

STATE OF WASHINGTON
BEFORE THE MARINE EMPLOYEES' COMMISSION

In Arbitration
Before Commissioner John Sullivan

INLANDBOATMEN'S UNION
OF THE PACIFIC,

Grievant,

v.

WASHINGTON STATE FERRIES,

Respondent.

MEC CASE NO. 54-04

DECISION NO. 424 - MEC

DECISION AND AWARD

APPEARANCES

Dennis Conklin, Regional Director, Inlandboatmen's Union of the Pacific (IBU); *Stuart Downer*, Business Agent, IBU; *Jay Ubelhart*, Business Agent, IBU appearing for the Inlandboatmen's Union of the Pacific.

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

NATURE OF THE PROCEEDINGS

On March 11, 2004, the Inlandboatmen's Union of the Pacific brought this matter before the Marine Employees' Commission (MEC) by filing a request for grievance arbitration against Washington State Ferries which was assigned MEC Case No. 54-04.

The IBU alleges that WSF required mandatory overtime, for two hours, when WSF had time to call for an eight-person relief crew to cover the two hours overtime. IBU asserts that that overtime in question was not a bona fide emergency and that WSF did not call for a relief crew

when requested by the deck crew. WSF claims a bona fide emergency existed per CBA Rule 11.04.

RECORD BEFORE THE COMMISSION

The Marine Employees' Commission has the following record before it.

1. The Request for Grievance Arbitration.
2. The Notice of a Settlement Conference held on May 20, 2004.
3. The Parties Collective Bargaining Agreement for the period July 1, 1999 through June 30, 2001, in small booklet format.
4. Transcript of hearing (155 pages).
5. Six exhibits accepted into evidence during the course of the hearing (including the Collective Bargaining Agreement).

POSITIONS OF THE PARTIES

Position of the IBU

On Saturday, January 17, 2004, the deck crew of the YAKIMA became aware around 3 p.m. that there was an extra two-hour run or trip that would require payment of overtime.

The deck crew requested not to work the overtime and asked WSF to replace the entire eight- person deck crew. WSF did not call for any relief deck crew members.

In addition there was no "bona fide emergency" which would require the deck employees to work overtime, pursuant to CBA Rule 11.04. The deck employees were paid the proper amount, which was two hours of overtime.

If this was a Maritime Emergency Service incident, pursuant to CBA Rule 18, there would be no payment of overtime for the extra run or trip.

Position of WSF

Saturday, January 17, 2004 was the start of a national three day holiday weekend, since Monday, January 19, 2004 was the celebration of Martin Luther King, Jr.'s birthday. There was an excess of cars on the Anacortes Terminal Dock going to the San Juan Islands to celebrate this three day weekend which created an emergency.

At the end of their regular shift at 1755 (5:55 p.m.) the ferry YAKIMA was required to make an extra run or trip to Orcas Island. The YAKIMA took over 80 cars on board on this extra run. This enabled the next scheduled ferry at 2025 (8:25 p.m.) to take on board all the remaining cars on the dock so no one had to stay in their cars on the Anacortes dock overnight to await the next ferry, which would be the first ferry in the morning on Sunday, January 18, 2004.

This qualified as a "bona fide emergency" per Rule 11.04 in the Collective Bargaining Agreement.

At 1546 (3:46 p.m.) Captain Piehler on the YAKIMA notified the agency in charge of the Anacortes terminal that the eight-person deck crew did not want to work the extra run or trip after the scheduled arrival in Anacortes at 1755 (5:55 p.m.), and wanted a total deck crew replacement to make the single round trip to Orcas Island.

WSF management made the decision that there was in fact a "bona fide emergency" and they would not attempt to replace the eight (8) person deck crew by trying to obtain that many people in Anacortes in less than two and a half (2 ½) hours.

IBU deck employees on their days off or on their free days can reject a job assignment; those employees who are on-call could reject the job; and AB-reliefs do not have to take a job assignment that is less than four days.

