

A FEW SMALL OFFICE ISSUES

**PMRS
SCHEDULING ISSUES
LEAVE ISSUES
OFFICE TO OFFICE TRAVEL
SPECIAL POSTAL CLERK LEVEL 6**

**IOWA STATE APWU FALL SEMINAR
NOVEMBER 16-17,2002
IOWA CITY IOWA**

**MUCH OF THIS PROGRAM IS BASED ON A PROGRAM PREPARED BY DENNIS
TAFF, ARKANSAS STATE PRESIDENT AND PAULA JONES OKLAHOMA
STATE PRESIDENT AND GIVEN AT OUR TRI-STATE. TRAVEL ISSUES
ARE BASED ON A PROGRAM BY BRUCE CLARK IOWA STATE PRESIDENT**



POSTMASTER RELIEFS (PMRs)

ACKNOWLEDGEMENTS

The information contained in the Small Office Issues CD is a culmination of over thirty years' work by our officers of the American Postal Workers Union. The fact that this CD is a reality is due to our commitment to provide APWU members, stewards and officers with a condensed version of these many years of accumulated information. Hopefully, the CD will furnish you with the opportunity to examine and, if necessary, copy and/or obtain documents that will improve your ability to ensure that management in smaller post offices will adhere to the provisions of the Collective Bargaining Agreement.

As with all endeavors of this nature, there are many people who have contributed to the information on the Small Office Issues CD. As you inspect the contents of the CD, you will see the signatures and names of numerous former and current national APWU officers, all of whom had a significant role in the creation of the Small Office Issues CD. Of course, all of these officers deserve credit for their contributions. Nevertheless, I wish to thank the following officers and members who expressly donated their time and energies to the actual production of this CD. Those dedicated unionists are:

- * Gerald Haskins – TPWU Legislative Aide;
- * Chris Chaney – Oklahoma City Local President;
- * Morline Moore – Texas State President;
- * Dennis Taff – Arkansas State President;
- * Paula Jones – Oklahoma State President;
- * Tom Maier – Former National Business Agent, Wichita Region &
member of the Tulsa, Oklahoma Local

This CD is not meant to be all-encompassing in regard to the myriad of problems experienced by our members who work in small post offices. It is purely our attempt at supplying information to combat the primary problems that they encounter and to illustrate that we are here for them.

In Union Solidarity,

Sam Lisenbe

THIS BOOKLET CONTAINS THE SUPPORTING DOCUMENTS AND SAMPLE GRIEVANCE FORMS AND THAT WERE USED IN FILING NUMEROUS GRIEVANCES IN THE STATE OF ARKANSAS OVER THE ISSUE OF IMPROPER UTILIZATION OF POSTMASTER RELIEFS. (PMR'S)

PMR'S ARE USED ILLEGALLY BY THE POSTAL SERVICE IN NORMALLY TWO DIFFERENT SITUATIONS. THE FIRST SITUATION IS WHICH THEY ILLEGALLY UTILIZES A PMR IS BY WORKING THEM IN ANOTHER NEARBY OFFICE TO PERFORM CLERK WORK WITHOUT A DUAL APPOINTMENT. THE MOST COMMON REASON WHY THE POSTAL SERVICE UTILIZES PMR'S AT OTHER OFFICES IS TO REDUCE CLERK HOURS OR TO REDUCE THE CLERK OVERTIME.

BY UTILIZING PMR'S IN THIS MANNER THE POSTAL SERVICE GAINS BECAUSE THEY ARE ABLE TO USE LOWER PAID NON-CAREER EMPLOYEES TO PERFORM CLERK DUTIES. ADDITIONALLY SINCE THEY DO NOT NORMALLY CLAIM THEM AS DUAL APPOINTED CASUALS, THE POSTAL SERVICE BENEFITS BECAUSE THE PMR'S ARE NOT COUNTED AGAINST THE CASUAL CAP.

UNION OFFICERS WHO REPRESENT SMALL OFFICES SHOULD INSTRUCT THE CLERKS IN THOSE OFFICES TO CONTACT THEIR UNION REPRESENTATIVE ANYTIME AN EMPLOYEES FROM ANOTHER OFFICE IS SCHEDULED TO WORK IN THEIR OFFICE. THIS SHOULD ALSO BE THE RULE IN ANY SIZE OFFICE. LARGE OFFICES ARE NOT IMMUNE TO THIS VIOLATION.

THE SECOND SITUATION IN WHICH THE POSTAL SERVICE ILLEGALLY USES PMR'S IS IN THEIR OWN OFFICE. THE POSTAL SERVICE UTILIZES PMR'S ABOVE AND BEYOND THEIR CONTRACTUAL LIMITS(WORKING THE SAME TIME AS THE POSTMASTER OR OIC, PERFORMING MAIL DISTRIBUTION BEFORE THE POSTMASTER OR OIC ARRIVES, ETC.)

THE SECOND SITUATION WAS THE MOST PROMINENT IN MY AREA. THE NEXT FEW PARAGRAPHS DESCRIBES HOW THE ILLEGAL USES OF PMR'S WERE DISCOVERED AND HOW THE UNION HANDLED THE GRIEVANCES CONCERNING THESE VIOLATIONS.

AS WE WERE REVIEWING A LIST OF MEMBERS AT LARGE (MAL'S) WE NOTICED THAT THERE WERE NUMEROUS LEVEL 15 OFFICES AND A FEW LEVEL 18 OFFICES IN WHICH THERE WERE NO CAREER CLERKS. AFTER FURTHER INVESTIGATION WE DISCOVERED THAT THE POSTAL SERVICE HAD HIRED AND WERE UTILIZING PMR'S IN THESE OFFICES ABOVE THE CONTRACTUAL LIMITS INSTEAD OF HIRING CAREER CLERKS.

WE LEARNED, THROUGH INVESTIGATION, THAT THIS PRACTICE HAD BEEN GOING ON FOR SEVERAL YEARS. IN MOST OF THE OFFICES WE FOUND THAT WHEN THE ONLY CLERK IN THAT OFFICE RETIRED, QUIT OR TRANSFERRED THE POSTAL SERVICE WOULD REPLACED THEM WITH A PMR. THEY ASSUMED THAT IT WOULD TAKE SOME TIME BEFORE THE UNION DISCOVERED THEM OR NEVER DISCOVER THEM AT ALL.

AFTER REVIEWING TIME DOCUMENTS WE FOUND THAT THESE PMR'S WERE WORKING BETWEEN 13 AND 40 HOURS PER WEEK. WE ALSO DISCOVERED THAT SOME OF THESE PMR'S WERE BEING UTILIZED TO PERFORM BARGAINING UNIT WORK IN OTHER SMALL OFFICES THAT HAD CAREER CLERKS. THEY WERE UTILIZING THESE PMR'S TO AVOID PAYING THE CAREER CLERKS OVERTIME.

I BROUGHT THESE VIOLATIONS TO THE ATTENTION OF THE POSTAL SERVICE, AND AFTER SEVERAL EFFORTS TO PERSUADE THE POSTAL SERVICE TO HIRE CAREER EMPLOYEES IN THESE OFFICES FAILED, THE STATE OFFICERS FILED GRIEVANCES IN APPROXIMATELY 17 OFFICES OVER THE USE OF PMR'S

OUR OFFICERS BASICALLY USED THE SAME FORMS AND INFORMATION FOR EACH GRIEVANCE THAT WAS FILED. THE OFFICERS ONLY HAD TO CHANGE THE AMOUNT OF HOURS THE PMR WAS WORKING IN EACH PARTICULAR OFFICE AND ADD ANY DOCUMENTS OR WRITTEN STATEMENTS THAT THE POSTMASTER WAS WILLING TO GIVE THE UNION.

AS YOU WILL SEE, WE RAISED NUMEROUS ARGUMENTS CONCERNING THE USE OF PMR'S AND PROPER REMEDIES IN OUR STEP 2 AND STEP 2 ADDITIONS AND CORRECTIONS, FULLY ANTICIPATING THAT WE WOULD HAVE TO FIGHT THE POSTAL SERVICE ALL THE WAY TO ARBITRATION.

THROUGH THE TIRELESS EFFORT OF NATIONAL BUSINESS AGENT, ROBERT KESSLER, THE POSTAL SERVICE, ALTHOUGH RELUCTANTLY, RESOLVED THESE GRIEVANCES AT STEP 3. THE SIGN OFF IS INCLUDED IN THIS HANDBOOK.

NOT ONLY DID THE FILING OF THESE GRIEVANCES RESULT IN A MONETARY AWARD TO THE UNION IT HAS FORCED THE POSTAL SERVICE TO HIRE NUMEROUS CAREER CLERKS TO REPLACE THE PMR'S.

I AM SURE THAT THE ILLEGALLY HIRING AND UTILIZATION OF PMR'S IS PRACTICED IN MOST OTHER STATES. IT TAKES SOME TIME AND EFFORT TO FIND THE VIOLATIONS, BUT I AM SURE THAT THEY ARE TAKING PLACE. THERE IS AN OPPORTUNITY TO INCREASE THE CAREER WORKFORCE IN YOUR STATE AND ALSO THE POSSIBILITY TO RECEIVE A MONETARY SETTLEMENT FOR THE UNION OR ITS MEMBERS. I HOPE THESE DOCUMENTS ARE HELPFUL TO YOU AND YOUR OFFICERS IN ELIMINATING THE ILLEGAL USE OF PMR'S.

SPECIAL THANKS TO MY FELLOW STATE OFFICERS AND NATIONAL BUSINESS AGENT ROBERT KESSLER FOR THEIR MANY HOURS OF WORK ON THESE GRIEVANCES.

POSTMASTER RELIEFS (PMRs)

**INFORMATION TO REQUEST TO
DETERMINE IF A GRIEVANCE EXISTS**

1. Copy of Postmaster's job description (To determine what level the PM is and if a PMR is authorized for the office)
2. Copy of Postmaster Relief's PS Form 50 (To determine if the PMR has a dual assignment as both PMR and Casual)
3. Copy of relevant time cards/clock rings for Postmaster and PMR (To discover if the PM and PMR worked simultaneously or if PMR did work in PMs absence)
4. Copy of relevant time cards/clock rings for affected employees (To show that bargaining unit employees in the office did not work maximum number of hours during the service week[s] in question)
5. Statements from bargaining unit employees (To further prove that PMR performed bargaining unit work and that PM was present on those same days)

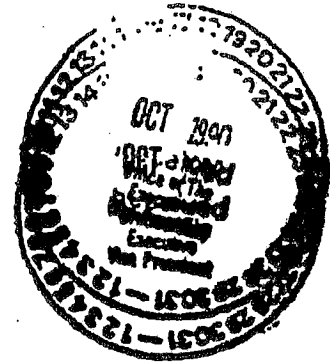


UNITED STATES POSTAL SERVICE
 ROOM 9014
 475 L'ENFANT PLAZA SW
 WASHINGTON DC 20260-4100
 TEL (202) 268-3818
 FAX (202) 268-3074

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2

JOSEPH J MAHON JR
 Assistant Postmaster General
 Labor Relations Department



October 16, 1990

Mr. William Burrus
 Executive Vice President
 American Postal Workers
 Union, AFL-CIO
 1300 L Street, NW
 Washington, DC 20005-4128

Dear Mr. Burrus:


This letter is in response to your September 28 correspondence regarding whether postmaster relief employees are authorized to work when the postmasters who they are to replace are also working.

It is the position of the Postal Service that Section 123.4 of the Administrative Support Manual controls the assignment of a postmaster relief.

Additionally, Section 419.141 of the Employee and Labor Relations Manual defines the postmaster relief as "a non-career hourly rate employee who performs as a relief or leave replacement during the absence of a postmaster in an EAS-15 or below office."

Should there be any questions concerning this matter, please contact Stan Urban of my staff at 268-3842.

Sincerely,

for 
 Stephen A. Moe, Acting
 Assistant Postmaster General



123.4 Assignment of Postmaster Relief**123.41 Determination**

Postmasters must determine the necessity of assigning others in their own relief. An employee relieving the postmaster must be engaged in the primary or core duties and be directed to assume the major responsibilities of the relief position. For example, if the postmaster is to be absent for a short time or is off duty for a period when window service is not available, it may not be necessary to provide relief for these responsibilities.

123.42 Office Without Career Clerk

In offices without an assigned career clerk, a temporary postmaster relief/leave replacement may be used for a limited term to relieve the postmaster during all hours the post office is open to the public. The postmaster may be in a duty status or off duty during the period of absence.

123.43 Office With Career Clerk

In offices with an assigned career clerk, the clerk is authorized to act in relief of the postmaster when the post office is open to the public and only when the postmaster is away from the local area or not in a duty status—that is, on the postmaster's regular day off, when taking personal absence, or on official leave. At other times when the postmaster is in a duty status and away from the office but remains in the general vicinity, such as when attending training or meetings, relief is not authorized. In these cases, the postmaster retains responsibility for the operation of the office even though not physically present.

418.4 Changes From Bargaining to Nonbargaining Schedules

Changes of bargaining unit employees to nonbargaining positions are made in accordance with 410.

419 Supplemental (Noncareer) Workforce

419.1 Assignments

419.11 Casual Employee

419.111 Definition

Casual employees are nonbargaining, noncareer employees with limited term appointments. These employees are employed as a supplemental workforce, as described in collective-bargaining agreements, to perform duties assigned to bargaining unit positions.

419.112 Salary Grade

Appointments of casuals are made to the position of Casual, Occupation Code 5201-1001, at grade EAS-7 in the Noncareer Temporary Rate (NTR) Schedule or as otherwise authorized by the SAPMG/HR.

419.12 Noncareer Rural Carriers

419.121 Definition

Noncareer rural carriers are employed as a supplemental workforce to perform duties assigned to the rural carrier bargaining unit.

419.122 Salary Grade

Noncareer rural carriers are appointed and paid as provided in the NRLCA Agreement.

419.13 Temporary Employee

419.131 Definition

Temporary employees, including Officers-in-Charge (OICs) appointed from outside the Postal Service, are nonbargaining, noncareer employees who perform duties assigned to nonbargaining positions.

419.132 Salary Grades

Prior to hiring a temporary employee, the installation head or other appointing official should carefully assess operational needs of the office and determine the EAS grade for the types of work to be performed. Based on this determination, the temporary employee is hired at that grade in the Noncareer Temporary Rate Schedule.

419.14 Postmaster Relief/Leave Replacements (PMRs)

419.141 Definition

A PMR is a noncareer hourly rate employee who performs as a relief or leave replacement during the absence of a postmaster in an EAS-15 or below post office.

