the only ferries that carry a Second Mate who is in charge of the car deck for loading and unloading the vehicles. Neither Ms. Dowling nor Mr. Peters had any pilotage so they could not navigate any of the ferries, but they could fill in on separate days so the ferry could sail with enough holders of Original Inland Mate’s License and they worked as Second Mates on the car deck on each day they worked.

8. Ms. Dowling, an IBU member since 1993 indicated Rules 31.01 and 31.02 of the CBA were confusing to her. See excerpts from her testimony from the transcript:

Q. And I believe you said that it was your understanding that normally they wait to reimburse until you get four-route pilotage, is that correct?

A. Yes.

Q. Was that your understanding at the time you applied for this reimbursement?

A. Yes.

Q. Okay. Who told you that?

A. It was just common amongst the fleet that those that were going towards their mate’s license were getting four routes done and then . . .

Q. Okay. So when you went to school is it fair to say that you did not expect to get any reimbursement until you had your four routes pilotage?

A. Yes.

Q. Even though you were getting an original inland mate's license?

A. Right.

Q. And after you received your license what did you do then as far as the reimbursement portion of it?

A. I didn't do anything.

Q. Were you starting to get paid – or reimbursed for it?

A. Yes. They did start to reimburse me and I thought at that time that was not correct so I contacted them and –but that got me thinking so I read the contract a little bit thoroughly and I saw distinctly that it said a mate's license or a pilot's license. So then it kind of confused me as to whether I was supposed to get reimbursed or not.

Q. Okay. What was it that confused you?

A. Why they were reimbursing me when normally like they've always waited until somebody has done four routes towards their pilot's license and I hadn't done that.

9. Mr. Peters obtained his Original License as an Original Inland Mate on May 23, 1997, which expired on May 23, 2002. His request for reimbursement of costs incurred obtaining the license was denied by WSF on December 4, 2002 because he did not have a First Class Pilot's License or endorsement on his license for four ferry routes operated by WSF. He retired from WSF on March 1, 2003 after 30 years.

10. Rule 31 of the IBU/WSF CBA for April 1, 1977 to March 31, 1980 reads in part, "an Original Inland Mate **and** First Class Pilot's License with pilotage for four (4) ferry routes operated by WSF." (Emphasis added.)

In the next IBU/WSF CBA (April 1, 1980 to March 31, 1983) to the current CBA (July 1, 1999 to June 30, 2001) the word "**and**" has been changed to "**or**."

Captain Tim Saffle, a 28-year veteran with WSF, is presently in Operations and the HR Port Captain. He started out as an Ordinary Seaman and worked his way up

through the deck department to AB, Mate and Master. Both he and Mr. Peters explained why, in Rule 31.01, the “**and**” was changed to “**or.**”

People were coming into the deck department with licenses that were greater than an Original Inland Mate’s License, so they did not want to have to go to school to obtain the Original Inland Mate’s License; however, they did not have pilotage on four ferry routes and would need three years seniority with WSF, plus their license they possessed when joining the WSF fleet.

They needed the license that was greater than Inland Mate’s license, plus three years seniority and the pilotage to be placed on the Mates’ Seniority List. They could only work on ferry routes for which they had pilotage.

### **DISCUSSION**

Ms. Dowling completed her training and received her license as an Original Inland Mate on September 28, 2000. She worked two days as a Second Mate in an emergency situation.

Mr. Peters completed his training and was issued his license as an Original Inland Mate on May 23, 1997. He worked six days as a Second Mate. One of those occasions was when a Mate was injured in a training accident, another when a Mate had an emergency at home. Four other occasions occurred when no Second Mate was in attendance; the vessel could not legally sail unless there was a Second Mate aboard, and Mr. Peters filled in as Second Mate with his license.

In the year 2003, the Washington State Ferries operated 29 vessels. Of that number, only 5 have a Second Mate in the crew with an Original Inland Mate License.

