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## **'Excluded' senior officers refuse BC Ferries' offers**

Patrick Brown & Christa Grace-Warrick

BC Ferries Services Inc (BCFS) has made salary and bonus offers to as many as 155 ships' officers, who were ruled 'excluded' and 'members of management' under an arbitration ruling award in October 2010. Currently they are paid union rates.

Despite the pending BC Ferry and Marine Workers Union's (BCFMWU) appeal against the arbitration ruling, and a request by the union to hold off on salary offers until the appeal process is complete, BCFS has proceeded with implementation. The Labour Relations Board also denied the union's request for a Stay of Proceedings until its appeal can be heard.

However, it is reported that as many of 80% of the newly exempt employees have not accepted the offers made by the company. This news comes from a separate body, the West Coast Ships Officers Association (WCSOA).

WCSOA comments that BCFS CEO David Hahn has refused to meet with them to discuss the situation. He is quoted as saying: "To be clear, I will not be partaking in any meeting with an organization that has no standing and our plan on exclusions is proceeding as planned."

BCFS' offers comes at a time of high demand for qualified deck officers and marine engineers for deep-sea ships. Deep-sea work, while involving long periods away from home, can reportedly pay up to double what BC Ferries is offering.

BC Ferries faces a potential shortage of officers and engineers, without which ferries cannot sail. Many have logged large amounts of overtime, which they have either 'banked' or have been paid for. As management, they would not be entitled to overtime pay.

### **Pushing It Through**

The implementation of the arbitrator's decision was described in the company's management plan for Performance Term 3 (2012-2015) as follows:

'Management presence on-board the vessels is

considered necessary by BC Ferries to manage the assets in an effective, efficient and accountable manner and to ensure high standards of customer service. In February 2008, BC Ferries initiated a process to seek the exclusion from the bargaining unit of certain senior positions on-board its vessels....

'A structured plan will be developed by BC Ferries to implement the award over the next three to five years. BC Ferries believes that the outcome in terms of increased management presence in the fleet will bring positive results including decreased costs in such areas as overtime, and increased efficiency and customer service.'

### **Masters (Captains) First**

For many years, BCFS had made applications to the BC Labour Relations Board to 'exclude' as many as 500 employees from the union bargaining unit. In his October report, arbitrator Vince Ready described the history of management's several attempts to exclude ship's officers, going back as far as 1978.

At that time, the Labour Relations Board determined that only the masters of major vessels were 'management'. Masters of minor vessels, senior chief engineers, chief engineers, second engineers/chief engineers, and chief stewards were employees and should be included in the union bargaining unit.

In 1986, approximately 10 masters and senior masters on the Northern Gulf Island Routes were excluded by agreement between the union and the BC Ferries Inc. In 1996 there was a further agreement to exclude two additional masters.

Sometime between 1996 and 1999 all senior masters on the remaining vessels (largely the southern Gulf Island routes) were excluded by a Consent Order of the Labour Relations Board. Nowadays, with the exception of 'minor vessels', the master is not in the bargaining unit. (A 'minor vessel' typically would have a total crew of six.)

A 2004 Interim Award granted approximately 200

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Island Tides, Box 55, Pender Island, BC, Canada.  
Email: [islandtides@islandtides.com](mailto:islandtides@islandtides.com).

Phone: 250-629-3660. Fax: 250-629-3838.  
Website: <http://www.islandtides.com>

generally land-based exclusions, consisting of the Crewing Department, Human Resources Department, and Assistant Terminal Managers. These exclusions were renewed in last October's decision.

### **Officers Next—October 2010 Ruling**

Following extensive hearings throughout 2008–2010, before independent arbitrator Vince Ready, BCFerries Services was finally successful in obtaining the ruling that certain senior ship personnel were part of management. These ranks therefore can also no longer be members of the BC Ferry and Marine Workers Union.

### **Naval Command Or Corporate Management?**

Aboard any ship, all the crew are under the command of the ship's master. But historically, the Labour Relations Board distinguishes between management and employees using a set of criteria which measure traditional management responsibilities including 'hire, fire, demote, confidentiality, industrial relations input, etc.'

However, applying these criteria to the essentially naval command structure of a ship poses unique questions. Arbitrator Ready considered an additional criterion, of contemporary 'management team' responsibilities.

BCFS employs shore-based senior fleet operations, engineering operations, customer care, and food and retail personnel who are not usually on board vessels. On board the vessels, there are three distinct departments: Deck, Catering, and Engineering. The deck department is under the direct supervision of each ship's master.