LABOR RELATIONS



Mr. Cliff Guffey
Assistant Director, Clerk Craft
American Postal Workers Union,
AFL-CIO
1300 L Street NW
Washington DC 20005-4128

Re: G94C-4G-C 97111714
Class Action
Christoval, TX 76935-9998

Dear Mr. Guffey:

On January 12, 1998, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether a Postmaster Relief/Leave Replacement can be utilized on a daily basis to process mail prior to the postmaster's reporting for work.

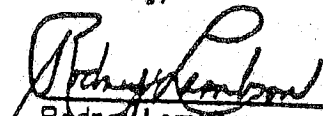
After reviewing this matter, we mutually agreed that no national interpretive issue is presented in this case. Postmaster Relief/Leave Replacements are to be utilized as outlined in Section 123.4 of the Administrative Support Manual not to cover the absence of bargaining unit employees.

Accordingly, we agreed to remand this case to the parties at Step 3.


Please sign and return the enclosed copy of this decision as your acknowledgment of agreement to remand this case.

Time limits were extended by mutual consent.

Sincerely,



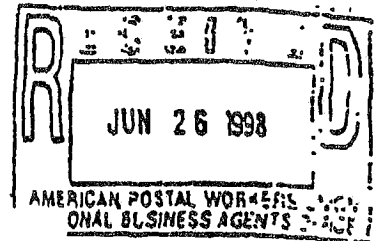
Rodney Lampton
Labor Relations Specialist
Grievance and Arbitration



Cliff Guffey
Assistant Director, Clerk Craft
American Postal Workers
Union, AFL-CIO

Date: 7-27-98

**SOUTHWEST AREA LABOR RELATIONS
PROCESSING CENTER**



June 22, 1998

Southern Region Grievance
Cad. Code: 07.0000

Carl Casillas
National Business Agent
1001 East 101st Terr., Ste 390
Kansas City, MO 64131-3368

G94C-4G-C 98065165
Class Action
De Valls Bluff AR 72041-9998
3/19/98 AR029803

Dear Mr. Casillas:

This is to confirm the disposition of the subject Step 3 grievance appeal which was discussed with you on 6/19/98.

Based on information presented and contained in the grievance file, the grievance is denied. There is no evidence contained in the grievance file at Step 2 or 3 to support the union's contention that the employer violated the National Agreement. The file supports those contentions made by management's Step 2 designee.

P.M.R. assignment to the clerk craft while the Postmaster is present will cease and desist.

The time limit for processing at Step 3 was extended by mutual consent.

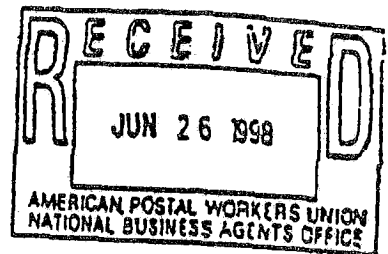
In our judgment, the grievance does not involve an interpretive issue(s) pertaining to the National Agreement or a supplement thereto which may be of general application. Unless the union believes otherwise, the case may be appealed directly to regional arbitration in accordance with the provisions of Article 15 of the National Agreement.

A handwritten signature in cursive script, appearing to read "Delward Stracner".

Delward Stracner
Labor Relations Specialist

cc: District - Arkansas

SOUTHWEST AREA LABOR RELATIONS
PROCESSING CENTER



June 22, 1998

Southern Region Grievance
Cad Code: 07.0000

Carl Casillas
National Business Agent
1001 East 101st Terr., Ste 390
Kansas City, MO 64131-3368

G94C-4G-C 9R065162
Class Action
Star City AR 71667-9998
3/19/98 AR029801

Dear Mr. Casillas:

This is to confirm the disposition of the subject Step 3 grievance appeal which was discussed with you on 6/19/98.

The grievance was settled by mutual agreement as follows:

The P.M.R. assignment to a clerk craft assignment is improper and will cease. The senior clerk will be compensated for the hour worked on Jan 26, 27 & 28 in the box section by the P.M.R.

The time limit for processing at Step 3 was extended by mutual consent.

A handwritten signature in cursive script, appearing to read "Delward G. Stracner".

Delward G. Stracner
Labor Relations Specialist

A handwritten signature in cursive script, appearing to read "Carl Casillas".

Carl Casillas
National Business Agent

cc: District - Arkansas

ARBITRATION AWARDS

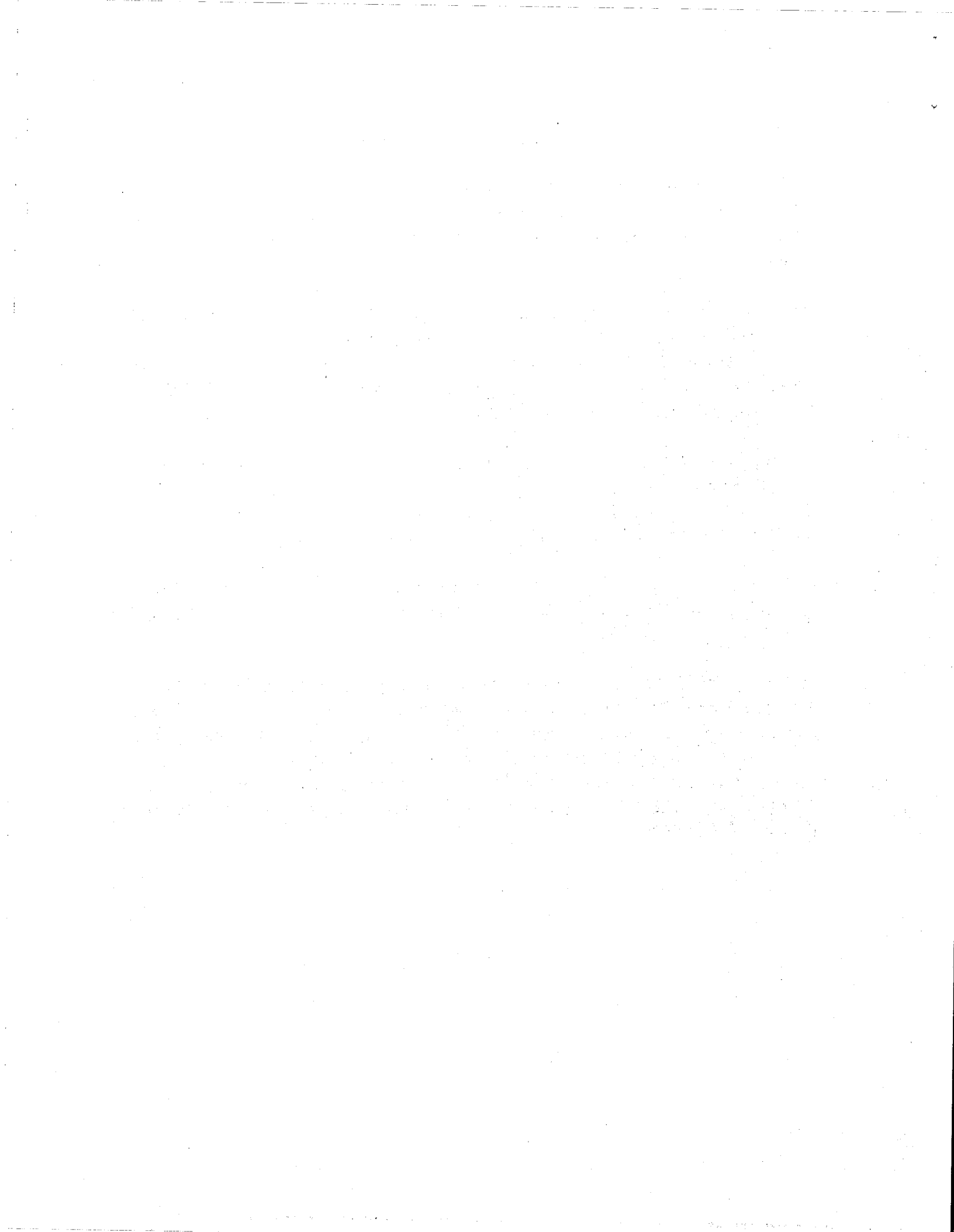
There are no arbitration awards, to this date, on the exact issue of a PMR working in their "Home" office prior to the Postmaster reporting for duty or at the same time as the Postmaster. But there are Step Fours that address these issues (pages 6 thru 11 of this booklet)

There is, however, a few arbitration awards on a PMR being utilized in an office other than their own. In all of these cases the arbitrator agreed with the union that it was a violation in which they utilized the PMR to perform bargaining Unit work in another office. SEE Case # G90C-4G-C 93009839 (Odom) and G94C-4G-C 98023081 (Neveu) and H94C-1H-C 97046292 (Odom)

Although the arbitrator did not address whether or not it was a violation to use a PMR in another office, the arbitrator allowed the union to use the hours worked by the "Borrowed" PMR to help meet the criteria in Article 7.3 for a conversion of a PTF to Full-Time Regular. SEE Case #G98C-4G-C 99294238 (Dorshaw)

There are also arbitration awards on granting monetary remedies to the union. SEE Case #G90C-4G-C 95010403 (Plant), G94C-1G-C 96068981 (Durham) and G90C-1G-C 95066791 (Eisenmenger)

These cases are important when grieving the issue of a PMR working in their "Home" office prior to the Postmaster reporting for duty or at the same time as the Postmaster. Because there is no other Bargaining Unit Clerk in the office, it is sometimes difficult to determine who exactly should be paid for the violation. That is why we ask in our remedy, along with a cease and desist order, that the appropriate Bargaining Unit employees and/or the Union be paid and made whole for the violation. We then cover all bases on the remedy.



SCHEDULING ISSUES





UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20009

MAR 11 1987

Mr. Richard I. Nevodau
Director
Maintenance Craft Division
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4107

ARTICLE	3
SECTION	3
SUBJECT	
<i>Richard I. Nevodau</i>	

Re: Class Action
Watertown, CT 06795
H4C-1J-C 17391

Dear Mr. Nevodau:

On January 12, 1987, we met to discuss the above-captioned case at the fourth step of our contractual grievance procedure.

The issue in this grievance is whether part-time flexible clerks must be scheduled to work 8 hours within 10 when scheduled to work 8 hours in a service day, and whether they are due overtime for time worked outside this 10-hour range.

During our discussion, we mutually agreed to settle this grievance based on the following:

1. There is no contractual basis for the remedy requested in this grievance.
2. However, as provided in Section 432.32c. of the Employee and Labor Relations Manual, part-time flexible employees may not be required to work more than 12 hours in one service day (including meal time) except in emergency situations as determined by the PMG (or designee).

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to settle this case.

Time limits were extended by mutual consent.

Sincerely,

James W. Bledsoe
James W. Bledsoe
Labor Relations Department

Richard I. Nevodau
Richard I. Nevodau
Director
Maintenance Craft Division
American Postal Workers Union,
AFL-CIO

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, S.W.
Washington, DC 20020

June 17, 1983

SEARCHED	9
SERIALIZED	3
INDEXED	
FILED	
JUN 17 1983	
PTF	
<i>dehullos</i>	

Mr. Gerald Anderson
Assistant Director
Clerk Division
American Postal Workers
Union, AFL-CIO
117 - 14th Street, N.W. —
Washington, D.C. 20005-3396

Re: J. Sanchez
Manati, PR 00701
HIC-1L-C 9117

Dear Mr. Anderson:

On June 7, 1983, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The matters presented as well as the applicable contractual provisions have been reviewed and given careful consideration.

We mutually agreed that in light of the existing provisions of 432.32, ELM, this grievance does not pose a nationally interpretive question.


Part-time flexibles may be required to observe a service day lasting more than 10 hours but less than 12 hours. Whether or not there exists a valid past practice in this local office to limit PTF's to a 10-hour service week is determined by examination of the fact circumstances.

Accordingly, as further agreed, this case is hereby remanded to Step 3 for further processing by the the parties at that level.

Please sign and return the enclosed copy of this decision as your acknowledgment of agreement to remand this case.

Sincerely,


Robert L. Eugene
Labor Relations Department


Gerald Anderson/
Assistant Director
Clerk Division
American Postal Workers
Union, AFL-CIO

RECEIVED

JUN 22 1983

2

RECEIVED

APR 23 1986

Richard I. Wavodau...
MAINTENANCE DIVISION DIRECTOR
AMERICAN POSTAL WORKERS UNION



UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

Mr. Richard I. Wavodau
Director
Maintenance Craft Division
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

ARTICLE	8
SECTION	3
SUBJECT	PART TIME FLEX. 12 HOUR LIMIT

Re: Class Action
Roanoke, VA 24022
H4C-2U-C 807

Class Action
Roanoke, VA 24022
H4C-2U-C 1396

Dear Mr. Wavodau:

On January 7, 1986, and again on April 2, 1986, we met to discuss the above-captioned grievances at the fourth step of our contractual grievance procedure.

The issue in these grievances is whether management violated the National Agreement by requiring PTF employees to work 12 1/2 hours in one service day.

During our discussion, we mutually agreed that the following constitutes full settlement of these cases:

Except in emergency situations as determined by the PMG (or designee), these employees may not be required to work more than 12 hours in one service day. In addition, total hours of daily service, including scheduled work hours, overtime, and meal time, may not be extended over a period longer than 12 consecutive hours.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to settle these cases.



UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

August 18, 1983

SPLIT SHIFT
PTF
RECEIVED IN THE OFFICE OF

AUG 22 1983

Mr. James I. Adams
Assistant Director
Maintenance Division
American Postal Workers
Union, AFL-CIO
817 14th Street, N. W.
Washington, D.C. 20005-3399

JAMES I. ADAMS

Re: Class Action
Northport, NY 11768
H1C-1M-C 15981

Dear Mr. Adams:

On August 8, 1983, we met to discuss the above-captioned case at the fourth step of the contractual grievance procedure set forth in the National Agreement.

The question raised in this grievance involved the scheduling of part-time flexible employees to work nine hours in a twelve hour period which included a swing period in excess of two hours.

During our discussion, we agreed to remand this case to Step 3 for application of the following language taken from the Step 4 settlement of grievances HBN-3P-C 25588 and HBN-3Q-C 26319:

1. When a part-time flexible employee is notified prior to clocking out that he should return within 2 hours, this will be considered as a split shift and no new guarantee applies.
2. When a part-time flexible employee, prior to clocking out, is told to return after 2 hours, that employee must be given another minimum guarantee of 2 hours work or pay.
3. All part-time flexible employees who complete their assignment, clock out and leave the premises regardless of interval between shifts, are guaranteed 4 hours of work or pay if called back to work. This guarantee is applicable to any size office.



