

# ***SALARY OVERPAYMENTS & WAIVER OF CLAIMS***

The question of Letters of Demand based upon erroneous salary overpayments and the employees subsequent request for a waiver of claim is steeped in regulatory history. The current postal regulations on this subject can be found at Subchapter 841 of the Financial Management Manual, *Overpayment of Pay Claims* and at ELM 437, *Waiver of Claims for Erroneous Payment of Pay*. These provisions spell out the procedures for the submission, review and approval/disapproval of waiver of claim requests using USPS Form 3074.

The Financial Management Manual provides at Part 841.3:

Before a claim is considered for waiver, it must meet these requirements:

- a. The claim resulted from an overpayment caused by administrative error to a current or former employee, generally in connection with a personnel action.
- b. The request for waiver is received by the USPS within 3 years immediately following the date when the overpayment was disclosed.
- c. There is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or anyone else with an interest in obtaining a waiver.<sup>1</sup>

The specific criteria for approval of a waiver request can be found at ELM 437.6, which provides:

## **437.6 Action by Minneapolis Accounting Service Center**

The Minneapolis Accounting Service Center will waive the claim if it can determine from a review of the file that all of the following conditions are met:

- a. The overpayment occurred through administrative error of

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<sup>1</sup>Attachment #1.

the USPS. Excluded from consideration for waiver of collection are overpayments resulting from errors in timekeeping, keypunching, machine processing of time cards or time credit, coding, and any typographical errors that are adjusted routinely in process of current operations.

- b. Everyone having an interest in obtaining a waiver acted reasonably under the circumstances, without any indication of fraud, misrepresentation, fault, or lack of good faith.
- c. Collection of the claim would be against equity and good conscience and would not be in the best interest of the USPS.<sup>2</sup>

While most of the requirements in both the ELM and the FMM are the same and seem fairly straight forward, it is the additional factors, the exclusions in ELM 437.a. and ELM 437.6.c. which, on their face, are perhaps the most troubling. These requirements appeared to the Union (and to many Arbitrators) to be rather vague and open to differing interpretation as to what specifically would be required to satisfy the regulation. As is usual with postal regulations, however, the Union was able to determine that ELM 437 did not just accidentally happen to appear one day. Research establishes that the *Waiver of Claim* regulations trace their history to Public Law 90-616, approved October 21, 1968, 82 Stat. 1212. Pursuant to that statute, the Code of Federal Regulations was amended in the December 31, 1968 Federal Register to include regulations prescribing standards for the waiver of claims for the erroneous payment of pay, on or after July 1, 1960, to an employee of an agency of the federal government. Those regulations provided, in pertinent part, at 4 C.F.R. § 201.5:

#### §201.5 Conditions for waiver of claims

Claims of the United States arising out of an erroneous payment of pay may be waived in whole or in part in accordance with the provisions of § 201.4 whenever:

(a) The claim arises out of an erroneous payment of pay made to an employee of an executive agency on or after July 1, 1960, except that waiver action may not be taken under the provisions of these regulations after the expiration of 3 years immediately following the date on which the erroneous payment of pay was discovered or after October 21, 1971, whichever is later.

(b) Collection action under the claim would be against equity and good

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<sup>2</sup>Attachment #2.

conscience and not in the best interests of the United States. Generally these criteria will be met by a finding that the erroneous payment of pay occurred through administrative error and that there is no indication of fraud, misrepresentation, fault or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim. Any significant unexplained increase in an employee's pay which would require a reasonable man to make inquiry concerning the correctness of his pay would preclude a waiver when the employee fails to bring the matter to the attention of appropriate officials. Waiver of overpayments of pay under this standard necessarily must depend upon the facts existing in the particular case. The facts upon which a waiver is based should be recorded in detail and made a part of the written record in accordance with the provisions of §202.6.<sup>3</sup>