The eight deck employees on the two-hour extra run or trip at the end of their regular shift, were paid at the overtime rate of pay which is double the straight-time rate of pay.

WSF made a management decision for the one extra trip without attempting to replace the entire eight-person deck crew in Anacortes in less than approximately 2 ½ hours.

THE ISSUE

Did WSF violate the Collective Bargaining Agreement, specifically Rule 11.04, when WSF required the YAKIMA crew to make an extra run after their regular scheduled end of their shift on January 17, 2004?

CONTRACT LANGUAGE

Applicable sections of the 1999-2001 IBU/WSF General Agreement:

RULE 1 - DEFINITIONS

SPECIFIC DEFINITION: Unless the context of a particular section of this Agreement clearly dictates otherwise, the following terms shall have the following meanings:

1.01 AGREEMENT. The term “agreement” shall refer to the present contract, of which this section is a part, as it presently exists between the Employer and the Union.

....

1.26 CONTINUOUS EMPLOYMENT. “Continuous employment” shall be broken by resignation, discharge, termination or written notice of layoff of six months or more.

OTHER DEFINITIONS AND TERMS. Unless the context of a particular section in question indicates otherwise, all other words and terms used in this agreement shall be given their common and ordinary meaning.

....

RULE 4 - MANAGEMENT RIGHTS

4.01 Subject to the specific terms and conditions of this Agreement, the Employer retains the right and duty to manage its business, including but not limited to the following: the right to adopt regulations regarding the appearance, dress, conduct

of its employees, and to direct the work force consistent with work procedures as are necessary to maintain safety, efficiency, quality of service, and the confidence of the traveling public. The Union reserves the right to intercede on behalf of any employee who feels aggrieved because of the exercise of this right and to process a grievance in accordance with Rule 16. The existence of this clause shall not preclude the resolution of any such grievance on its merits.

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RULE 11 - MINIMUM MONTHLY PAY AND OVERTIME

11.01 The overtime rate of pay for employees shall be at the rate of two (2) times the straight time rate in each classification.

11.02 When work is extended fifteen (15) minutes or less beyond the regular assigned work day, such time shall be paid at the overtime rate for one quarter (1/4) of an hour. Should work be extended by more than fifteen (15) minutes, the time worked-beyond the regular assigned work day, shall be paid at the overtime rate in increments of one (1) hour. Such extended work shifts shall not be scheduled on a daily or regular basis.

Employees required to work more than one (1) shift without a break shall be paid as follows:

The first scheduled shift shall be paid at the straight time rate; the second shift shall be at the overtime rate; the third shall be at triple the straight time rate, unless the employee has had a minimum of a six (6) hour break preceding the third shift excluding travel time. Sixteen (16) hours including uncompensated time off between work shifts shall constitute the first and second shift.

An employee who is otherwise entitled to earn pay for a full work shift at the overtime rate under provisions of this agreement may opt to take compensatory time at a later date in lieu of receiving the overtime pay, subject to the conditions and limitations of Rule 26.02 and Rule 26.03 of this Agreement (effective 3/1/99).

11.03 Employees called to work prior to commencing their regular scheduled shift shall receive the overtime rate of pay in increments of one (1) hour for early call-out. Early call-outs shall not be on a daily or regularly scheduled basis. This rule does not apply to WSF training (Rule 31.05).

11.04 Employees may request not to work overtime. This request will be granted unless no other qualified replacement is available or a bona fide emergency exists which requires said employee to work overtime.

11.05 Employees called back to work after completing a scheduled shift and released prior to starting their next scheduled shift shall be paid at the overtime rate, with a minimum of eight (8) hours.

11.06 An employee may refuse call back assignments on scheduled days off or scheduled vacation, and shall not be disciplined for refusing said assignments.

11.07 Employees called back to work on their scheduled assigned days off, will receive a minimum of eight (8) hours pay at the overtime rate. This section shall not apply to part-time employees.

11.08 The Employer agrees that overtime shall be equalized on each route and terminal, insofar as is practical, and every effort shall be made to equalize overtime within the system.