FEB 6 1988

OWEN BARNETT

UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

ARTICLE	1
SECTION	1
SUBJECT	
CALL BACK	

Mr. Owen Barnett
Assistant Director
Maintenance Craft Division
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4107

FEB 02 1988

Re: T. Reeves
H4C-3S-C 61908
Fort Lauderdale, FL 33310

J. Claar
H4C-3S-C 61907
Fort Lauderdale, FL 33310

Dear Mr. Barnett:

On January 21, 1988, we met to discuss the above-captioned grievances at the fourth step of our contractual grievance procedure.

The issue in these grievances is whether the grievants were entitled to an additional guarantee under Article 8 because they were told to go back to work after they had punched off the clock and had not left the premises.

After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in these cases. We further agreed that this was a local issue suitable for regional determination based upon application of the November 10, 1981, pre-arbitration settlement of case Nos. HBN-3P-C 25588 and HBN-3Q-C 26319, which states in part "employees who complete their assignment, clock out and leave the premises regardless" of interval between shifts, are guaranteed 4 hours of work or pay if called back to work. This guarantee is applicable to any size office."

Accordingly, we agreed to remand these cases to the parties at Step 3 for application of the aforementioned to the specific fact circumstances.


Owen Barnett

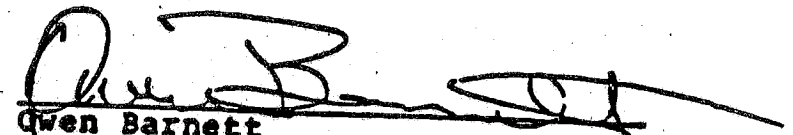
2

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand these cases.

Time limits were extended by mutual consent.

Sincerely,


Samuel M. Pulcrano
Grievance & Arbitration
Division


Owen Barnett
Assistant Director
Maintenance Craft Division
American Postal Workers
Union, AFL-CIO



UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20020

September 30, 1982

Mr. Halline Overby
Assistant Secretary Treasurer
National Association of Letter
Carriers, AFL-CIO
100 Indiana Avenue, N.W.
Washington, D.C. 20001

ARTICLE 8
SECTION 8

STAND BY AT HOME , PTF

Re: Class Action
St. Clair Shores, MI 48080
E8N-4B-C 26734

Class Action
St. Clair Shores, MI 48080
E8N-4B-C 24748

Dear Mr. Overby:

On several occasions, the most recent being September 22, 1982, we met on the above-captioned cases at the fourth step of the contractual grievance procedure set forth in the 1978 National Agreement.

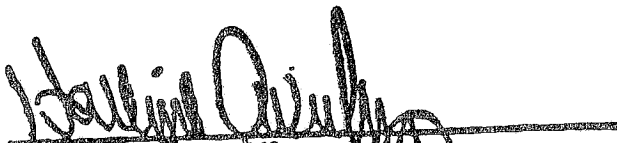
The question raised in these grievances involve whether local management violated the terms of the National Agreement when they advised part-time flexible carriers that they would be contacted by telephone if needed on a nonscheduled day.

After further review of this matter, we mutually agreed that no National interpretive issue is fairly presented in the particulars evidenced in these cases. Part-time flexible carriers cannot be required to "stand-by" or remain at home, under the threat of discipline, for a call-in on a nonscheduled day. Should a supervisor be unable to contact an employee whose services are needed, the employee merely remains nonscheduled for that day. The fact circumstances of this dispute must be adjudicated within this mutual understanding.

Accordingly, as we further agreed, these cases are hereby remanded to the parties at Step 3 for further processing if necessary. Please sign a copy of this letter as your acknowledgment of agreement to remand these cases.

Sincerely,


Howard K. Carter
Labor Relations Department


Halline Overby
Assistant Secretary Treasurer
National Association of Letter



LEAVE ISSUES





UNITED STATES POSTAL SERVICE
 475 L'Enfant Plaza, SW
 Washington, DC 20260

AUG 21 1981

F. Kenneth D. Wilson
 Administrative Aide, Clerk Craft
 American Postal Workers Union, AFL-CIO
 17 - 14th Street, NW
 Washington, DC 20005

10
 PTF
 SICK LEAVE
 APPROVED MONDAY
 CANCELLED

AW 2307

Re: J. Jackson
 Puyallup, WA 98371
 H8C-5D-C-19088

Dear Mr. Wilson:

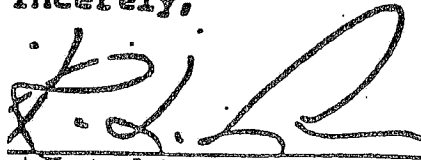
On August 14, 1981, we met with you to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.


The matters presented by you as well as the applicable contractual provisions have been reviewed and given careful consideration.

We mutually agreed that based upon the circumstances of this case the grievant shall receive six (6) hours approved sick leave for May 9, 1981. If the granting of this leave causes the total paid hours for the week to exceed forty (40) hours, overtime shall be paid for the excess.

Please sign the attached copy of this decision as your acknowledgment of agreement to resolve this case.

Sincerely,


 Robert L. Eugene
 Labor Relations Department


 Kenneth D. Wilson
 Administrative Aide, Clerk Craft
 American Postal Workers Union,
 AFL-CIO

Mr. Richard I. Wavodau

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Time limits were extended by mutual consent.

Sincerely,

Muriel A. Aikens
Muriel A. Aikens
Labor Relations Department

Richard I. Wavodau
Richard I. Wavodau,
Director
Maintenance Craft Division
American Postal Workers
Union, AFL-CIO



UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260

JUL 17 1985

Mr. Thomas Freeman, Jr.
Assistant Director
Maintenance Craft Division
American Postal Workers
Union, AFL-CIO
817 14th Street, N.W.
Washington, D.C. 20005-3399

ARTICLE	10
SECTION	PTF
SUBJECT	LEAVE

Re: H. Davis
Lansing, MI 48924
H4C-4B-C 1880

Dear Mr. Freeman:

On June 25, 1985 and again on July 3, 1985, we met to discuss the above-captioned grievance at the fourth step of the contractual grievance procedure.


The issue in this grievance is whether the grievant was properly compensated for work and leave hours for the week February 2, 1985 to February 8, 1985.

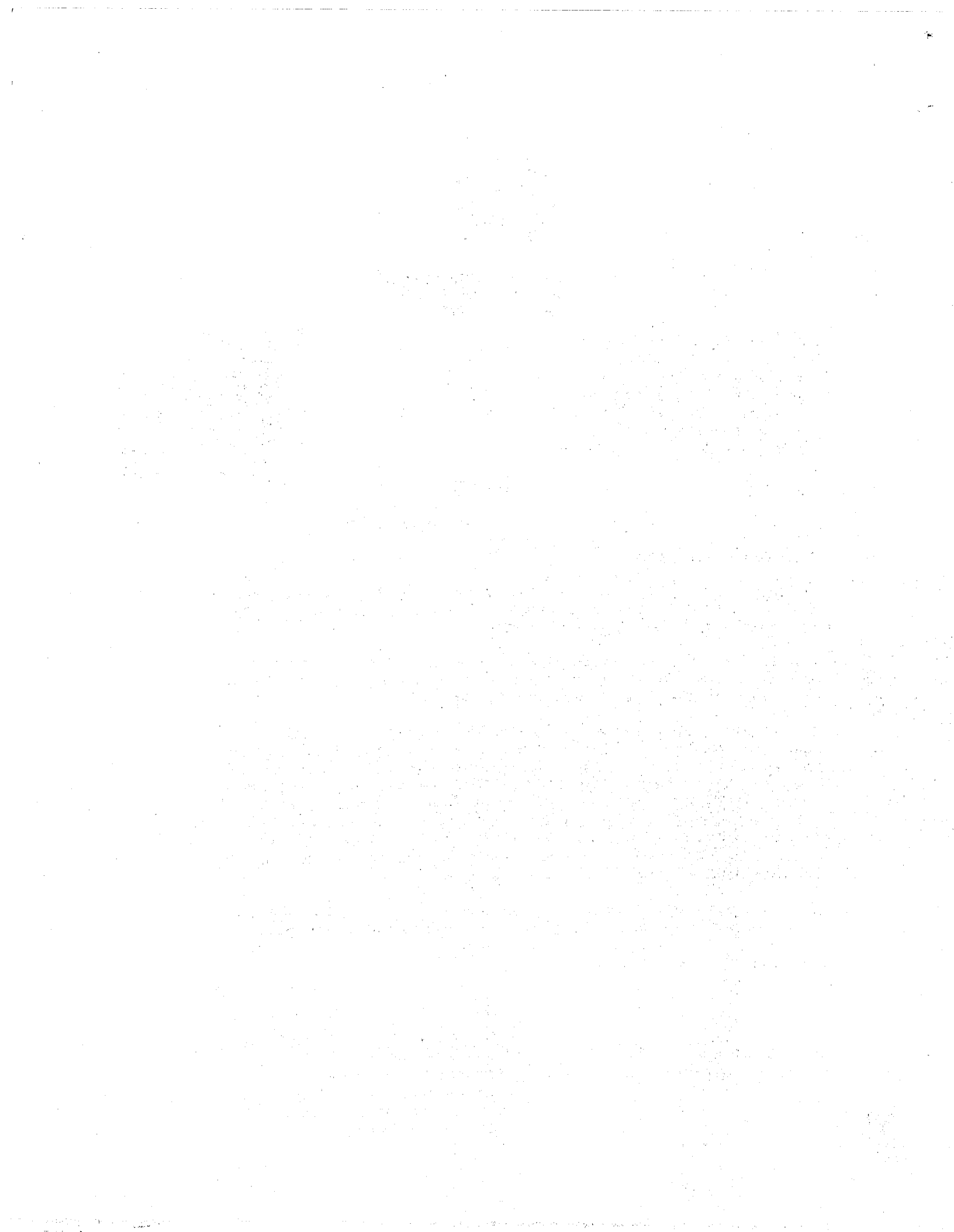
During our discussion, we mutually agreed that when a PTF employee has been previously granted annual leave, such leave will not be unilaterally changed to a nonscheduled day, solely to make the PTF available for an additional day of work at the straight time rate. Based upon the above consideration, the grievant will be compensated at the overtime rate for hours worked on February 8, 1985. In addition, payment for 8 hours of annual leave for February 4, 1985 should be made.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to settle this case.

Sincerely,


Muriel Aikens
Labor Relations Department


Thomas Freeman, Jr.
Assistant Director
Maintenance Craft Division
American Postal Workers
Union, AFL-CIO



OFFICE TO OFFICE TRAVEL



PRESIDENT'S REPORT

JOIN THE USPS AND SEE THE WORLD OR: TRAVEL ISSUES FOR POSTAL WORKERS

I am devoting my column this month to the subject of **travel pay** for postal workers. I do this because with the forced travel occurring **throughout the district** of Associate Office clerks to larger offices and plants, **the problem has become more widespread**. Also this is one of the most **common areas where our members are robbed** by management. In many cases small town Postmasters are **ignorant of the rules** and screw you unintentionally. At the same time some in the **district are aware of the rules** and deliberately violate them.

THE FORCED MARCH

First, on the subject of forced travel. Throughout **much of the Hawkeye District**, Postal management is forcing PTF's who work less than 40 hours to travel to larger offices or plants to fill out their 40 hours. They do this because **they are concerned about you** having an adequate income, right? If you said "**right!**", **be careful, whatever you're on is probably illegal**. They do this to maximize the use of **employees already on the rolls** to avoid hiring others in larger offices. For many years **some of you have voluntarily** loaned into other offices to get more hours when you wanted them and also into other surrounding small offices just to help out and that was **fine and worked well**. Now things are different. Never mind that you hired on maybe 20 years ago and wanted a part-time job and have faithfully done whatever they asked all these years. **Also never mind that you have worked in many offices for years to help out**. Now you must go to Waterloo, Mason City, Burlington, Decorah or Sioux City or other cities possibly at night to help prevent the hiring of other employees.

The bad news as we have discussed with many of you is **that I know of no provision** at this time that would prevent them from making you do **this traveling**. We have tried to teach many of you to make the process as expensive as **possible for management**. Unfortunately, in general, once they have made a decision, **no cost will deter our illustrious leaders** and they certainly don't care if they are **alienating hundreds of employees**. However, this forced travel does renew interest in many questions about how we are paid when we engage in these exciting travel opportunities. Please note these rules apply whether the travel is forced or voluntary (**another historic ruse to cheat you**).

TRAVEL ISSUES

All travel issues rest on understanding the provisions of **two governing manuals** – the

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Employee and Labor Relations Manual (ELM) and the new Travel and Relocation Manual (F-15). The ELM governs the pay on the clock and the F-15 governs things like mileage, per diem, lodging, etc. The crucial part of these manuals for our discussion involves the definition of "local travel". In the F-15 at 7.1.1.1.1 local travel is defined.

"Local travel is defined as travel to a location within a 50-mile radius of your permanent duty station in which overnight lodging is not needed. If your destination is within a 50-mile radius of your permanent duty station and if you are required to stay overnight, your trip is considered regular travel not local travel."

Therefore, when it comes to mileage, the first question is whether you are traveling within a 50 mile radius of your home office. If you travel to another office on a day you don't work in your own office and it is within 50 miles you will receive the mileage minus the mileage of your normal commute to work. If you first report to work and then drive to another office you will receive the whole mileage with no reduction. Also note, that in the odd case where you stay overnight within 50 miles, it is no longer "local travel" and you get all the mileage:

Regular travel in the F-15 is all travel outside the 50 miles. Here you get all the mileage and if travel for longer than 10 hours in the day or stay overnight, you are entitled to "per diem". Per Diem is to cover expenses and is paid in 6 hour segments – Midnight to 6 AM, 6 AM to noon, noon to 6 PM, and 6 PM to midnight. You are paid a flat rate per quarter and to get each quarter, you must travel at least 30 minutes within that quarter.

TIME IS ON MY SIDE

The ELM governs time paid in travel and has its own definition of local travel. In ELM 438.112 we read,

"Local Commuting area is the suburban area immediately surrounding the employee's official duty station and within a radius of 50 miles."