Not long thereafter, in the April 17, 1969 Postal Bulletin, the Post Office published strikingly similar changes in Part 755 of the Postal Manual to comply with Public Law 90-616. Those changes provided:

### **.93 Conditions for Waiver of Claims**

The waiver of collection of claims against employees, whether in whole or in part, will be accomplished in accordance with criteria set forth in this subsection and will generally be limited to claims arising out of the issuance of a personnel action that has classified an employee in an incorrect salary level or step rate and to claims involving the overpayment of leave and severance pay. Excluded from consideration for waivers of collection are overpayments resulting from errors in timekeeping, keypunching, machine processing or time card or time credit, coding, and any typographical errors that are adjusted routinely in process of current operations. Exclusions from consideration of waiver depend on the circumstances involved and are not necessarily limited to these types of errors. Overpayment of pay resulting from the Departmental policy of advancing annual leave at the beginning of the year will not be considered for waiver. The following considerations must exist in considering a claim for waiver:

a. The claim arises out of erroneous payment of pay made through administrative error to an employee or former employee on or after July 1, 1960, except that waiver action may not be taken after the expiration of 3 years immediately following the date on which the erroneous payment of pay was discovered or after October 21, 1971, whichever is later.

b. Collection action under the claim would be against equity and good conscience and not in the best interests of the United States. Generally these conditions will be met by a finding that the erroneous payment of pay occurred through administrative error and that there is no indication of fraud, misrepresentation, fault or lack of good faith on the part of the employee or any

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<sup>3</sup> Attachment #3.

other person having an interest in obtaining a waiver of the claim.

c. Any significant unexplained increase in an employee's pay which would require a reasonable man to make inquiry concerning the correctness of his pay would preclude a waiver when the employee or former employee failed to bring the matter to the attention of appropriate officials.

d. Waiver of overpayments of pay necessarily must depend upon the facts existing in the particular case. The facts upon which a waiver is based must be recorded in detail and made part of the written record.<sup>4</sup>

As can be readily seen, the postal regulations adopted the same general definition of "against equity and good conscience and not in the best interests of the [Employer]" as did 4 C.F.R. § 201.5(b). Additionally, the postal regulations specifically identified "claims arising out of the issuance of a personnel action that has classified an employee in an incorrect salary level or step rate" as being the primary type of claim to which the waiver provisions would apply. Those changes in Part 755 of the Postal Manual were then accomplished through Personnel Transmittal Letter 215, dated September 17, 1969.<sup>5</sup> On April 1, 1978, the first issue<sup>6</sup> of the Employee and Labor Relations Manual would appear, rescinding Chapter 7 of the Postal Manual and including ELM 437, cited above. While the new ELM 437.6 provisions closely mirrored the old Postal Manual language, they omitted the clarifying instructions on the meaning of when collection action under a claim would be against equity and good conscience and not in the best interest of the Employer. However, by reviewing the regulatory history the meaning becomes significantly more clear.

A review of arbitral authority on the subject of waivers of claim is equally informative. Pertinent excerpts from some of the better reasoned awards are cited herein and the awards themselves are attached.

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<sup>4</sup>Attachment #4.

<sup>5</sup>Attachment #5.

<sup>6</sup>Attachment #6.

Grievant was overpaid at the Level 6 rate instead of the Level 5 rate for a number of months. She reported the matter to her supervisor but the problem was not corrected for some time. The Employer issued a Letter of Demand for the \$553.11 which she was overpaid. Addressing the question of whether the claim should have been waived, the Arbitrator said:

"Chapter 841.3 of the Financial Management Manual sets forth waiver requirements. It states:

**841.3 Waiver Requirements**

Before a claim is considered for waiver, it must meet these requirements:

- a. The claim resulted from an overpayment caused by administrative error to a current or former employee, generally in connection with a personnel action.
- b. The request for waiver is received by the USPS within 3 years immediately following the date when the overpayment was disclosed.
- c. There is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or anyone else with an interest in obtaining a waiver.