11.09 All employees in year round positions and designated relief positions as defined in Rule 1.14 shall be guaranteed forty (40) hours of pay per one week work schedule or eighty (80) hours of pay per two week work schedule, as set forth elsewhere in this agreement. This provision shall not apply to employees engaged as part-time or on-call employees.

11.10 Overtime shall be paid to each employee required to work an extended work day as a result of a time changeover from Pacific Daylight Savings Time to Pacific Standard Time.

....

RULE 18 - EMERGENCY SERVICE

18.01 Maritime Emergency Service such as collisions, breakdown, stranding, rendering aid to another vessel, shall not be considered overtime. The additional hours shall be paid for only at the straight time rate of pay. This provision shall relate only to the crew on watch at the time of the emergency.

FINDINGS OF FACT

1. On January 17, 2004, the YAKIMA was sailing out of Anacortes to the San Juan Islands which include Lopez Island, Orcas Island, Shaw Island and San Juan Island where Friday Harbor is located.

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2. "E" watch was working on the YAKIMA from 1115 (11:15 a.m.) to 1835 (6:35 p.m.) shift. Their shift was to end when they arrived in Anacortes at 1755 (5:55 p.m.) on Saturday, January 17, 2004.

3. Monday January 19, 2004 was Martin Luther King, Jr. Day, a national holiday, which made it a three-day holiday. The Anacortes Terminal Agent, Welk, was concerned at 1404 (2:04 p.m.) about excess car traffic.

4. The agent said a solution could be an extra trip by the YAKIMA which would arrive in Anacortes at 1755 (5:55 p.m.) and could load car traffic and depart Anacortes for Orcas Island by 1810 to 1815 (6:10 p.m. to 6:15 p.m.). The extra trip would be two (2) hours or less and the deck crew would be paid overtime.

5. Assistant Operation Director (AOD) Tracie Brewer-Rogstad was contacted, advised of the excess traffic in Anacortes, and of the agent's suggestion that an extra run or trip was required.

6. At 1507 (3:07 p.m.) AOD Brewer-Rogstad approved the extra run or trip to Orcas Island.

7. Also at 1507 (3:07 p.m.) AOD Brewer-Rogstad asked the Watch Supervisor John Delaney that the following be made aware of the extra service, Senior Port Captain Kelly Mitchell, S. Burnett, Port Captain Tim Saffle, and WSF Operations Director Michael Anderson.

8. The deck crew of the YAKIMA was notified about 1515 (3:15 p.m.) that they were going to make an extra run on trip to Orcas Island after they arrived in Anacortes at 1755 (5:55 p.m.) and would depart Anacortes by 1810-1815 (6:10-6:15 p.m.). The extra trip would be after the crew's regular work shift.

9. There is an entry in the WSF Operations Center Activity Log, maintained by Watch Supervisor John Delaney on Saturday, January 17, 2004 that reads as follows:

1546-YAKIMA

Captain Piehler called to advise that the extra service for this vessel tonight will not take place because the crew has declined the overtime citing previously made plans. The Master has informed the ANA Agent.

10. Senior Port Captain Kelly Mitchell was trying to contact Captain Piehler by phone, and Captain Piehler was trying to contact Captain Mitchell, with calls going back and forth between the two at 1610, 1611, 1614, 1615, 1617. While the Operations Center Activity Log indicates the above times when calls were attempted, the log does not specifically record that the two, Captain Mitchell and Captain Piehler, actually talked. It would not be far fetched to presume they did in fact discuss the deck crew problem and the extra run.

11. Captain Art Piehler and Chief Mate Phyllis Thoreson of the YAKIMA must have convinced the deck crew to make the extra run or trip to Orcas Island, because the Anacortes Agent, D. Moor, talked with Chief Mate Thoreson and the deck crew agreed to have Domino's Pizza delivered to the ferry for dinner and make the extra run or the trip.

12. The YAKIMA's extra run or trip that departed from Anacortes between 6:10 p.m. to 6:15 p.m. had approximately 80 cars on board plus one car for Lopez Island that was loaded by mistake.