Again, we refer to "local" travel or a "local commuting area". This definition like the F-15 is very clear but it is also very different. Here merely the 50 miles is not the standard rather it is "... the suburban area immediately surrounding the employee's official duty station...". This is very important because the vast majority of travel in Iowa does not involve travel to a "suburb" of your home office. In the vast majority of cases, if you travel to another office for a day when you don't work at home, you must be paid the travel time from your home and back again. For instance, if you travel from Independence to Cedar Rapids as one clerk did to do training, you might only drive 47 miles but only in the mind of District Finance do these two cities have a "suburban"

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relationship. (Your guys need to get out of the Ingram Building more often) In this case you are on the clock from when you leave home until you get to the other office and back home.

TWO OFFICES IN THE SAME DAY

If you travel between two offices in the same day, within the local commuting area you may also get travel time if there is no "Break in Service" between the two. A break in service occurs when you have an hour of your own time between the offices in addition to the travel time and lunch if it is that time. However, this only applies within the local commuting area.

IMPORTANT: I MISREAD THIS SECTION IN THE PAST AND TOLD MANY OF YOU THAT YOU DIDN'T GET TRAVEL PAY IN THE SAME DAY IF THERE WAS A BREAK IN SERVICE EVEN OUTSIDE THE "COMMUTING AREA". I NOW SEE THIS IS WRONG. The "BREAK IN SERVICE" APPLIES ONLY IN THE "LOCAL COMMUTING AREA"

Elm 438.133 IS CLEAR ON THIS POINT

"...time spent at any time during a single service day by an eligible employee who is in travel on Postal Service business to one or more locations outside of the local commuting area and back to the home community is compensable."

Therefore, let me be perfectly clear on this point. If you travel to another office which is not a suburb of your home office, whether on a day you work at home or not, that travel time is "compensable" which means you get paid.

If you are one of the many clerks in the state who has not properly been paid, you should take the following steps. For mileage you are owed or for time owed you should identify the period you have not been paid even if that goes back a year or two or more. Then you should tell your Postmaster or Supervisor that you just became aware that you are owed this money and ask them to arrange for you to be paid for the mileage and/or time owed to you. If and when they deny your claim - THEN YOU MUST CONTACT THE UNION WITHIN 14 DAYS TO FILE A GRIEVANCE ON YOUR BEHALF. IF FOR SOME REASON YOU CANNOT CONTACT A UNION OFFICIAL, THEN TELL YOUR SUPERVISOR OR POSTMASTER, WITHIN THE 14 DAYS, THAT YOU WANT TO FILE A STEP ONE GRIEVANCE FOR THE DENIAL OF PAY AND MILEAGE OWED TO YOU. THEY ARE SUPPOSED TO ANSWER THE GREVANCE WITHIN 5 DAYS. CONTACT THE UNION TO TAKE CARE OF THE STEP 2 APPEAL ASSUMING THEY DENY THE STEP 1. DO NOT LET THE 14 DAYS EXPIRE AND THEN TELL US YOU COULDN'T GET A HOLD OF US

If the travel issues in this article are unclear to you , please contact one of your state or local officers before you proceed to be certain your claim is properly prepared and presented.

These issues are a bit complex and I must tell you that some of these things are agreed to by the District Finance people and some are not. The case of the 47-mile drive to Cedar Rapids from Independence however was a real case which was settled at step 3 with management in agreement. In response, to their shame, our district finance people when informed of this said they were going to make us grieve every case. So much for good Labor-Management relations.

I would suggest that you wrap your fish in something else this month and save this article for future reference, as I wrote a similar article once before but most people are still unaware of these arguments.

In Working Class Solidarity, Bruce Clark Iowa State President APWU

NATIONAL ARBITRATION PANEL

In the Matter of Arbitration)
)
 between) Grievance: Travel Time
) Compensation
 UNITED STATES POSTAL SERVICE)
)
 and) Post Office: Omaha, Nebraska
)
 AMERICAN POSTAL WORKERS UNION) Case No.: 190V-41-C 94005141

BEFORE: Carlton J. Snow, Professor of Law

APPEARANCES: For the Postal Service:
 Mr. David A. Stanton
 For the Union:
 Mr. Darryl J. Anderson

PLACE OF HEARING: Washington, D.C.

DATE OF HEARING: April 29, 1997

RECORD CLOSED: February 9, 1998

RELEVANT CONTRACTUAL PROVISIONS: Article 15.2; Article 19

CONTRACT YEAR: 1990-1994

TYPE OF GRIEVANCE: Contract Interpretation

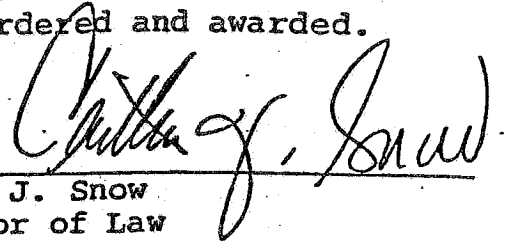


AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrator concludes that employees who have been required to travel away from home overnight on postal business and who were not paid in accordance with Arbitrator Mittenthal's Award of April 12, 1993 are not precluded from receiving compensation if they filed within 14 days of obtaining knowledge or constructive knowledge of the contractual violation. If such grievances were timely filed, an individual is entitled to back pay for the entire period of the violation. If, however, the employee previously knew or should have known of the violation but did not assert rights within 14 days of obtaining actual or constructive knowledge, the grievant is still entitled to compensation; but the remedy is limited to the 14 days previous to the filing of the grievance. ELM Section 436 does not extend the time period of filing grievances but, rather, places a six-year limitation on the time during which an employee must submit the settled claim to the appropriate authority for collection. The matter is remanded to the parties for further proceedings consistent with this award. The arbitrator shall retain

jurisdiction in this matter for 90 days from the date of the report in order to resolve any problems resulting from the remedy in the award. It is so ordered and awarded.

Date: March 28, 1998



Carlton J. Snow
Professor of Law

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NATIONAL ARBITRATION PANEL

IN THE MATTER OF ARBITRATION))
) BETWEEN))
UNITED STATES POSTAL SERVICE)	ANALYSIS AND AWARD)
) AND))
AMERICAN POSTAL WORKERS UNION)	Carlton J. Snow)
(Travel Time Compensation)	Arbitrator)
Grievance))
(Case No. 190V-41-C 94005141)))

I. INTRODUCTION

This matter came for hearing pursuant to a collective bargaining agreement between the parties effective from June 12, 1991 through November 20, 1994. A hearing occurred on April 29, 1997 in a conference room of Postal Headquarters located at L'Enfant Plaza in Washington, D.C. Mr. David A. Stanton, National Litigation Attorney, represented the United States Postal Service. Mr. Darryl J. Anderson of the O'Donnell, Schwartz and Anderson law firm in Washington, D.C. represented the American Postal Workers Union.

The hearing proceeded in an orderly manner. There was a full opportunity for the parties to submit evidence, to examine and cross-examine witnesses, and to argue the matter. All witnesses testified under oath as administered by the arbitrator. The advocates fully and fairly represented their respective parties. Mr. Ted Fambro of Diversified Reporting

Services, Inc. reported the proceeding for the parties and submitted a transcript of 122 pages.

The parties stipulated that the matter properly had been submitted to arbitration and that there were no challenges to the substantive or procedural arbitrability of the dispute. The arbitrator received post-hearing briefs from the parties in July of 1997, and there ensued a protracted correspondence between the parties and the arbitrator with regard to the Union's motion to reopen the record. A vigorous debate ensued between the parties regarding the Union's petition, and the parties ultimately agreed to rely on evidence submitted at the arbitration hearing, assuming the arbitrator could resolve disputes on the basis of the record already submitted by the parties. After numerous detailed, extensive statements and counter-statements by the parties with regard to the secondary issue of reopening the hearing, the arbitrator ultimately closed the record on February 9, 1998 after receipt of the final submission by the Employer on the request to reopen the case.

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II. STATEMENT OF THE ISSUE

The parties authorized the arbitrator to state the issue, and it is as follows:

Are employees who, otherwise, are entitled to compensation for travel time under the Mittenthal Award of 1993 precluded from pursuing compensation if such travel occurred more than fourteen days prior to filing a grievance? If there has been a contractual violation, what is an appropriate remedy?

III. RELEVANT CONTRACTUAL PROVISION

ARTICLE 15 - GRIEVANCE-ARBITRATION PROCEDURE

Section 2. Grievance Procedure--Steps

Step 1:

(a) Any employee who feels aggrieved must discuss the grievance with the employee's immediate supervisor within fourteen (14) days of the date on which the employee or the Union first learned or may reasonably have been expected to have learned of its cause. The employee, if he or she so desires, may be accompanied and represented by the employee's steward or a Union representative. The Union also may initiate a grievance at Step 1 within 14 days of the date the Union first became aware of (or reasonably should have become aware of) the facts giving rise to the grievance. In such case the participation of an individual grievant is not required. A Step 1 Union grievance may involve a complaint affecting more than one employee in the office.

(b) In any such discussion the supervisor shall have authority to settle the grievance. The steward

or other Union representative likewise shall have authority to settle or withdraw the grievance in whole or in part. No resolution reached as a result of such discussion shall be a precedent for any purpose.

(c) If no resolution is reached as a result of such discussion, the supervisor shall render a decision orally stating the reasons for the decision. The supervisor's decision should be stated during the discussion, if possible, but in no event shall it be given to the Union representative (or the grievant, if no Union representative was requested) later than five (5) days thereafter unless the parties agree to extend the five (5) days period. Within five (5) days after the supervisor's decision, the supervisor shall, at the request of the Union representative, initial the standard grievance form that is used at Step 2 confirming the date upon which the decision was rendered.

(d) The Union shall be entitled to appeal an adverse decision to Step 2 of the grievance procedure within ten (10) days after receipt of the supervisor's decision. Such appeal shall be made by completing a standard grievance form developed by agreement of the parties, which shall include appropriate space for at least the following:

1. Detailed statement of facts;
2. Contentions of the grievant;
3. Particular contractual provisions involved; and
4. Remedy sought.

ARTICLE 19 - HANDBOOKS AND MANUALS

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21, Timekeeper's Instructions.

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IV. STATEMENT OF FACTS

In this case, the Union filed a class action grievance asserting a right to travel time compensation for employees who performed the traveling years ago. A dispute arose in the wake of the parties' attempted application of a national level arbitration award issued by Arbitrator Mittenthal on April 12, 1993. The Union filed its class action grievance on September 1, 1993 in Omaha, Nebraska on behalf of Motor Vehicle Service employees who had not been compensated for travel time according to the methodology of the Mittenthal Award. The Employer denied the grievance as untimely in view of the fact that the Union sought compensation for travel time up to six years preceding the Mittenthal Award.

The "travel time" arbitration decision issued by Arbitrator Mittenthal covered employee entitlement to compensation for travel to training courses when such travel occurred outside normal working hours. Arbitrator Mittenthal adopted a creative, effective resolution to the problem which had not been asserted by either party. He, then, remanded the dispute to the parties for implementation in a manner consistent with the remedy set forth in the award. The parties entered negotiations and, ultimately, reached a resolution on October 15, 1993. The agreement memorializing their understanding provided a lump sum payment to resolve approximately 250 grievances which had been held in abeyance awaiting the "travel time" arbitration decision. Subsequently, management adopted a prospective plan for travel time compensation.

The current class action grievance represents as many as 1500 grievances which employees filed in response to an article in a union newsletter that encouraged bargaining unit members to vindicate their "travel time" rights pursuant to the Mittenthal Award. The matter advanced through the grievance procedure with the Employer persistently asserting that the grievance was untimely. When the parties were unable to resolve their differences, the matter proceeded to arbitration at the national level in order to resolve the interpretive dispute.

As mentioned in the introduction to this report, the arbitrator closed the hearing in early July on receipt of post-hearing briefs from the parties. On July 27, 1997, the Union petitioned the arbitrator to be able to submit an additional exhibit. After alerting the arbitrator to its need to file a delayed response, the Employer, on September 9, 1997, informed the arbitrator of its opposition to reopening the hearing in order to receive the proffered exhibit. The arbitrator informed the parties that it would be necessary to hold some sort of a hearing in order to sort out factual allegations made in the exchange of correspondence and to insure that a full and fair hearing had been achieved.

On January 14, 1998, the Union informed the arbitrator that the parties could not agree on a date for a hearing and requested that the case be resolved without ruling on the submission of an additional exhibit. On January 29, 1998, the Employer submitted a letter, which the arbitrator received on February 9, 1998, stating its willingness

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to bring the case to a close without the arbitrator's issuing a ruling on the matter of reopening the hearing. All correspondence regarding the issue of reopening the hearing, of course, has been made a part of the official record.

V. POSITION OF THE PARTIES

A. The Union

It is the position of the Union that the pending class action grievance has been timely filed. The Union asserts that clear language of the Employee and Labor Relations Manual entitled the grievants to be compensated for their travel time for up to six years. According to the Union, the Employer's reliance on the Back Pay Act and Barring Act does not preclude the arbitrator from resolving the merits of the case because the legislation on which the Employer relies allegedly is irrelevant and not supportive of its theory of the case.

Additionally, the Union argues that the right set forth in the parties' agreement to file grievances within 14 days after a violation did not begin to toll until employees or the local union learned or should have learned of their right as interpreted under the "travel time" award. Accordingly, such employees allegedly are entitled to receive back pay for any uncompensated travel time that was worked within the six years preceding a request for such compensation under

the current grievance. The Union requests that the grievance be sustained and that the matter be remanded to the parties for implementation.

B. The Employer

The Employer, on the other hand, argued that the history of the Back Pay Act from which the relevant ELM provision is derived does not support the Union's claim for compensation. Moreover, the Employer contends that ELM Section 436 is intended only for use in computing back pay. The provision allegedly does not confer an additional avenue of redressing disputes between the parties.

It is the contention of the Employer that the only individuals entitled to compensation pursuant to the Mittenthal Award are those employees who grieved the matter within 14 days of traveling. Likewise, the Employer asserts that any "back pay" compensation is limited to a 14-day period preceding the filing of a grievance. Management contends that its theory of the case is supported by decisions of the Federal Labor Relations Authority and that FLRA precedent rejects the Union's interpretation of the "back pay" language. The Employer also asserts that the Union's current interpretation of ELM Section 436 is inconsistent with prior assertions made by the Union in previous arbitration proceedings before national level arbitrators. Accordingly, the Employer contends that the grievance must be denied as untimely.

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VI. The Importance of Promptness

The underlying issue in the dispute before the arbitrator implicates a fundamental element of any effective dispute resolution system. The underlying issue is: When is it appropriate to limit the liability of parties to unasserted claims? The American judicial system has responded to the problem by adopting statutory periods of limitation as well as the doctrine of laches. A statute of limitation states a time limit for filing a complaint after a person has a legal right to pursue a cause of action. When the limitation period has ended, a person's right to file a complaint is time-barred.