"The Employee and Labor Relations Manual also addresses the issue of waiver of claims for erroneous payments of pay. It states:

**437.6 Action by Postal Data Center (PDC)**

.61. The PDC will waive the claim if it can determine from a review of the file that all of the following conditions are met:

- a. The overpayment occurred through administrative error of the USPS. Excluded from consideration for waiver of collection are overpayments resulting from errors in timekeeping, keypunching, machine processing of time cards or time credit, coding, and any typographical errors that are adjusted routinely in process of current operations.
- b. Everyone having an interest in obtaining a waiver acted reasonably under the circumstances, without any indication of fraud, misrepresentation, fault, or lack of good faith.
- c. Collection of the claim would be against equity and good conscience and would not be in the best interest of the USPS. (See, Joint Exhibit No. 32).

"The earlier postal manual incorporated Public Law 90-616 which defined specifically when collection of a claim would be against good conscience and not in the best interest of the Employer. The old manual addressed the issue in Section 755.9(.93)(b). The manual stated:

- b. Collection action under the claim would be against equity and good conscience and not in the best interests of the United States. Generally these conditions will be met by a finding that the erroneous payment of pay occurred through administrative error and that there is no indication of fraud, misrepresentation, fault or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim. (See, Joint Exhibit No. 33).

"The point of all these provisions in the Employer's work manuals is to make clear that the Employer's claim of an erroneous overpayment should be waived if it is determined that the overpayment resulted from an administrative error and that there was no indication of fraud, misrepresentation, fault or lack of good faith on the employee's part. In other words, if those requirements are met, the claim for repayment of the overpayment would not be in good conscience or in the best interest of the Employer.

"The way in which the overpayment occurred clearly was an administrative error. Management initially issued the grievant the wrong time card. The grievant immediately brought that fact to the attention of her supervisor. Her supervisor instructed her to keep using the incorrect card, despite the fact that the problem easily could have been resolved by filing a corrected green time card.

"Mr Wolman described in detail the incident which caused the grievant to be paid at a Level 6 rate while being detailed to Level 6 from Level 5. That incident resulted in a class action grievance and, eventually, in a retroactive pay adjustment. It is reasonable to conclude that the incident revealed an administrative error. It would be inequitable to require the grievant to repay salary which she received under the circumstances. She bore no responsibility for the overpayment which resulted from her receiving higher pay at Level 5 while being detailed to Level 6. Overpayments to the grievant resulted from clear administrative error. There was no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the grievant. The Employer's claim for overpayment, therefore, is not in good conscience and is not in the best interest of the Employer, as it has been defined in Public Law 90-616. Accordingly, the claim for repayment should have been waived."<sup>7</sup>

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<sup>7</sup> Attachment #7. *Arbitrator Carlton J. Snow, W1C-5F-C 6247, Albuquerque, New Mexico, October 23, 1984, pp. 11-13.*

Grievant was placed in the wrong step as the result of administrative error. This error continued for nearly six years before it was discovered and the Employer then issued grievant a Letter of Demand for the \$1,039.14 salary overpayment. The Arbitrator said:

"Section 437.6 is relied upon by both parties and sets forth the criteria under which the Postal Service may waive a claim for erroneous payment of wages. It states:

437.6 Action by Postal Data Center (PDC)

.61. The PDC will waive the claim if it can determine from a review of the file that all of the following conditions are met:

- a. The overpayment occurred through administrative error of the USPS. Excluded from consideration for waiver of collection are overpayments resulting from errors in timekeeping, keypunching, machine processing of time cards or time credit, coding, and any typographical errors that are adjusted routinely in process of current operations.
- b. Everyone having an interest in obtaining a waiver acted reasonably under the circumstances, without any indication of fraud, misrepresentation, fault, or lack of good faith.
- c. Collection of the claim would be against equity and good conscience and would not be in the best interest of the USPS.