While they did not have pilotage for any routes operated by WSF, both Ms. Dowling and Mr. Peters could sail on the three Jumbo Mark II Class and the two Jumbo Class ferries. The Second Mate is in charge of the car deck and does not navigate the ferries or work on the bridge and is not required to have any pilotage on any of the WSF ferry routes.

To obtain an Original License as a First Class Pilot's License with pilotage for four ferry routes operated by WSF, the following steps are required:

1. An "Application for License as an Officer, Staff Officer or Operator and for Merchant Mariner's Document," must be filled out, the same application you would complete for your "Original Inland Mate's License."

2. The applicant must become familiar with the U.S. Coast Guard requirement for a "First Class Pilot." They include general requirements, tonnage requirements and route familiarization requirements. An original license or initial endorsement requires 15 round trips as Mate, AB, QM, Wheelsman or Observer. (Some round trips must be made during the hours of darkness if the route is to be traversed during darkness.)

3. The applicant must fill out a "Pilot Certification or Round Trips Experience" form when seeking the pilotage for the ferry routes. The form lists:

- Depart Terminals
- Depart Time
- Arrival Terminal
- Arrival Time
- Date
- Vessel
- Gross Tons
- Master or Pilot's Signature
- Signature of the Applicant

It would appear that the four quickest ways to obtain four routes would have been by seeking pilotage on the following WSF ferry routes:

- Mukilteo—Clinton = 20 minutes, one-way
- Edmonds—Kingston = 30 minutes, one-way
- Seattle—Bainbridge = 35 minutes, one-way
- Point Defiance—Tahlequah = 15 minutes, one-way

No exhibits were introduced at the hearing regarding what is needed for individual pilots license or endorsements such as:

1. Application for Pilots Endorsement or License.
2. USCG Requirements for First Class Pilot.
3. Pilot Certification of Round Trip Experience.

There was no testimony from the parties or any witness that the grievants had made any attempt to obtain pilotage for any WSF routes.

The USCG will issue a Pilot's License for one or more routes if the applicant completes the paperwork and the necessary round trips and passes the chart test requirements.

There is no position on WSF ferries for someone with a Pilot's License only, without an Original Inland Mate's License or possessing a more advanced license, plus four (4) ferry routes operated by WSF.

On vessels going to Alaska on the Inside Passage, there are vessels that carry a pilot separate from the Master or Mates because of the narrow and difficult channels and waterways they have to navigate.

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## ANALYSIS

In the IBU/WSF CBA for April 1, 1977—March 31, 1980 (Ex. 14), Rule 28 – Allowance for Schooling and Upgrading, Rule 28.01 stated: “or an Original Inland Mate **and** First Class Pilot’s License with pilotage for four (4) ferry routes operated by Washington State Ferries.”

The uncontradicted testimony of WSF Port Captains Malde (30 years with WSF) and Saffle (28 years with WSF), was that in the April 1, 1980—March 31, 1983 IBU/WSF CBA and all subsequent CBAs the word **and** between “Mate and First Class” was changed to the word **or**. Captains Malde and Saffle testified that there were new deck people who were entering the employment of WSF who had greater than “Original Inland Mate” licenses. A Master’s License could be unlimited, which would be a “Master License, Unlimited, any Ocean and any Tonnage” which would entitle the holder of such a license to serve on the largest U.S. vessel afloat. These new deck people did not want to be required to take the “Original Inland Mate” license examination since they already held a greater license so the word “and” was changed to the word “or.”

Even with a greater license, the new deck people still had to be qualified under the CBA, had to have three (3) years continuous service with WSF and be employed by WSF and of course they had to have a greater license than “Original Inland Mate” and obtain a “First Class Pilot’s License with pilotage for four (4) ferry routes operated by Washington State Ferries in order to be reimbursed for schooling and upgrading.

In the 1999-2001 contract back to the 1980-1983 contract, the second numbered paragraph under “Allowance for Schooling and Upgrading” have the same last sentence that reads as follows: “Such payment will be made only when the employee successfully completes

the examination and presents the license for not less than those CAPACITIES stated above.”  
(Emphasis added.)