Limitations on a person's right to pursue a claim go far beyond contract technicalities and are supported by important policies. It is reasonable to protect the party against whom old claims have been filed from having to rely on witnesses with faded memory or from losing a case because old evidence has been lost. Moreover, a party or an organization ought to be protected from ensuing insecurity that would accompany unlimited claims lasting forever. As the U.S. Supreme Court stated, "there comes a time when a person ought to be secure in the reasonable expectation that the slate has been wiped clean of ancient obligations." (See Chase Securities Corp. v. Donaldson, 325 U.S. 304, 314 (1945)).

It is important to protect a negotiated dispute resolution system from the burden of stale claims. Interests of neither party are well-served by requiring a defense of stale claims which, in turn, undermines the efficiency of the dispute resolution system to respond to current disputes. Parties to

a negotiated grievance procedure need reasonable certainty that they may go about their business without being required to defend against lingering claims which, by the passage of time and a failure to assert them, have grown stale.

In order to foster promptness in addressing complaints, the parties negotiated Article 15.2 of their collective bargaining agreement. It states:

Any employee who feels aggrieved must discuss the grievance with the employee's immediate supervisor within fourteen (14) days of the date on which the employee or the Union first learned or may reasonably have been expected to have learned of its cause. (Joint Exhibit No. 1, p. 75.)

Arbitrators long have honored contractual time limits set forth in a negotiated grievance procedure. (See, e.g., Monarch Food Serv., 86 LA 694 (1985); Bethlehem Steel Corp., 81 LA 933 (1983); Anaconda Aluminum Co., 57 LA 900 (1971).) Over the years, a few exceptions to rigid enforcement of seemingly time-barred grievances have evolved in the common law of the shop.

B. The Concept of a Continuing Grievance

The class action grievance before the arbitrator arose in response to the Mittenthal Award on travel time issued on February 12, 1993. In this current dispute, the Union seeks back pay for employees who allegedly were undercompensated. The Union argued that the time period for which the Employer is liable is six years.

Of considerable guidance in this dispute is another award by Arbitrator Mittenthal, namely, the Highpoint Award.

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In it, he addressed a situation similar to that presented in this dispute. In the Highpoint Award, the Union grieved and obtained the right to be compensated for underpayment of out of schedule premiums. After the arbitrator issued the initial award, a bevy of new grievants emerged demanding compensation.

With regard to the new grievants, Arbitrator Mittenthal concluded that the 14-day time limitation set forth in the parties' collective bargaining agreement covered the new grievances; and the running of the time limit began from the time the employee or the Union knew or reasonably should have known of the violation. Knowledge or imputation of constructive knowledge constituted a factual question. The arbitrator stated in the Highpoint Award:

Even if the High Point people knew or should have known of the change in practice in January 1980, that would not necessarily call for the total denial of this grievance. For every time Management improperly failed to pay an out-of-schedule premium to an employee-supervisor, Article VIII, Section 4-B was violated. This would constitute a continuing violation. The High Point grievance was discussed with Management in Step 1 on February 11, 1982. Hence, any valid claim for an out-of-schedule premium for work within the 14-day period preceding February 11, 1982 (or following that date) would have to be paid. To that extent, the grievance would in any event have to be granted.

This disagreement may merely be a consequence of the parties' different views regarding the procedural issues in this case (Parts I, II and III). The answer, however, is clear. If the Postal Service's view is correct and the High Point employees or APWU representatives knew or should have known of the change in practice in January 1980, then any back pay must be limited to the 14-day period preceding February 11, 1982.* If the APWU's view is correct and the High Point people had no such knowledge until on or about the time the grievance was submitted, then back pay is not

limited to such 14-day period and may properly encompass all violations since the January 1980 change in practice. These findings are consistent with the language and purpose of Article XV.

* Back pay would be warranted also for the period after February 11, 1982. (See Case No. H1C-3A-C-5465 (1983), p. 9, emphasis added.)

Arbitrator Mittenthal relied on the arbitral doctrine of a continuing grievance. The concept of a "continuing grievance" is well recognized in arbitration. One arbitrator defined a "continuing grievance" as a dispute where "the act of the company complained of may be said to be repeated from day to day, such as the failure to pay an appropriate wage rate or act of a similar nature." (See Bethlehem Steel Co., 26 LA 550.) As another arbitrator observed, "it is well established practice in arbitration that a grievance of a continuing nature cannot be limited by a fixed filing date inasmuch as the issue at hand is not the occurrence of a single event but the daily recurrence of the cause of dispute." (See Mississippi Structural Steel Co., 65 LA 23, 25.) Another arbitrator stated that "undue delay in prosecuting a claim would tend to reduce the damages to which [a grievant] may have been entitled, but this would not affect the merits of the claim." (See Pipefitters Union Local 636, 75 LA 449, 454.)

The basic logic underlying a continuing grievance is that "a current occurrence of a repeated or continuous violation reasonably and properly should be given the same status as if the same current violation were occurring for the first time." (See Sears Roebuck & Co., 39 LA 567, 570.) One arbitrator

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described the purpose of the rule with regard to a "continuing grievance" as follows:

The purpose of the rule which both recognizes the violation and makes an equitable adjustment in regard to the remedy is to insure that a violation, if found, can be corrected. If the employer were to be allowed to shelter a violation, if found, on the ground that it first occurred some time ago, the employer would be in a position to cause serious erosion of provisions of the bargaining agreement. (See Lockheed Missils and Space Co., 61 LA 90, 93.)

The United States Supreme Court has recognized the concept of a continuing grievance. (See, e.g., John Wiley & Sons, Inc. v. Livingston, 376 U.S. 543 (1964).) Other courts have relied on the concept. (See Abrams v. Baylor College of Medicine, 42 F.E.P. Cases 806 (1986); and Quarles v. Philip Morris, Inc., 279 F. Supp. 505 (E.D. Va. 1968).) It is an established doctrine in judicial and arbitral decisions.

Jurisprudential underpinnings for the concept of a continuing grievance are rooted in the doctrine of restitution and the historical effort of the common law to avoid unjust enrichment. If an employer were permitted indefinitely to reject a legitimately aggrieved employee's complaint regarding a wage dispute on the basis of procedural nonarbitrability, an organization could be unjustly enriched. In such circumstances, courts traditionally have compelled parties to surrender any benefits unjustly received from an injured party. It is a fundamental concept in Anglo-American common law that no one should be unjustly enriched at the expense of another, and arbitrators have adopted the same value. (See Restatement (Second) of Contracts, § 344, p.106 (1981); 1996 NAA 48th Annual Meeting 150; and Carpenters Local 1913, 213 N.L.R.B. 363,

C. Application of Relevant Principles

The "Highpoint" Award was a national level arbitration decision binding on the current arbitrator unless modified by negotiations of the parties. Applying it to the current dispute requires a finding that, under the parties' collective bargaining agreement, claims of the grievants are not precluded unless (1) they either knew or reasonably should have known of the contractual violation within 14 days of filing the grievance; and (2) no contractual violation occurred within 14 days of filing the grievance.

Depending on the factual determination of the state of the grievants' knowledge with regard to the violation, the grievants may recover back pay for the entire period of undercompensation if the grievance was filed within 14 days of actual or constructive knowledge. Otherwise, a grievant may recover only for 14 days preceding the filing of the grievance, pursuant to an application of the "continuing grievance" principle.

The time in which the relevant contractual violations should have been discovered constitutes a factual question to be resolved on a case-by-case basis. Factors to be considered include whether there was a unilateral change in management's position, the complexity of the compensation system, the knowledge of employees who filed the original grievance, as well as the surprise of the outcome in the "travel time" award and the difficulty of its application.

D. The Impact of ELM Section 436

At this juncture, the analysis cannot end because the Union asserted that, pursuant to ELM 436, employees enjoy an extended period during which to file a back pay grievance.

ELM Section 436.11 states:

An employee or former employee is entitled to receive back pay for the period during which an unjustified or unwarranted personnel action was in effect which terminated or reduced the basic compensation, allowances, differentials, and employment benefits which the employee normally would have earned during the period. (See Union's Exhibit No. 5, p. 141.)

This provision must be supplemented by ELM Section 436.3 which describes an individual's entitlement to corrective action.

It states:

The installation head, or other appropriate authority, determining that a previous decision was unjustified or unwarranted, initiates and directs the corrective action to be taken to assure appropriate earnings to the employee for the period affected. (See Union's Exhibit No. 5, p. 141.)

To these provisions must be added ELM Section 436.26 which provides:

Any claim made by a postal employee or his or her authorized agent or attorney for back pay must be submitted to the appropriate office within 6 full years after date such claim first accrued. (See Union's Exhibit 5, p. 141.)

Both parties submitted regional arbitration awards allegedly supporting their respective theories of the case. The arbitrator received approximately 20 such regional decisions. At the same time, each party conceded that these regional awards are not binding on the arbitrator. The awards lacked sufficient analysis to provide much guidance in the outcome

of the case. Their usefulness as a source of guidance, of course was substantially undermined by the significant inconsistency among them. Some regional arbitrators found ELM Section 436 to set forth a limitation period in which a claim had to be initiated. Other regional arbitrators contended that the limitation period constituted a maximum length of time during which back pay could be awarded. Still others asserted the primacy of the 14-day contractual period over the ELM provision.

Contrary to the Union's contention that the grievance in this case concerns a claim of entitlement to a corrective action, the ELM provisions do not present an alternative to the grievance process. They must be interpreted in conjunction with the contractual procedure. This is not to suggest that entitlement to corrective action may be achieved only through arbitration or in the grievance procedure. If a mistake warranting corrective action is brought to the attention of an appropriate managerial authority, it certainly may be corrected without resorting to the grievance procedure.

The ELM provision does not constitute an alternative appeal process to the grievance procedure. This is demonstrated by history of the Back Pay Act. Additionally, Article 19 of the parties' collective bargaining agreement makes clear that the negotiated agreement maintains primacy over handbooks and manuals. Moreover, this section of the ELM is entitled "Limitations." Furthermore, managerial instructions demonstrated that the intent of the disputed ELM provision was not to create a new substantive right but to limit the

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amount of time which an individual has to submit a claim to the Employer for processing. In light of such evidence, the Union's interpretation fails to be persuasive.

E. Conclusion

The question needing to be determined in this case as well as those held in abeyance is fact-based. It is necessary to determine when a grieving employee or union obtained either actual or constructive knowledge that contractual rights had been violated. If such notice was not received within 14 days of filing the present grievance, such individuals are entitled to back pay for the entire time of being under-compensated. If, however, evidence shows that grieving individuals should have had actual or constructive knowledge prior to 14 days preceding the Mittenthal Award but that the violation continued to within 14 days of the filing of the grievance, there is a right to compensation and back pay for only those 14 days preceding the filing of the grievance. In both circumstances, the grievants will have six full years from the determination of their eligibility for back pay to submit the claim to the appropriate office for compensation.

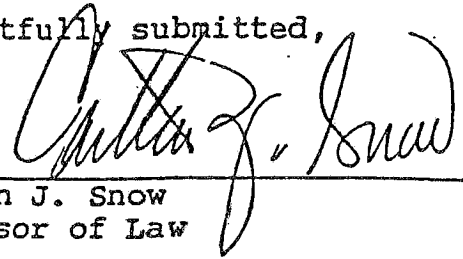
AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrator concludes that employees who have been required to travel away from home overnight on postal business and who were not paid in accordance with Arbitrator Mittenthal's Award of April 12, 1993 are not precluded from receiving compensation if they filed within 14 days of obtaining knowledge or constructive knowledge of the contractual violation. If such grievances were timely filed, an individual is entitled to back pay for the entire period of the violation. If, however, the employee previously knew or should have known of the violation but did not assert rights within 14 days of obtaining actual or constructive knowledge, the grievant is still entitled to compensation; but the remedy is limited to the 14 days previous to the filing of the grievance. ELM Section 436 does not extend the time period of filing grievances but, rather, places a six-year limitation on the time during which an employee must submit the settled claim to the appropriate authority for collection. The matter is remanded to the parties for further proceedings consistent with this award. The arbitrator shall retain

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action in this matter for 90 days from the date of
report in order to resolve any problems resulting from
remedy in the award. It is so ordered and awarded.

Respectfully submitted,



Carlton J. Snow
Professor of Law

Date: March 28, 1998



**UPGRADING
SPECIAL POSTAL CLERK,
LEVEL 6**



STD POSITION DESCRIPTION

U. S. Postal Service

SPECIAL POSTAL CLERK, FS-06

FUNCTIONAL PURPOSE

Has charge, either at a workstation separated from the area regularly watched over by a supervisor, or during a tour on which no supervisor is present, of a mail processing activity carried out personally or with assistance of a limited number of mail processing employees.

OPERATIONAL REQUIREMENTS

This job is assigned to mail processing. The employee is on duty by himself, or with a limited number of mail processing employees, or performs an assignment comparable to it.

DUTIES AND RESPONSIBILITIES

1. Makes primary and one or more secondary distributions of incoming or outgoing mails, or both, based on a knowledge of the applicable distribution scheme or schemes.
2. Maintains direct contacts with persons picking up mails in bulk from or delivering it to the postal facility during the tour.
3. Personally resolves problems of a routine nature arising during the tour and decides when problems warrant contacting a supervisor at his home or other location away from the facility.
4. Keeps required records for such matters as mail on hand and processed.
5. May provide leadership to one or more clerks when assigned to the tour or a portion of the tour.

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SUPERVISION

Supervisor of unit to which assigned.

SELECTION METHOD

Senior Qualified

BARGAINING UNIT

CLERK

KEY POSITION REFERENCE

KP-0015

(End of Document)

SPECIAL DELIVERY
USRX - UPGRADE

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration
between
UNITED STATES POSTAL SERVICE
and
AMERICAN POSTAL WORKERS UNION,
AFL-CIO

GRIEVANTS: Jody Troup, et. al.
POST OFFICE: Middleburg, PA
CASE NO.: C90C-4C-C
95004637
KAL941290

OPINION AND AWARD: Andree Y. McKissick, Arbitrator

APPEARANCES:

For the U.S. Postal Service: Luke Sheridan
Labor Relations
Specialist

For the Union: Jeff Kehlert, National Business Agent
Clerk Craft

Place of Hearing: Harrisburg, Pennsylvania

Date of Hearing: July 24, 1996

Post-Hearing Briefs: October 28, 1996; November 30, 1996

AWARD: This grievance is SUSTAINED. Grievants Jody Troup, et. al., shall be monetarily compensated for September 6-9 of 1994 for time actually spent performing level six (6) duties.