. . .

"A basic consideration present in all cases submitted by the parties questions whether or not the grieving party should have realized the error had occurred...

. . .

"The Postal Service introduced a number of documents dealing with the Grievant's pay level. However, the Postal Service did not have a witness who could establish each document was received by the Grievant. She acknowledged receipt of several. The Postal Service places great weight on the information contained on the Form 50's. I agree that a careful inspection of those

documents shows the Grievant is at the wrong step level. Nevertheless, those same Forms 50's were in the hands of Management and supposedly reviewed with the Grievant on the occasion of each new step increase. No one in Management caught the error. Yet, the Postal Service insists the Grievant should have and that not to have done so was unreasonable.

"The Arbitrator disagrees. Reasonable conduct must be measured by the circumstances as they exist and not in the abstract. The Grievant, through her testimony, did not evidence an affinity with numbers and calculations. Rather, she presented herself as a solid worker who trusted the calculations of the Postal Service. Notwithstanding the above, the Postal Service advanced the belief that the Grievant had a duty and responsibility to examine all Notices of Personnel Actions and to correct any errors. I believe this assertion is grossly overdrawn. First, a Form 50 is a Management document. If an employee is capable of understanding all the complexities of a Form 50 and discovers an error, that employee should be held responsible for the reporting of the error. This is precisely the fact situations, presented in Case S8N-3W-31975, supra, but that is not the fact situation presented by this grievance...Thereafter, neither the Grievant nor Management caught the mistake for some six years.

. . .

"The Postal Service fully acknowledges there is no indication of fraud, misrepresentation, or lack of good faith on the part of the Grievant. The record also conclusively establishes there is no reasonable basis upon which to attribute fault to her. Accordingly, I find the Grievant has satisfied the criteria set forth in Section 437.6 (a) and (b) of the ELM and that, as suggested by the Longmont Postmaster, collection would be against equity and good conscience."<sup>8</sup>

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**Arbitrator Carlton J. Snow, W1C-5F-C 9030, Denver, Colorado, October 25, 1984.**

Grievant had erroneously received level 6 pay instead of level 5 pay. A letter of demand for \$1522.52 was issued and the Employer began deductions from the grievant's paycheck. The employee initiated this grievance, requesting waiver of the claim. The arbitrator concluded that

"Article 19 of the parties' agreement incorporates various manuals into the parties collective bargaining agreement. Among provisions incorporated into the agreement by Article 19 is Section 437.6(.61)(a), (b) and (c) of the Employer's Employee and Labor Relations Manual. Section 437.6 states that the Employer will waive claims by the Employer for overcompensation if certain conditions have been met. The provision states:

437.6 Action by Postal Data Center (PDC)

.61. The PDC will waive the claim if it can determine from

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<sup>8</sup>Attachment #8. *Arbitrator Robert W. McAllister, W1C-5F-C 11548, Longmont, Colorado, July 21, 1987, pp. 5-11.*



a review of the file that all of the following conditions are met:

a. The overpayment occurred through administrative error of the USPS. Excluded from consideration for waiver of collection are overpayments resulting from errors in timekeeping, keypunching, machine processing of time cards or time credit, coding, and any typographical errors that are adjusted routinely in process of current operations.

b. Everyone having an interest in obtaining a waiver acted reasonably under the circumstances, without any indication of fraud, misrepresentation, fault, or lack of good faith.

c. Collection of the claim would be against equity and good conscience and would not be in the best interest of the USPS. (See, Joint Exhibit No. 2).

"It is the requirements of 436.6(.61)(c) that are most difficult to determine. When collection would be 'against equity and good conscience' or would not be 'in the best interest' of the Employer cannot always be determined with scientific precision. The parties, however, have provided some insight into the meaning of this requirement in an earlier version of the Employee and Labor Relations Manual which incorporated Public Law 90-616. Section 755.9(93)(b) stated:

b. Collection action under the claim would be against equity and good conscience and not in the best interests of the United States. Generally these conditions will be met by a finding that the erroneous payment of pay occurred through administrative error and that there is no indication of fraud, misrepresentation, fault or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim. (See, Joint Exhibit No. 2(16), emphasis added [by Arbitrator]).