### **Arguments At The 2010 Arbitration**

The arbitration award came after Vince Ready had heard from both senior management and ship personnel. BCFS executives argued that, without 'management' personnel actually on the ships, improvements in efficiency, safety, and customer service could not be assured.

However, ships' personnel argued that they had a professional responsibility to report safety and environmental problems to a number of regulatory bodies. This, they said, was included in the union contract, which thus provided them a measure of protection from retribution.

Arbitrator Ready, having presided over several previous attempts by the company to pull the employees out of the union, was familiar with the arguments. In requesting written submissions to speed the hearings, he said: 'I anticipate the Union will argue that its members are fully conscious of the need for safety and that this does not justify any management exclusion. On the other hand, I

anticipate the Employer will argue that exclusions are the means by which management will have the ability to be accountable for the continued safe operations of the fleet.'

One of the questions facing arbitrator Ready was whether the on-board management of the engineering and catering functions should be non-union personnel, since that they all reported to the ships' masters.

Company executives testified that the senior on-board managers of each of these functions should also be excluded from the union bargaining unit, since in some cases, the ship's master was the only non-union individual on board.

With respect to shipboard engineering personnel, Mark Collins, BCFS Vice-President—Engineering, testified that shore-based management are responsible for multiple ships and cannot adequately monitor performance or discipline issues aboard a single vessel.

Said Collins: 'Engineering superintendents must rely on the chief engineer and first engineer to evaluate shipboard staff performance. This frequently places the chief engineer and first engineer in a conflict situation with fellow union members when matters of job performance and discipline arise. As a result, issues involving the safe and effective operation of the vessel may go unreported to management.'

### **Whistleblowing**

In his report, arbitrator Ready referred to a January 2007 report on fleet safety by former BC Auditor General George Morfitt. Morfitt's review of the ferry company generally affirmed that a 'majority' of employees felt BCFS was 'receptive' to their safety-related concerns. However, Morfitt also recommended that improvements in the Safety Management Systems must address the 'number of staff [who] did not express the same level of comfort.'

Morfitt's remarks echoed an affidavit from Darin Bowland, who briefly held the position of Director of Safety, Health and Environment (non-union) in early 2006, and who quit a few days after the sinking of the *Queen of the North*. Commenting on what he termed a 'broken' safety management system, Bowland expressed his concern about a 'culture that discouraged internal criticism and constructive debate on issues of safety and the environment'.

### **Regulations: A Management Issue?**

However, in Collins' view, contact with regulatory bodies must be routed through management. He went on to say: 'BCF has a significant number of regulatory bodies to comply with, such as Transport Canada, BC Safety

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Authority, WorkSafe BC, Health Canada, Dept of Fisheries and Oceans, Canadian Coast Guard, and Environment Canada. Senior chief engineers, chief engineers and first engineers deal with these bodies on behalf of the Company. It is important these bodies are advised of the full company position on critical matters, uninfluenced by labour relations matters.'

'For example, in the past there have been times when engineers have directed regulators to issues on a vessel that resulted in operational disruption. If handled by management such issues can usually be resolved with a phased approach that does not disrupt service.'

### **Rules Of The Sea & Corporate Sensitivity**

Senior officers covered by the new arrangement fear that they will lose their right to delay a ferry's sailing on safety or environmental grounds. Under the current union collective agreement and Canadian maritime law, Senior engineers can do this; if overruled, they may appeal directly to Transport Canada.

However V-P Collins counters: 'Senior-chief and chief engineers are also in possession of sensitive internal company information (such as financial or environmental data) which may be open to misinterpretation by regulators if not presented in the correct context. In my

view, organized labour imperatives can provide an incentive for personnel to present sensitive information to regulators in inappropriate ways.'

### **Serious Charges**

Collins charges: 'At present we have some senior engineers who do not fully embrace safety initiatives, leading to a less safe environment for our staff.' He further claimed: 'Organized labour imperatives may also cause personnel to suppress critical safety information from the Company's knowledge. Unionized personnel have an incentive to put protection of the individual's job or reputation ahead of reporting of critical safety information.' And further: 'Organized labour rules sometimes prevent the Company from taking timely action on competence issues which lead to critical safety issues.'

### **Arbitrator Accepts Company Submissions**

Arbitrator Ready accepted BCFS' arguments. The company put forward similar arguments with respect to Chief Stewards (who deal with Health Canada regarding catering, and with passengers regarding all manner of complaints) aboard larger vessels; Ready's decision also excluded Senior Chief Stewards and Chief Stewards from the bargaining unit. ✍