Date of Award: November 30, 1996



ARBITRATOR

BACKGROUND

This is an arbitration proceeding pursuant to the grievance and arbitration provisions of the Collective Bargaining Agreement between the American Postal Workers Union (hereinafter "Union") and the United States Postal Service (hereinafter "Employer"), 1990-1994 (Jt. Exhibit I). At the hearing, the exhibits were offered and made part of the record and oral argument was heard. Post-Hearing Briefs were received on October 28, 1996 and November 30, 1996.

APPLICABLE CONTRACT PROVISIONS

The central controversy of this grievance lies within the applicability of the contractual provisions in the National Agreement which are as follows:

Article 25, Section 1

Higher level work is defined as an assignment to a ranked higher level position, whether or not such a position has been authorized at the installation.

Article 25, Section 2

An employee who is detailed to higher level work shall be paid at the higher level for time actually spent on such job. An employee's higher level rate shall be determined as if promoted to the position. An employee temporarily assigned or detailed to a lower level position shall be paid at the employee's own rate.

Article 19

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable and equitable.

In addition to the above contract provisions of the Agreement, the ELM states as follows:

ELM 234.1

Effective evaluation requires a clear understanding of the position duties, responsibilities and work requirements; and careful description of the position ensures that employees receive equal pay for substantively equal work.

ELM 234.31

When a full time employee is scheduled every workday to perform the work of two separately defined positions in two different grades, the employee is placed in the position of the higher grade. The duties of the lower grade position, while included in the work assignment, represent EXTRA DUTIES in relation to the official position and DO NOT AFFECT the pay grade of the employee.

EMPLOYER'S ISSUES

Should the two clerks at the Middleburg, PA Post Office have been paid level six (6) (instead of level five (5)) for work performed prior to the Postmaster reporting for duty and after the Postmaster's tour of duty ended on the applicable dates? If so, what shall be the remedy?

UNION'S ISSUES

Whether the Postal Service violated Article 25 [Sections 1 and 2], "Higher Level Pay," of the Collective Bargaining Agreement when it refused to pay the two clerks at the Middleburg, PA Post Office Level 6 pay for work performed prior to the Postmaster reporting for duty and after the Postmaster's tour of duty ended on the applicable dates? If so, what shall be the remedy?

STATEMENT OF THE FACTS

This is a class action grievance which involves two Grievants, both of whom are employed at the Middleburg, Pennsylvania Post Office. One is a full-time window clerk; the other is a part-time flexible (PTF) clerk named Jody Troup. Both Grievants are level five (5) clerks who arguably are performing level six (6) duties of a "Special Postal Clerk".

It is stipulated that no other managers or clerks are employed at this small postal facility: the Middleburg, Pennsylvania Post Office. The Postmaster's hours begin at 7:00 A.M. and end at approximately 4:30 P.M., whereas the Grievants worked from 5:00 A.M. until 5:30 P.M.

At issue is what particular duties are performed before the Postmaster's Tour begins and after it ends, as well as how often they are performed. Thus, between 5:15 A.M. and 7:00 A.M. and between 4:30 P.M. and 5:30 P.M. are the operative times from which

these alleged level 6 duties are regularly performed by the Grievants of this dispute.

It is also stipulated that the remedy is limited to monetary compensation for the Grievants instead of a reclassification and promotion to a level six (6), should the Union prevail.

POSITIONS OF THE PARTIES

It is the position of the Employer that Grievant Troup was never instructed to perform level six (6) duties. Although the Employer admits that there is some overlapping of duties, the Employer argues that the "core" duties of level six (6) were not regularly performed by either Grievant. Specifically, the Employer notes that just because a few duties are performed on a higher level, Article 15 of the National Agreement does not necessarily require assignment to that higher level.

Moreover, the Employer asserts that it is the Union's responsibility to support its contentions with a preponderance of evidence which was not attained in this dispute. Most importantly, the Employer adds that neither Grievant had any decision-making tasks, which are among the required duties of a level six (6) employee. Lastly, the Employer asserts that working alone does not automatically qualify an employee for the position of a level six (6) special clerk.

On the other hand, it is the Union's contention that the Grievants performed all of the core duties, #5 - 9 as outlined in Jt. Exhibit II, the job description of a "Special Postal Clerk," level six (6), on September 6 - 9 of 1994 in the absence of Postmaster Richard Bickhart. The Union points out that these added duties at level six (6) were performed in addition to their regular level five (5) duties as specified in Jt. Exhibit III. However, the Union urges that neither the full-time clerk nor the part-time flexible clerk received level six (6) pay for the work performed on a consistent basis from Monday to Friday, in contradiction with the ELM and the National Agreement.

FINDINGS AND DISCUSSION

After a careful review of the record in its entirety, and after having had an opportunity to weigh and evaluate the testimony and credibility of all the witnesses, this Arbitrator finds that the Grievants did perform the "core" duties of a level six (6) "Special Postal Clerk".

This determination was made after a comparative analysis of the specific duties of a level six (6) employee and the testimony of Grievant Troup, some of which was corroborated by Postmaster Bickhart. Specifically, Jt. Exhibit II sets forth the following

duties of a "Special Postal Clerk," level six (6):

5. Makes primary and one or more secondary distributions of incoming or outgoing mails, or both, based on the knowledge of the applicable distribution scheme or schemes.
6. Maintains DIRECT CONTACT with persons picking up mails in bulk from or delivering it to the postal facility during the tour.
7. PERSONALLY RESOLVES problems of a routine nature arising during the tour and DECIDES when problems warrant contacting a supervisor at his home or other location away from the facility.
8. Keeps required records for such matters as mail on hand and precessed.
9. May provide leadership to ONE OR MORE CLERKS when assigned to the tour or a portion of the tour.

The facts of this dispute support the premise that Postmaster Bickhart was absent early in the morning and late in the evening as stipulated. It is also the "functional purpose" of the position of "Special Postal Clerk," level six (6) to take charge when "no supervisor is present" (Jt. Exhibit II, page 5).

A pivotal fact in making this determination was the testimony of Grievant Troup, especially concerning her method of solving a problem when it arises. Her decision-making tasks and her resolution of those problems at hand was identical to #7 and #9 of the above quoted job description of a level six (6) "Special Postal Clerk". These are the fundamental and essential duties of a level

six (6) clerk which these Class Action Grievants performed on September 6, 1994 through September 9, 1994, in the absence of a supervisor.

It is significant to note that both Article 25, Section 2 of the Agreement and the accompanying ELM #234.1 clearly state that "time actually spent" on that higher level position requires monetary relief because employees should "receive equal PAY for ... equal work". Focusing on the precise monetary compensation, Article 25, Section 2 also specifies that "an employee's higher level rate shall be determined AS IF promoted to the position".

Based on all of the above, this Arbitrator finds that both Class Action Grievants should be fully monetarily compensated for level 6 six (6) duties performed on September 6 and consistently until September 9, 1994 as specified. However, both Grievants shall remain level five (5) employees as only monetary relief was requested.


ARBITRATOR

REGULAR ARBITRATION PANEL

IN THE MATTER OF THE ARBITRATION

between

UNITED STATES POSTAL SERVICE

and

AMERICAN POSTAL WORKERS UNION

CLASS ACTION

WATFORD CITY, NORTH DAKOTA

C4C-48-C 27297

BEFORE:

APPEARANCES:

For the U.S. POSTAL SERVICE:

For the UNION

Place of Hearing:

Date of Hearing:

James P. Martin

Violat L. Flemmer

James D. Lundquist

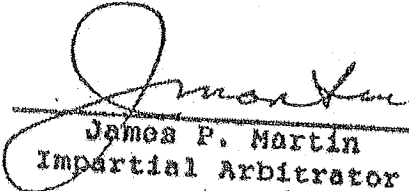
Watford City, North Dakota

May 18, 1990

AWARD:

Management was in violation of the Agreement when it failed to pay Higher Level pay to the Senior Clerk on duty in the absence of the Postmaster, except for hours when that employee was paid Postmaster Replacement Pay; that the appropriate Clerk is to be made whole for all time spent working as a Special Postal Clerk from the date of the filing of the Grievance on.

July 16, 1990


James P. Martin
Impartial Arbitrator

RECEIVED JUL 18 1990

ISSUE

Was Management in violation of the Agreement when it refused to pay Higher Level Pay, at the Special ^{POSTAL} Clerk Rate, to the Clerk who was in charge when the Postmaster was gone for meetings, training, part-day leave, etc., except for those hours when the Clerk in charge received Postmaster Replacement Pay? If so, what is the remedy?

NATURE OF CASE

Watford City is a Level EAS-15 Post Office. The staff is a Postmaster, one full-time and two PTF Clerks, and one Rural Carrier. The office is open from 8:00 a.m. to 5:00 p.m. six days per week. It is obvious that the Postmaster must be absent on some occasions, attending meetings, or training sessions, or taking annual leave. Under the ASM, Section 123.4, the Postmaster determines the need for assigning someone in his own relief. The Clerk is authorized to act as a POA in relief of the Postmaster when the Post Office is open to the public, and when the Postmaster is away from the local area or not in a duty status,

for example, on the Postmaster's regular day off or when the Postmaster is on official leave. Further, it was stipulated that the Postmaster's regular day off is Saturday, and the window is open from 11:00 a.m. to 1:00 p.m. The Clerk would be authorized to act as a POA during that period on a weekly basis, except that the Postmaster has determined it is not necessary to assign a relief during that period. In addition, the Postmaster has determined that no relief is necessary for her absences unless she is on annual leave.

The instant Grievance was filed on December 16, 1986, asking for Higher Level pay when the Postmaster is gone to meetings, training, or part-day leaves, not on the basis of being a replacement for the Postmaster, but on the basis of acting as a Special Postal Clerk, PS6. *Management* argues that ASM Section 123.42 does not allow appointment of a Postmaster Relief when the Postmaster is in a duty status, away from the office but in the general vicinity, attending training or meetings. However, a Relief for the Postmaster would be paid at the rate of two grades below the Postmaster, which would be an EAS-13. According to the Union, the ASM does not discuss nor prohibit Higher Level Pay, in cases where the employee performs the functions of a Special Postal Clerk, in the absence of the Postmaster.

According to Management, the Postmaster, when away from the office in a duty status, is still responsible for the entire operation of the Post Office. The Postmaster can be reached if a problem arises and can make any decisions necessary. The Clerks in the office are doing no work that they do not do in the presence of the Postmaster, and the Postmaster has determined that relief under those circumstances is not necessary. The ASN authorizes the Postmaster to make that decision, and there is no showing that the decision was made arbitrarily nor capriciously. The Clerk or Clerks in the office perform the same function with or without the Postmaster, do not perform the functions of a Special Postal Clerk, and are not entitled to higher level pay on any basis. The Grievance should be denied.

According to the Union, the Clerk in charge in the absence of the Postmaster patently perform the functions of a Special Postal Clerk, and is entitled to Higher Level pay. No claim is made for the still higher pay of a Postmaster Relief Appointment, since the Postmaster, while authorized at least part of the time, has determined not to appoint such a relief for herself. Whether relieving or not, when an employee performs higher level duties, he is entitled to higher level pay. That is the case in this

case, The Grievance should be allowed as meritorious, with the Clerk in charge made whole from December 3, 1986.

APPLICABLE CONTRACT PROVISIONS

ARTICLE 25

HIGHER LEVEL ASSIGNMENTS

Section 1. Definitions

Higher level work is defined as an assignment to a ranked higher level position, whether or not such position has been authorized at the installation.

Section 2. Higher Level Pay

An employee who is detailed to higher level work shall be paid at the higher level for time actually spent on such job. An employee's higher level rate shall be determined as if promoted to the position. An employee temporarily assigned or detailed to a lower level position shall be paid at the employee's own rate.

Section 3. Written Orders

Any employee detailed to higher level work shall be given a written management order, stating beginning and approximate termination, and directing the employee to perform the duties of the higher level position. Such written order shall be accepted as authorization for the higher level pay. The failure of management to give a written order is not grounds for denial of higher level pay if the employee was otherwise directed to perform the duties.

123.42 Postal Operations Administrator. In those offices with an assigned career clerk, the clerk is authorized to act as a Postal Operations Administrator (POA) in relief of the postmaster when the post office is open to the public and only when the postmaster is away from the local area or is not in a duty status—that is, on the postmaster's regular day off or when the postmaster is taking personal absence or on official leave. At other times when the postmaster is in a duty status and away from the office but remains in the general vicinity, such as when attending training or meetings at the MSC, relief is not authorized. In these cases, the postmaster continues to retain responsibility for the operation of

the office even though not physically present. Higher level pay as a POA is authorized at two grades below the grade of the postmaster.

Title: Special Postal Clerk
Key Position Reference No. 15

Salary Level: PS-6

BASIC FUNCTION. Has charge, either at a work station separated from the area regularly watched over by a supervisor, or during a tour on which no supervisor is present, of a mail processing activity carried out by himself or with assistance of a limited number of mail processing employees.

DUTIES AND RESPONSIBILITIES. Performs one of the following assignments or an assignment comparable to it:

- (A) At a work station geographically separated from the parent postal installation, such as the plant of a mail order firm originating a large volume of mail:
 - (1) Provides that employees of the originating firm who handle its outgoing bulk mail are sufficiently informed of and trained in the application of relevant postal regulations and practices to contribute effectively to the activity of which the clerk is in charge.
 - (2) Weighs or oversees the weighing of the mail and the affixing of the required postage.
 - (3) Accepts and provides receipts for insured or COD mail.
 - (4) In addition, may make a primary separation of the mail or take receipts from the firm for returned COD and insured mail.
- (B) On duty by himself, or with a limited number of mail processing employees.
 - (1) Makes primary and one or more secondary distributions of incoming or outgoing mails, or both, based on a knowledge of the applicable distribution scheme or schemes.
 - (2) Maintains direct contacts with persons picking up mails in bulk from or delivering it to the postal facility during the tour.
 - (3) Personally resolves problems of a routine nature arising during the tour and decides when problems warrant contacting a supervisor at his home or other location away from the facility.
 - (4) Keeps required records for such matters as mail on hand and processed.
 - (5) May provide leadership to one or more clerks when assigned to his tour or a portion of his tour.

ORGANIZATIONAL RELATIONSHIP. Reports to a designated supervisor.