"The grievant should have received a waiver of his claim in this case. The overpayment was the clear result of an administrative error by the Employer. The grievant filed for a change in position from a Level 6 MPLSM clerk to a Level 5 NIXIE distribution clerk. The Employer transferred the grievant but failed to arrange the corresponding salary adjustment. (See, Joint Exhibit 2, p. 15, Form 50). If fault must be assigned with regard to the resulting two and a half years of overcompensation, it must fall on the Employer.

"The grievant acted reasonably under the circumstances. There was no indication of any intent to defraud, misrepresent, to act with fault or any showing of a lack of good faith...

"...Nor was it reasonable to expect the grievant to do more than an average, prudent person in reviewing his wage stubs in order to be certain that they were reasonably accurate.

"The grievant's request for a waiver of the Employer's over-compensation claim in this case has been made in good conscience, and it is the best interest of the Employer not to pursue the collection of the overpayment. Under Section 755.9(.93)(b) of the earlier postal service manual, such a claim must have been the result of administrative error; and the grievant

must have acted in good faith and without fraud and reasonably in order for the claim by the Employer not to be in good conscience or in the best interest of the Postal Service. The grievant's overpayment clearly resulted from an administrative error. He has acted reasonably and has done so in good faith and without fraud. Consequently, it is reasonable to conclude that the Employer's claim for overpayment has not been made in good conscience and is not in the best interests of the Employer. Accordingly, it was not reasonable to deny the grievant's request for a waiver."<sup>9</sup>

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***Arbitrator Bernard Cushman, S8C-3D-C 6380, Birmingham, Alabama, December 18, 1979***

Grievant, a full-time officer with the Union, was not properly billed for optional life insurance coverage. When the USPS discovered the error, grievant requested a waiver of claim. Reviewing the Employer's denial of that waiver request, the Arbitrator said:

"As the evidence reveals, Grievant did, as suggested by the Postal Service Data Center, request a waiver of the indebtedness claimed. The request was denied by the Postal Service on the ground that 'administrative error' aside, Grievant should have been alerted by the Forms 1903 furnished by the Data Center that premiums for optional life insurance had not been deducted and that this circumstance should have prompted him to inquire as to the true situation. The short answer to this defense is, as the record shows, that the Postal Service never furnished the Forms 1903 to which reference has been made.

"In this connection Paragraph 437 of the Postal Service Employee and Labor Relations Manual incorporated by reference under the National Agreement (Article XIX) is directly relevant, as the parties acknowledge. Paragraph 437.7 deals, as its title indicates with waivers off claims for erroneous payments of pay. Subparagraph 437.6 reads:

The PDC will waive the claim if it can determine from a review of the file that all of the following conditions are met:

- (a) The overpayment occurred through administrative error of the USPS.
- (b) Everyone having an interest in obtaining a waiver acted reasonably under the circumstances, without any indication of fraud, misrepresentation, fault, or lack of good faith.
- (c) Collection of the claim would be against equity and good conscience and would not be in the best interest of the USPS.