In the 1977-1980 contract on the same subject, the second numbered paragraph, last sentence reads: “This is only predicated on the employee successfully completing the examination and presentation of the license for not less than these CAPACITIES stated above.”  
(Emphasis added.)

In *Webster’s New World Dictionary and Thesaurus*, (1996 ed.) the definition of “capacities” is “an occupational position” or “a post of employment.” Capacities is plural meaning more than “one position.”

The use of the term “capacities” in the 1999-2001 current CBA, Rule 31.02 and all previous CBAs since 1970, refers to Rule 31.01 which identifies two (2) positions a Licensed Mate and First Class Pilot’s License with pilotage for four (4) ferry routes operated by WSF.

In the second paragraph of Rule 31, in the last sentence, “capacities” is plural and refers to those “capacities stated above” referring to paragraph Rule 31.01 which indicates you have to have a Mate’s License and a Pilot’s License as stated. The reference to “capacities” makes Rule 31 in its entirety ambiguous.

Because Rule 31 in its entirety is ambiguous it is proper to examine past practice to determine the parties’ practical interpretation of the language.

Past practice is that no one who had obtained an Original Inland Mate’s License was reimbursed without also obtaining a First Class Pilot’s License with pilotage for four (4) ferry routes operated by WSF.

Mr. Dennis Conklin, was employed in the deck department of WSF from June 1979 to February 15, 1991, when he became Business Agent for the IBU. On February 7, 2004, he

became Regional Director of the IBU. Mr. Conklin testified he was unaware of anyone who had ever been reimbursed prior to obtaining his or her four-route pilotage until Ms. Dowling filed on May 23, 2003 and Mr. Peters filed on August 15, 2003 and requested reimbursement without having any pilotage.

Both Captain Malde and Captain Saffle started out with WSF as an Ordinary Seaman, the lowest deck rating, and then earned their Original Inland Mate's License. Then they started getting their First Class Pilot's License with pilotage for four (4) ferry routes operated by WSF. They were then reimbursed. Each went on to get their Master's License, and pilotage on every one of the ferry routes.

### **Custom and Practice**

The 1977-1980 IBU/WSF CBA used the word "and" between the Mate's License **and** the Pilot's License, and there was no question that you had to have the required Pilot's License and pilotage and Mate's License to be reimbursed.

There has been numerous CBAs negotiated between the same parties and starting with the 1980—1983 CBA, they replaced the word "and" with the word "or" but have continued the custom and practice of not reimbursing until the Mate's License and the Pilot's License with pilotage has been acquired.

With the claims of the present grievants, we find that we have a condition of latent ambiguity as described in *Midwest Rubber Reclaiming Co.*, 69 LA 198, 199 (Bernstein 1977).

The law recognizes the existence of two types of ambiguities in contracts. The first type is the "patent ambiguity" in which language is unclear on its face—a mere reading of the contract discloses the confusion. However, there is also the category of the "latent ambiguity," where the language appears clear on its face but becomes unclear when an effort is made to apply it to a given situation.



There is no question that the custom and practice of not paying reimbursement until the employee has the Mate's License and pilotage as required by the CBA has continued for over 20 years until these two present grievances.

A simple definition of binding past practice on the parties is as follows:

A past practice binding on the parties may be defined as one which is directly, repeatedly and consistently associated with a specific condition and must have been practiced with such regularity, consistency and constancy as to disclose a definite, distinct pattern mutually accepted in the past by the parties.  
*Campbell Plastics Corp.*, 51 LA 705 (Cahn 1968).

The tests of a binding past practice are rather simple. 1) Has the practice existed over an extended period of time, so that employees could reasonably expect the outcome? (In this case, the practice continued for at least 20 years. That is a sufficiently long period of time.) 2) Has the practice been clear and unequivocal? (In this case the practice has been followed clearly and without exception. There were no requests for reimbursement for schooling and upgrading.) 3) Has the practice been accepted by both parties? (Yes, as indicated by not requesting reimbursement until this present grievance.)