DISCUSSION

This case has many of the elements of an Apples and Oranges argument. The Union claims that the Clerk in charge is doing higher level pay work as a Special Postal Clerk, PS6, and is entitled to the pay for that position under Article 25. Management defends on the basis that the Clerk in charge has not been appointed as Postmaster Relief, such appointment is controlled by, and banned by, the ASM, the Clerk in charge is not therefore entitled to EAS-13 pay, the Clerk in charge does not function as a Postmaster Relief, and is therefore also not doing higher level pay.

Since the Union filed the Grievance, it has the first right to state what^{it} is complaining about. The evidence and arguments made it clear that the Union is complaining only about the failure of the Clerk in charge to receive higher level pay as a PS6. Management's arguments that the ASM controls the appointment of Postmaster Relief, and in this case bars it, is irrelevant; were the Union to be demanding EAS-13 pay for the Clerk in charge, then the ASM would require a finding in favor of Management. Since the Union is not, Management must show that the work done by the Clerk in charge during the absence of the Postmaster

was not work within the position description of the Special Postal Clerk. This it has failed to do.

It is incumbent upon the Union, as the moving party, to prove that the Clerk in charge did the core duties of the Special Postal Clerk. The Senior Clerk testified that she performed each of the duties and responsibilities set out under (B) of the Special Postal Clerk position description: Distributes the mail, based upon a distribution scheme; essentially deals with the public in pick-up and delivering mail; personally resolves problems of a routine nature arising during the Tour and decides when problems warrant contacting a Supervisor (Postmaster) at home or other location away from the Facility; keeps required records; and may provide leadership to another Clerk during a portion of her Tour. The basic function, as performed according to the Senior Clerk's testimony, is having charge of a mail processing activity carried out by herself or with the assistance of one or two other mail processing employees. Testimony at the Hearing was that the Postmaster was present during the year preceeding the ^{grievance} on one Saturday, part-time, except for two emergencies which required her to come to the Post Office. The position description of the Special Postal Clerk does not

require that employee to do work other than Postal Clerk work, of a higher nature, in order to warrant the PS6 salary level, but rather, requires the performance of the same duties as a person in charge, or a person on duty by himself. It appears that the need to resolve problems on one's own, or to decide when it is necessary to call for help, as is the case here, creates the essential difference between a PS5 and PS6 Clerk. Testimony in this case convinces me that the Clerk in charge at the Watford City Post Office performs the core duties of a Special Postal Clerk, even though not appointed to relieve the Postmaster, and is therefore entitled to higher level pay for the periods during which such functions are performed.

Since no evidence was introduced to show a difference in functions performed by the Senior Clerk from the filing of the Grievance, December of 1986, through the time of the Hearing, an Award of higher level pay must be made for that period. Other than the evidence concerning a full-day on Saturday, no evidence was presented to allow an Award to go beyond the generic. For the periods of time when the Union can prove the Clerk in charge performed Special Postal Clerk duties, as set out in this Award, that Clerk is entitled to higher level pay. If agreement can not be reached as to the hours involved, then the conflict must be resolved in the usual manner.

**RURAL CARRIERS
PERFORMING CLERK DUTIES**



RURAL CARRIERS PERFORMING CLERK CRAFT DUTIES

1. Determine what type of rural carrier is performing clerk craft duties – Full-time, Rural Carrier Relief (RCR), Rural Carrier Associate (RCA), Temporary Rural Carrier (TRC). This can be established by requesting the PS Form 50 of the employee(s).
2. If the carrier(s) is an RCR, RCA, or TRC, the PS Form 50 will reflect whether or not the employee has a dual appointment as a casual and will indicate the craft of the appointment.
3. Determine if the rural carrier is injured on duty. If so, request a copy of the carrier's medical restrictions and refer to Section 546 of the Employee & Labor Relations Manual (ELM).
4. Obtain statements from other clerk craft employees and/or provide a description of the types of clerk craft duties the rural carrier is performing (boxing mail, letter or flat distribution, etc.)
5. Obtain clock rings/time cards to show the number of hours the rural carrier performed work in the clerk craft. If clock rings/time cards are not available, statements from clerk craft employees will have to suffice.
6. Obtain clock rings/time cards of the clerk craft employees in the office (full-time and PTF). Determine how the clerk craft employees were harmed (PTFs were not working 40 hours weekly, overtime could have been utilized among the clerk craft employees).
7. Cite Article 1, Section 2, "Exclusions", and Article 19, specifically the Employee & Labor Relations Manual (ELM), Section 323.6, when filing the grievance.
8. Request as a remedy that the clerk craft employees be compensated for all hours that the rural carrier(s) performed clerk craft duties, including the overtime rate if applicable. Also, include in the corrective action that management cease and desist from utilizing rural carriers to perform clerk craft work.

323.412 Use of Temporary Appointments

Temporary appointments may be made to meet administrative needs for *temporary employment*. The following types of positions or circumstances are filled by temporary limited appointments:

- a. Positions not expected to last more than 1 year.
- b. Part-time and intermittent positions that are not clearly of a continuing nature.
- c. Continuing positions, when temporarily vacated for periods of less than 1 year.
- d. Emergency situations such as fire, flood, earthquake, high winds, or unforeseeable circumstances which cause a severe curtailment of available manpower, e.g., epidemics, accidents involving an unusual number of employees, etc.

323.42 Casual Appointment

A *noncareer limited term appointment* to positions used as a supplemental work force as described in the National Agreement or in similar provisions in other Postal Service collective bargaining agreements, requiring the performance of duties otherwise assigned to employees in the bargaining units.

323.43 Former Postal or Federal Employees

For those hired as temporary or casual employees after having previously served in a position in the Postal Service or other federal agencies, wherein they were covered by Civil Service retirement, health benefits, or life insurance, such persons must have at least a 4-day break between such service and their appointment as a temporary employee.

323.5 Rural Carrier Positions

Normally, regular rural carrier positions and rural carrier relief or leave replacement positions are filled in accordance with any applicable collective bargaining agreement.

323.6 Dual Employment or Dual Compensation

323.61 Within the Postal Service

323.611 General Explanation

Under certain circumstances, as described in this chapter, an employee may be appointed to more than one position in the Postal Service. This is known as a dual appointment. Only one of the appointments may be to a position in the career workforce. The primary purpose of dual appointments is to improve the opportunity of part-time employees (career) and employees who provide relief/leave replacement service on rural routes and postmaster relief or leave replacements (noncareer) to gain further employment and to minimize unemployment compensation expense. Substitute rural carriers (72-0 and 73-0) may be given a dual appointment to a career part-time position or noncareer position. Rural carrier relief (RCRs), Rural Carrier

Associates (RCAs) and Postmaster relief or leave replacements cannot be given a dual appointment to a career position. Dual appointments also enable the Postal Service to utilize available experienced employees instead of new hires.

323.612 Prerequisite

All dual appointments must be cost effective and in the best interest of the Postal Service. Before deciding to make dual appointments, installation heads should consider the following factors:

- a. Determine the estimated daily workload requirement (hour by hour) in each craft.
- b. Determine if this workload can be covered by increasing the hours of part-time flexibles currently on the rolls, by the judicious use of overtime hours.
- c. Determine if this workload can be covered by using employees from another craft, in accordance with applicable provisions in collective bargaining agreements.
- d. Determine if it would be more feasible to use the services of part-time employees from other nearby post offices.
- e. Determine if the installation will have enough flexibility to make necessary leave replacements if dual appointments are made.
- f. Determine what the average weekly workhours are for each employee on the rolls and ascertain whether a dual appointment would reduce the Postal Service's liability for State Unemployment Compensation benefits.
- g. When it is proposed to offer a *substitute rural carrier* a dual appointment as a part-time employee in another craft, determine if the advantages justify the additional expense for fringe benefits. *Substitute rural carriers* are not eligible for retirement, life insurance, military leave, or health benefits. However, they become eligible for these benefits upon being appointed to a career part-time position. Normally, installation heads can obtain information on benefit and unemployment costs from the district Finance manager.
- h. Determine whether the combined hours of the dual appointment will total more than 8 hours a day or 40 hours a week.

323.613 Authority to Appoint

Authority to make dual appointments must be obtained from the district manager (or designee) as appropriate.

323.614 Appointment Requirements

Employees considered for dual appointments must meet all qualification requirements for both positions, including examination requirements, if any. Likewise, substitute rural carrier employees may be appointed to entry-level career positions noncompetitively. All other procedures for conducting examinations, maintenance of registers, and selections and promotions are included in Handbook EL-311, *Personnel Operations*.

LABOR RELATIONS



34.6

May 17, 1995

Mr. William Burrus
Executive Vice President
American Postal Workers
Union, AFL-CIO
1300 L Street, N.W.
Washington, DC 20005-4128

MAY 23 1995
U.S. POSTAL SERVICE

Dear Mr. Burrus:

This is in response to your further correspondence dated April 20 concerning Rural Carrier Relief (RCR) employees and the extent to which they may perform APWU bargaining unit work.

As you and Patricia Heath of my staff discussed last week, there does not appear to be any dispute between the APWU and the Postal Service at this level on this subject. RCRs who do not hold a dual appointment as a casual may perform APWU bargaining unit work only as specified in Article 3.

If you wish to provide more information concerning any office in which you perceive there may be a problem, please feel free to contact Ms. Heath at 268-3813.

Sincerely,

for Handwritten signature of Anthony J. Vegliante in cursive script.

Anthony J. Vegliante
Manager
Contract Administration (APWU/NPMHU)

Steven E. Wenzel
Senior Plant Manager
Des Moines Processing and Distribution Center

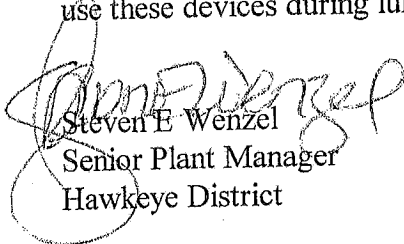


February 6, 2002

MEMORANDUM FOR: ALL EMPLOYEES

SUBJECT: CELLULAR PHONES/PAGERS/BEEPERS

Personal cellular phones/pagers/beepers have become increasingly visible in the workplace. Although these devices are a benefit of modern society, there are concerns relative to safety and efficiency. Utilization of these devices in the workplace often interrupt operations and impede the efficiency of the Postal Service. Accordingly, personal cellular phones/pagers/beepers are not allowed on the workroom floor. You may use these devices during lunches and breaks and then, only off the workroom floor.


Steven E. Wenzel
Senior Plant Manager
Hawkeye District



Steven E. Wenzel
Senior Plant Manager
Des Moines Processing and Distribution Center

cf d ka 3/11/02
FILE COPY




March 6, 2002

All Employees Des Moines Processing & Distribution Center

Subject: Personal Reading Material

Personal newspapers and magazines are not allowed on the workflow. The use of these personal materials on the workflow impairs our ability to ensure the security and sanctity of the mail. In addition the reading of this material on the workflow impedes our overall operational efficiency. Personal magazines and newspapers are therefore confined to non-work areas such as break areas, locker rooms and lunchrooms. Personal reading material found on the workflow will be discarded as trash.


Steven E Wenzel
Senior Plant Manager
Hawkeye District



STEVEN E WENZEL, SENIOR PLANT MANAGER
DES MOINES PROCESSING & DISTRIBUTION



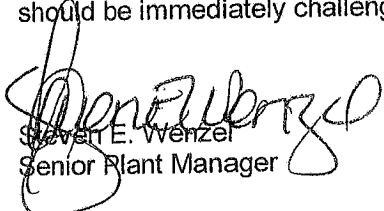
October 7, 2002

MEMORANDUM FOR ALL EMPLOYEES

SUBJECT: **WORKROOM FLOOR ACCESS**

Access to all workroom areas is limited to authorized on-duty postal employees and authorized contractors. All other individuals are excluded unless they have legitimate business on the floor and are properly escorted.

It is every employee's responsibility to prevent unauthorized individuals, including off-duty employees, from entering restricted areas. All individuals on the workroom floor who are not properly identified or escorted should be immediately challenged.


Steven E. Wenzel
Senior Plant Manager



STEVEN E WENZEL, SENIOR PLANT MANAGER
DES MOINES PROCESSING & DISTRIBUTION



October 7, 2002

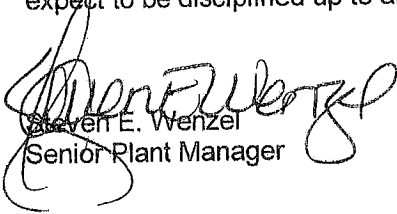
SUBJECT: Altercation Policy

MEMORANDUM FOR ALL EMPLOYEES

All employees have a basic right to a safe and humane working environment. No one wants to think about working in an environment where there exists an attitude of fear that something violent might happen to them, or to someone else; nor do they want to work in an atmosphere where verbal threats or indirect or subtle derogatory implications are expressed.

Fighting and assaults by postal employees while on duty or on postal premises will not be tolerated. Loud arguments and abusive threatening language is unacceptable and such disruptive acts will not be condoned. Employees who engage in verbal or physical assaults with other employees place their jobs in serious jeopardy. Bullying, harassment, intimidation or threats will not be tolerated.

Employees who engage in activities which disrupt the workplace or may cause harm to other employees can expect to be disciplined up to and including removal.


Steven E. Wenzel
Senior Plant Manager



Steven E. Wenzel, Senior Plant Manager
Des Moines Processing and Distribution



October 7, 2002

MEMORANDUM FOR: ALL EMPLOYEES

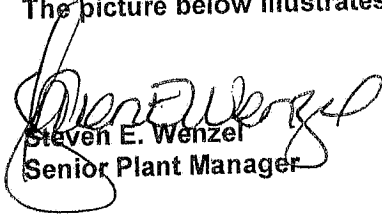
SUBJECT: BADGES

All personnel are assigned an identification badge that must be worn during their official duty hours. All photo identification is to be displayed on the outer garment at all times while on duty.