13. Peter Moe, 20 year WSF employee, was employed on board the YAKIMA as an AB on January 17, 2004. He testified the deck crew was aware of the extra trip at 1515 (3:15 p.m.) and at about 1530 (3:30 p.m.) he told the Chief Mate Thoreson the crew did not want to work the extra run or trip.

14. AB Moe estimated that at about 1615 (4:15 p.m.) the deck crew was called to the wheelhouse, prior to their arrival in Anacortes at approximately 1755 (5:55 p.m.).

15. AB Moe testified:

Our Captain received a call from port captain and was told anyone who does not make the extra trip will face disciplinary action. The deck crew decided to make the extra trip under duress resulting in two hours overtime.

16. AB Moe testified the YAKIMA returned to the Anacortes Terminal at 2025 (8:25 p.m.) from the extra run or trip to Orcas Island, after which he left the ferry to return to his home.

ANALYSIS

WSF management made a decision that with less than a 2 ½ hours time frame to work in that they would not make an attempt to replace the deck crew with qualified replacements. The deck crew on board the YAKIMA would remain on board and they would be paid overtime which would be at the rate of two times the straight-time rate in each classification (CBA-Rule 11.01). This would be for the two hours for the extra trip to Orcas Island after their regular work shift.

Cynthia J.N. “Cindy” Birginer is an AB Seaman who has been with WSF since May 13, 2002 and has been on the majority of the WSF routes. She testified that she has been called to work an unscheduled run, an additional run at the end of a regular work shift.

Captain Tim Saffle, a Port Captain with WSF who has been with WSF for 29 years in both unlicensed and licensed capacity, testified it has been the custom and practice for many years at the end of regular work shift at times to add on an unscheduled run or trip which would be unexpected, but such extended work shifts shall not be scheduled on a daily or regular basis, and would result in the payment of overtime rate.

The parties, IBU and WSF, have always had sections of contract language that indicate when overtime shall be due and paid. In the present contract covering the period July 1, 1999

through June 30, 2001, RULE 11-MINIMUM MONTHLY PAY AND OVERTIME covers in detail when overtime shall be paid.

The basis of this grievance is CBA Rule 11.04, which states as follows:

11.04 Employees may request not to work overtime. This request will be granted unless no other qualified replacement is available or a bona fide emergency exists which requires said employee to work overtime.

WSF management stipulated that they did not attempt to call any qualified replacement, that the practice when there is an extra boat is that the existing crew stays over and WSF does not call any relief or on-call people to come in as replacements.

There is no question that there were severe time constraints in the time that was available to attempt to contact qualified replacements—the time frame was close to two hours. It was reasonable and practical not to attempt to make calls to secure an eight-employee deck crew on a Saturday of a three-day holiday in Anacortes.

In addition, it has been the custom and practice for many years that WSF at the end of a regular shift will have the ferry's crew make an extra run and pay the overtime which is twice the straight-time.

Without the YAKIMA making the extra run or trip to Orcas Island, cars would have been required to stay overnight at the Anacortes Terminal Dock until the next morning, which would in fact be an emergency for the WSF, the public employer of the deck crew, and would be an unforeseen occurrence for those in cars required to remain overnight on the dock.

It was WSF management's decision, because of the shortage of time over a three-day holiday weekend, not to attempt to seek qualified replacements for the eight-person deck crew pursuant to Rule 11.04.

In RULE 4-MANAGEMENT RIGHTS the parties in the CBA set out in part their duty and obligation “to direct the work force consistent with work procedures as are necessary to maintain safety, efficiency, quality of service, and the confidence of the traveling public.”

The second part of the second sentence of Rule 11.04 reads, “or a bona fide emergency exists which requires said employee to work overtime.”

Webster’s New World Dictionary and Thesaurus, © 1996 by Simon and Schuster, Inc., defines “bona fide” as meaning “in good faith, without fraud” and “emergency” as meaning “a sudden, generally unexpected occurrence demanding immediate action”, also “obligation”, “turn of events”, “unforeseen occurrence” and “predicament.”