"The Arbitrator concludes and finds, after careful consideration of all facts

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<sup>9</sup>Attachment #9. *Arbitrator Carlton J. Snow, W1C-5F-C 9030, Denver, Colorado, October 25, 1984, pp. 9-12.*

of record, that Subparagraph 437.6 is fully applicable here. The Postal Service forthrightly acknowledged its 'administrative error.' Notwithstanding that error, the Postal Service denied the claim for waiver because in its view Grievant and/or the Union should have been alerted by the information listed in Forms 1903, furnished by the Postal Service Data Center, that deductions were not being made for optional life insurance. Yet the evidence is undisputed that the designated forms had never been furnished to Grievant or the Union. Under the circumstances there appears to be no other basis—and the Postal Service suggests none—to alert Grievant or the Union that a substantial arrearage had accumulated over a period of several years in unpaid optional insurance premiums. The conduct of the Grievant and the Union was, therefore, whole reasonable and free of any indication of fraud, misrepresentation, fault or lack of good faith. Whatever fault existed in that regard plainly lay with the Postal Service and any detrimental consequences flowing therefrom must be borne under settled principles not by the innocent victim, here Grievant, but by the party at fault.

"The Arbitrator concludes, therefore, that the request for waiver should have been granted and that Grievant should be made whole for the payments he made under threat of cancellation of all his fringe benefits."<sup>10</sup>

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***Decision of the Comptroller General of the United States, Hollis W. Bowers, B-219122, January 22, 1986***

Employee applied for optional life insurance coverage but appropriate premiums were not properly deducted from his pay for over a year. It was determined that the error stemmed from a problem in the automated payroll system. The employee was then billed for \$5,200.00, represented by the amount of under deduction per pay period of \$200 times the 26 pay periods involved. The employee sought a waiver and the Comptroller General reasoned:

"Waiver of claims for overpayments to Federal employees of pay and allowances is authorized by 5 U.S.C. § 5584 (1982). That section provides that where collection of such a claim would be against equity and good conscience and not in the best interests of the United States, it may be waived in whole or in part unless there is an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee. Since there is no indication of fraud, misrepresentation, or lack of good faith on the part of the employee in this case, waiver hinges on whether Mr. Bowers is found to be at fault.

"Fault, as used in the statute authorizing waiver, is considered to exist if it is determined that the concerned individual should have known that an error existed but failed to take action to have it corrected. See 4 C.F.R. § 91.5 (1985), and 56 Comp. Gen. 943 (1977). If an employee has records which, if reviewed, would indicate an overpayment, and the employee fails to review those

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<sup>10</sup>Attachment #10. *Arbitrator Bernard Cushman, S8C-3D-C 6380, Birmingham, Alabama, December 18, 1979, pp. 7-9.*

documents for accuracy or otherwise fails to take corrective action he is not without fault and waiver will not be granted. Jack A. Sheppard, B-193831, July 20, 1979. Thus, if an employee is given a Standard Form 50 showing he has FEGLI coverage but his regular Earnings Statements show that the necessary insurance premium deductions are not being made, the employee has notice of an error and is ordinarily considered to be at least partially at fault if he fails to take corrective action. Rosalie L. Wong, B-199262, March 10, 1981; Annie E. Strom, B-204680, February 23, 1982."<sup>11</sup>

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**Arbitrator Randall M. Kelly, N7C-1E-C 0019956, Boston, Massachusetts, March 23, 1994**

The grievants should have been converted to the FERS program in 1984, but were not, due to an administrative oversight by the Postal Service. Addressing the employees request for a waiver of claim, the Arbitrator said:

"...Under these circumstances, it is held that the waiver procedures of the ELM apply to these debts.

"The next question is whether the claims should have been waived under those procedures. Again, the ELM provides:

**437.6 Action by Postal Data Center (PDC)**

The PDC will waive the claim if it can determine from a review of the file that all of the following conditions are met:

- a. The overpayment occurred through administrative error of the USPS.
- b. Everyone having an interest in obtaining a waiver acted reasonably under the circumstances, without any indication of fraud, misrepresentation, fault, or lack of good faith.
- c. Collection of the claim would be against equity and good conscience and would not be in the best interest of the USPS.

"On the present record, it is clear that the first two requirements were met. The remaining question is whether it is possible to find, on the present record, that 'Collection of the claim would be against equity and good conscience and would not be in the best interest of the USPS.'