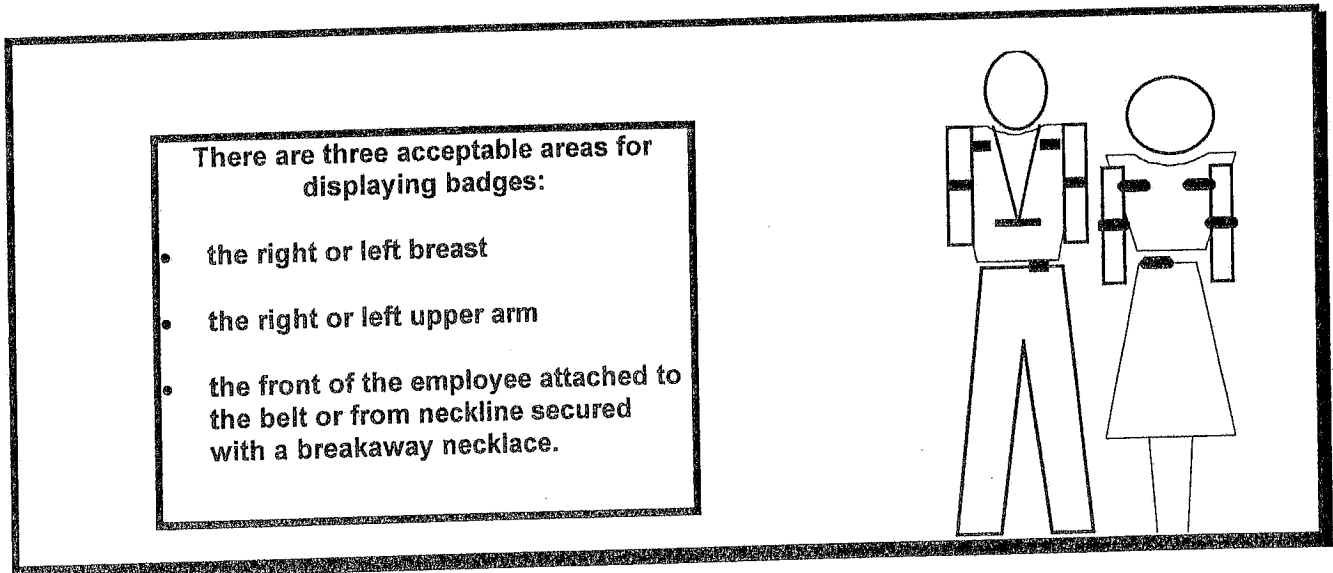
Employee identification badges are intended to provide quick positive identification of the employee wearing the badge. In order to achieve this objective, it is necessary that the badges are visible, not turned backwards, or worn under aprons, jackets, or other articles.

Make your badge visible and worn with the picture out facing the observer.

The picture below illustrates the acceptable areas to display your identification badge.



Steven E. Wenzel
Senior Plant Manager





Steven E. Wenzel, Senior Plant Manager
Des Moines Processing and Distribution



October 7, 2002

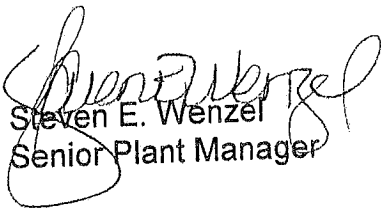
MEMORANDUM FOR: ALL EMPLOYEES

SUBJECT: PARKING

Vehicles which are found to be parked in "No Parking" areas such as median strips or fire lanes, unauthorized vehicles found in handicapped parking spaces, will be towed and impounded at the owner's expense. Vehicles that do not display a Post Office parking sticker or permit will be given a warning sticker. After a warning sticker has been issued, vehicles improperly parked may be towed and impounded at the owner's expense.

Parking stickers/permits must be hung from the windshield of the vehicle. Motorcycles will not require a parking sticker, but they must be parked in the designated motorcycle parking area or they will also be subject to the towing policy.

Parking stickers/permits are available in the General Clerk's office. Employees will be allowed up to two (2) permits free of charge. Any parking permits requested after that will be subject to a \$10.00 fee.


Steven E. Wenzel
Senior Plant Manager



Steven E. Wenzel, Senior Plant Manager
Des Moines Processing and Distribution

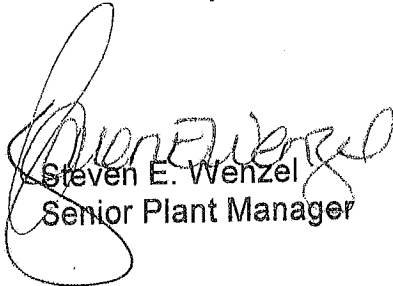


October 7, 2002

MEMORANDUM TO: ALL EMPLOYEES
DES MOINES PROCESSING & DISTRIBUTION CENTER

SUBJECT: BREAKS

Please keep in mind that breaks are 15 minutes in duration. The break begins when you leave your workstation and ends when you return to your workstation. The 15 minutes are to allow employees to use the rest room facilities, get snacks or beverages. At the end of the 15 minutes the employee should be at their work station ready to work.



Steven E. Wenzel
Senior Plant Manager



Steven E. Wenzel, Senior Plant Manager
Des Moines Processing and Distribution



October 7, 2002

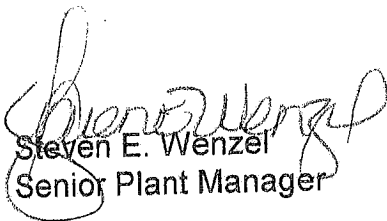
MEMORANDUM TO: ALL PLANT EMPLOYEES

SUBJECT: FOOD & BEVERAGE POLICY

Open beverage containers are not allowed on the work room floor. Spillproof covered plastic containers are the only acceptable containers allowed on the work room floor.

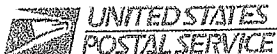
Food, other than that wrapped like a typical candy bar, is not allowed on the work room floor.

Any exceptions to this policy, such as retirements, holiday potlucks, etc. must be approved by the Plant Manager.


Steven E. Wenzel
Senior Plant Manager



Steven E. Wenzel, Senior Plant Manager
Des Moines Processing and Distribution



October 7, 2002

MEMORANDUM TO: ALL EMPLOYEES
DES MOINES PROCESSING & DISTRIBUTION CENTER

SUBJECT: HORSEPLAY IN THE WORKPLACE

It has recently come to my attention that some employees are engaging in horseplay on the workroom floor. Some of these incidents have resulted in verbal, and on occasion, physical confrontations and have disrupted operations.

Horseplay of any kind will not be condoned and cannot be tolerated in the workplace. The Postal Service is responsible for maintaining a safe work environment, and horseplay could easily result in injuries to employees. In addition, all employees are required and expected to remain gainfully employed while at work. Horseplay of any kind is disruptive to postal operations and will not be tolerated.

Generally, horseplay is not considered to be a minor offense because it can and does lead to physical confrontations and violence. Therefore, employees who engage in horseplay can expect to be issued appropriate corrective disciplinary action at the first occurrence. Supervisors are expected to address every incident involving horseplay appropriately and swiftly.


Steven E. Wenzel
Senior Plant Manager



Steven E. Wenzel, Senior Plant Manager
Des Moines Processing and Distribution



October 7, 2002

MEMORANDUM FOR: ALL EMPLOYEES

SUBJECT: Smoking Policy

Smoking is defined as having a lighted cigar, cigarette, pipe or other smoking material.

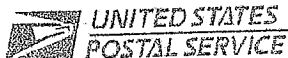
Smoking is strictly prohibited on the workroom floor, all office spaces, and all docks including on the apron in front of the docks out 30 feet.

Smoking will be permitted only in the area designated for that purpose. The only authorized smoking area will be the area on the southwest corner of the building.


Steven E. Wenzel
Senior Plant Manager



Steven E. Wenzel, Senior Plant Manager
Des Moines Processing and Distribution



October 7, 2002

MEMORANDUM FOR: ALL EMPLOYEES

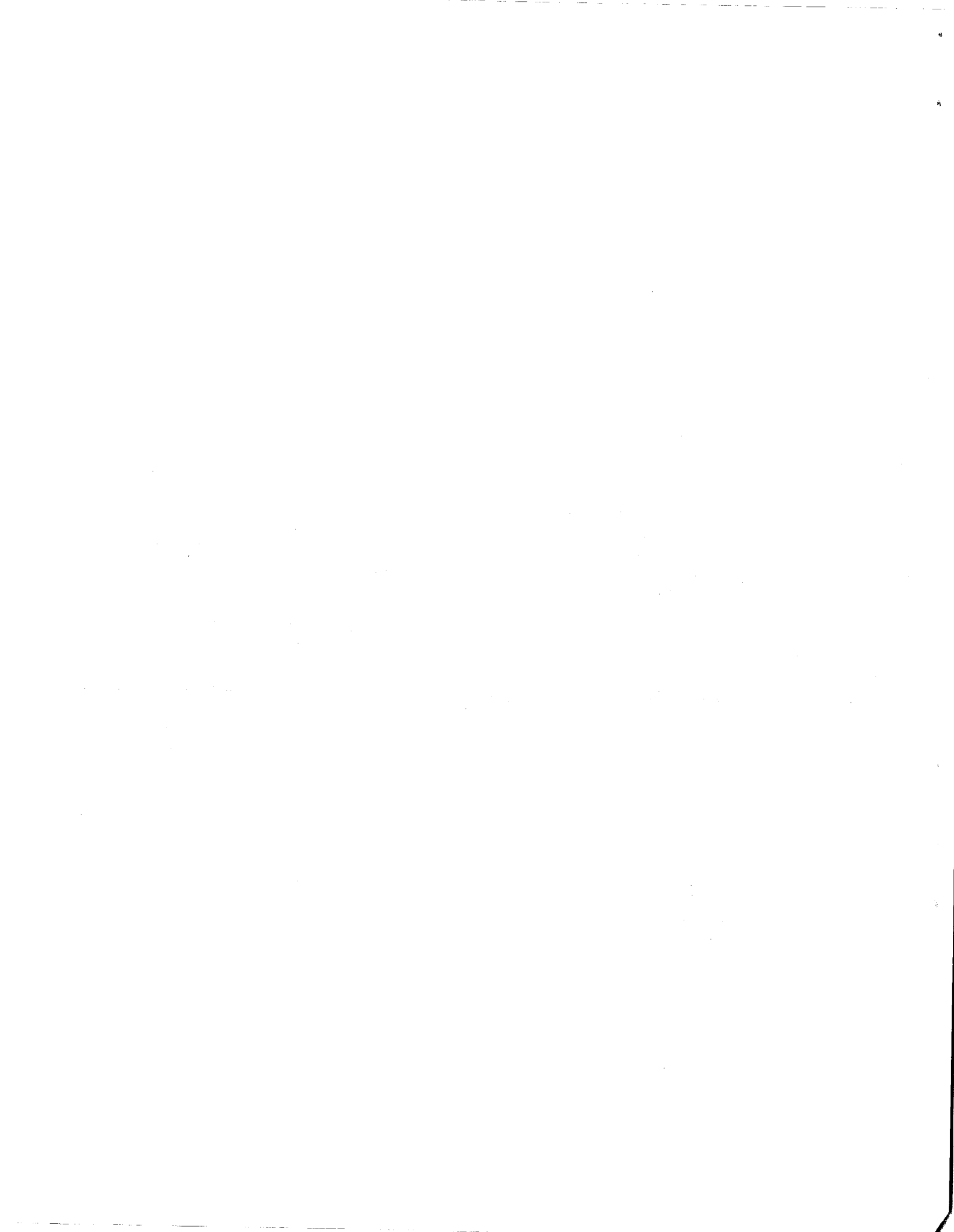
SUBJECT: Telephone Use

Personal calls are not allowed on the workroom floor during the employees' duty hours unless it is an "emergency". If it's an emergency the employee will be allowed to take the call. The caller should identify that it is an emergency call. It is the responsibility of the employee to inform family and friends of these procedures. The person receiving the call should use common sense if they suspect that it is an emergency call but the caller did not say it was an "emergency". For example; if the caller says they are on their way to the hospital, this call should be passed on to the employee as soon as possible.

If an employee receives a call, the supervisor should take the name and number so the employee can return the call on his/her next scheduled break or lunch.

Telephones are provided on each floor for use by employees. These telephones are located in the designated break areas. These telephones are for outgoing local calls only. If you must make a call outside of your break or lunch schedule, please request permission from your supervisor. All telephone calls should be limited to three (3) minutes, so please observe the three (3) minute limit.


Steven E. Wenzel
Senior Plant Manager



STEVEN E WENZEL, SENIOR PLANT MANAGER
DES MOINES PROCESSING & DISTRIBUTION



October 7, 2002

TO: ALL DES MOINES PROCESSING & DISTRIBUTION EMPLOYEES

SUBJECT: EMPLOYEE ATTENDANCE REQUIREMENTS

I would like to take this opportunity to recognize and express my appreciation to the Des Moines Processing & Distribution employees who maintained regular work schedules throughout the previous year and to inform all employees of the requirements and importance of the maintenance of a regular work schedule.

An employee's maintenance of a regular work schedule ensures the most efficient and cost effective service to our customers. Additionally, when employees maintain regular attendance, it provides the maximum opportunity to allow for proper leave consideration to all employees. Consistent adherence to your scheduled work hours is not only critical to the organizational goals but also a fundamental responsibility for all employees.

For purpose of definition, maintain a "regular work schedule" means to report to work at the scheduled reporting time, with no deviation, and to work the assigned hours which provide for authorized breaks. Employee absences other than bid annual leave may have a negative impact on fellow employees and the success of the operation and are to be avoided as much as practicable. These absences, including scheduled and unscheduled sick leave (or leave without pay in lieu of sick leave), emergency annual leave (or leave without pay in lieu of emergency annual leave) will be considered when your supervisor reviews your attendance. Any corrective action necessary will be based on your supervisor's attendance review.

Employees are also responsible for proper reporting of any necessary deviation from their regular work schedule due to illness or emergency situations. Employees are required to contact the RMO in advance whenever possible if unable to report to work as scheduled and provide them with the duration of the absence to allow for proper replacement scheduling.

Both excessive use and abuse of leave are in conflict with the goals of our organization and must be avoided. I am soliciting all employees in being responsible for regularity in attendance. Enforcement of our attendance regulations will be a primary goal for this upcoming year. Again, thank you for your assistance.

A handwritten signature in black ink that reads "Steven E. Wenzel".

Steven E. Wenzel
Senior Plant Manager

1165 2ND AVE
DES MOINES, IA 50318-9997
515-283-7650
FAX: 515-283-7665



STEVEN E WENZEL, SENIOR PLANT MANAGER
DES MOINES PROCESSING & DISTRIBUTION



October 7, 2002

TO: ALL DES MOINES PROCESSING & DISTRIBUTION EMPLOYEES

SUBJECT: PERSONAL PROPERTY & BELONGINGS

Employee personal lockers are issued for the purpose of allowing employees to store their personal belongings and possessions. As examples: personal radios, lunch boxes, purses, totes, etc. Items such as these should not be stored on the workroom floor.

A handwritten signature in black ink that reads "Steven E. Wenzel".

Steven E. Wenzel
Senior Plant Manager