What happened in Anacortes on January 17, 2004 with the back load of cars on the terminal dock qualifies as a “bona fide emergency” as the terms are defined in the dictionary.

The language below concerning definitions and terms follows Rule 1.26 in the parties’ CBA:

OTHER DEFINITIONS AND TERMS. Unless the context of a particular section in question indicates otherwise, all other words and terms used in this agreement shall be given their common and ordinary meaning.

WSF as a public employer has a special duty to its customers when the customers are waiting in line to board a ferry to the San Juan Islands. WSF would violate their obligation to these customers if the customers were required to spend the night on the Anacortes Terminal, January 17-18, 2004.

When the YAKIMA departed Anacortes at 1810-1815 (6:10-6:15 p.m.) on its extra run or trip to Orcas Island there were approximately 80 cars aboard. The YAKIMA returned to Anacortes at 2025 (8:25 p.m.). The last run departing Anacortes was the ferry ELWHA

scheduled to depart at 2025 for the San Juan Islands and was able to take all cars that were on the terminal dock so there were no cars left on the dock. The ELWHA has a capacity of 160 cars.

If the YAKIMA had not made the extra run or trip, there would have been cars left on the terminal dock overnight to await the first ferry on Sunday morning, January 18, 2004.

Maritime Emergency Service is specifically set out in Rule 18, as noted earlier in this decision. Maritime Emergency Service would involve ship collisions, breakdown, stranding, rendering aid to another vessel, and shall not be considered overtime.

The possibility of cars being forced to remain overnight on the Anacortes Terminal Dock on Saturday night, January 17, 2004 does not qualify as a Maritime Emergency Service, but such circumstance would qualify as a “bona fide emergency” for which the deck crew were paid overtime.

CONCLUSION OF LAW

On the basis of the Record before it, the Findings of Fact and the contractual and legal analysis, the Marine Employees’ Commission makes the following 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. Past practice has been for many years that at the end of their regular work shift the crew of a ferry can be called upon to work overtime for which they will be paid overtime pursuant to Rule 11 and subsequent sections and paragraphs.

4. According to Rule 4-Management Rights include “the right and duty to manage its business” and “to direct the work force consistent with work procedures as are necessary to maintain safety, efficiency, quality of service and the confidence of the traveling public.”

WSF did the above when they encountered an emergency situation of overloading of cars on the dock to be loaded on the boats and had the YAKIMA make an extra run or trip.

5. The WSF acted reasonably and properly when they made their decision not to attempt to obtain a qualified eight-person replacement deck crew within the approximately two-hour time frame available.

6. The 2025 (8:25 p.m.) ferry ELWHA was the last boat departing from Anacortes to the San Juan Islands on Saturday, January 19, 2004, until the next morning. The unforeseen occurrence of too many cars on the Anacortes terminal dock for the ELWHA to carry was an emergency that qualifies under the description of Rule 11.04 that states “or a bona fide emergency exists which requires said employee to work overtime.”

7. The emergency existed until the YAKIMA made the extra run or trip with cars to Orcas Island.

8. The ELWHA is a Super Class ferry and is capable of carrying 160 cars and thus was able to take all the remaining cars that were on the dock on their 2025 (8:25pm) departure from Anacortes.

9. The deck crew on the YAKIMA had made the decision before they arrived in Anacortes at 1755 (5:55 p.m.) on Saturday, January 17, 2004 to make the extra run or trip and to accept the overtime as spelled out in Rule 11.

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AWARD

WSF did not violate the collective bargaining agreement when it required the YAKIMA crew to make an extra run after the scheduled end of shift on January 17, 2004.

The grievance, filed by the Inlandboatmen's Union of the Pacific and docketed as MEC Case 54-04, is hereby denied.

DATED this 5th day of October 2004.

MARINE EMPLOYEES' COMMISSION

/s/ JOHN SULLIVAN, Arbitrator

Approved by:

/s/ JOHN SWANSON, Chairman

/s/ JOHN BYRNE, Commissioner