In the current CBA, Rule 31 in its entirety is ambiguous. The past practice that has been followed for over 20 years is not ambiguous, and must be considered as a practical interpretation of the Rule.

Past practice can attain the status of contract rights and duties as noted:

Past Practice

However, this does not end the matter since it is well recognized that the contractual relationship between the parties normally consists of more than the written word. Day-to-day practices mutually accepted by the parties may attain the status of contractual rights and duties, particularly where they are not at variance with any written provision negotiated into the contract by the parties and where they are of long standing and were not changed during contract negotiations.  
*Metal Specialty Co.*, 39 LA 1265, 1269 (Volz 1962).

The above *Metal Specialty Co.* decision was cited with approval in *Dallas Power & Light Co.*, 87 LA 415, 418 (White 1985) at page 418:

In view of the above cited holding in *Warrior and Gulf* and the well established arbitration standards for determining the existence of controlling past practices, as illustrated by the *Metal Specialty* case, it must be concluded . . . not only can be said to have attained the status of a contractual right, but is to be considered, “equally a part of the agreement although not expressed in it.”

The custom and practice is for a person to obtain an Original Inland Mate’s License and then start working to obtain trips to qualify for the four WSF ferry routes. The U. S. Coast Guard examination for the ferry routes has to be passed before the USCG places the ferry route endorsements on a license.

The second paragraph of “Allowance for Schooling and Upgrading” in the current IBU/WSF CBA, as well as all the CBAs back to 1970 and probably earlier, refer to the holder of the Original Inland Mate’s License presenting “the license for not less than those **CAPACITIES** stated above.” Those **CAPACITIES** would be the “Original Inland Mate” as well as having “pilotage for four (4) ferry routes operated by Washington State Ferries.” Meeting these two requirements, qualifies the employee to obtain reimbursement as set out in Rule 31.02 of the current contract.

The grievants, Ms. Dowling and Mr. Peters, by not seeking to obtain the required pilotage, are in effect defeating the purpose of Rule 31 and subsection 31.04 which “is to provide a reservoir for selecting future officer replacements.” Without pilotage as officers they could not participate in any navigation procedures from the vessel’s bridge; they would be limited to only ferries that carry a Second Mate, which is only 5 of the 24 passenger and vehicle ferries. They would not be able to work on the 5 passenger-only ferries.

## CONCLUSIONS OF LAW

1. The parties 1999-2001 contract remains in full force and effect past its stated expiration date by operation of law (RCW 47.64.170).

2. The Marine Employees' Commission has jurisdiction over the parties and the dispute (RCW 47.64.280). The case is properly before the Marine Employees' Commission for decision.

3. The language of Rule 31.01, while it appears clear on its face, becomes unclear when it is read in conjunction with the other parts of Rule 31. Rule 31 is latently ambiguous.

4. The past practice for over 20 years—the practice which continued even when Rule 31 was changed—is that the deck employee must first be qualified; second, obtain an Original Inland Mate's License; third, obtain a First Class Pilot's License with pilotage for four (4) routes operated by WSF. At that point, the deck employee would be entitled to reimbursement as set out in Rule 31.02.

5. Neither grievant obtained the required pilotage as set out in the CBA, Rule 31—Allowance for Schooling and Upgrading, and therefore they were not entitled to reimbursement.

6. WSF did not violate the CBA when it denied grievants Dowling and Peters reimbursement for obtaining only their Original Inland Mate's License without having obtained any pilotage.

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**ORDER OF DISMISSAL**

On the basis of the above Findings of Fact and Conclusions of Law, the Marine Employees' Commission hereby orders that both the grievance of Ms. Dowling, MEC Case 45-03, and the grievance of Mr. Peters, MEC Case 15-04, be denied.

DATED this 23rd day of April 2004.

MARINE EMPLOYEES' COMMISSION

/s/ JOHN SULLIVAN, Arbitrator

Approved by:

/s/ JOHN SWANSON, Chairman

/s/ JOHN BYRNE, Commissioner