**"Equity and Good Conscience:**

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<sup>11</sup>Attachment #11. *Decision of the Comptroller General of the United States, Hollist W. Bowers, B-219122, January 22, 1986, p. 4.*

"The Service strenuously objects that it would not be against equity and good conscience and certainly not in the best interest of the Service to waive the debts. After all, the Service has had to pay out these amounts on behalf of the employees and the Service itself will obtain no benefit.

"I cannot agree. One of the principal reasons I cannot agree is the Service's proven contractual violations in its collection efforts.

. . .

"Under all these circumstances, I find that valid debts existed, but that the debts should have been waived pursuant to Section 437 of the ELM in that the Service failed to follow the procedural requirements in collecting those debts. Therefore, 'Collection of the claim(s) would be against equity and good conscience and would not be in the best interest of the USPS.'"<sup>12</sup>

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***Arbitrator Carol Wittenberg, N7C-1W-C 36010/36011, Syracuse, New York, December 10, 1991***

Grievants had their positions abolished and received salary protection. However, over the next two (2) years, on balance, they received payments over and above what was contractually required as the result of a software problem at the Postal Service Data Center. When they received invoices requesting repayment of \$1,335.21 and \$1,437.19, they requested a waiver of claim, which was denied. Addressing this denial, the Arbitrator concluded:

"Turning to the merits, the Arbitrator is persuaded as well that the Postal Service's denial of a waiver of claim for overpayment was in violation of the Agreement, and Section 437 of the E&LM. My reasons follow.

"Section 437.6 of the E&LM is clear in stating that the PDC will waive a claim if three conditions are met. These are:

- a. The overpayment occurred through administrative error of the USPS. Excluded from consideration for waiver of collection are overpayments resulting from errors in timekeeping, keypunching, machine processing of time cards or time credit, coding, and any typographical errors that are adjusted routinely in process of current operations.
- b. Everyone having an interest in obtaining a waiver acted reasonably under the circumstances, without any indication of fraud, misrepresentation, fault, or lack of good faith.
- c. Collection of the claim would be against equity and good conscience and would not be in the best interest of the USPS.

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<sup>12</sup>Attachment #12. *Arbitrator Randall M. Kelly, N7C-1E-C 0019956, Boston, Massachusetts, March 23, 1994, pp. 17-24.*

"Upon review of all the evidence in this case, the Arbitrator concludes that all of the conditions of Section 437.6 of the E&LM have been met.

"There is no dispute that the overpayment occurred through administrative error of the Postal Service...

"Section (b) requires that the employees involved acted reasonably and in good faith. The Arbitrator finds that the Grievants acted properly by informing local management of the overpayments in a timely fashion.

"Finally, the Arbitrator finds that Section (c) has also been met. Equity in this case is on the side of the Grievants. They were not responsible for the error. Nor did they seek to hide the overpayments from local management. Instead, they came forward to attempt to have the matter corrected. As a result, the Grievants should not be held responsible for a Postal Service error that took two years to correct. Such a decision would not, in my view, be equitable. Nor am I persuaded that it would be in the best interest of the Postal Service."<sup>13</sup>

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***Arbitrator Kathy Fragnoll, H90C-1H-C 95037221, Tampa, Florida, September 8, 1997***

The Postal Service made an administrative error placing grievant in the incorrect retirement code at the time he was hired. The error caused an overpayment to grievant for nearly four (4) years. The error was corrected at that point and, some five (5) years thereafter the Employer issued a Letter of Demand in the amount of \$2,139.20. Addressing the grievant's request for a waiver of claim, the Arbitrator said:

"The next issue is whether the grievant is entitled to a waiver under ELM, 437.6 which provides in relevant part:

The PDC will waive the claim if it can determine from a review of the file that all of the following conditions were met:

- a. The overpayment occurred through administrative error of the USPS...
- b. Everyone having an interest in obtaining a waiver acted reasonably under the circumstances, without any indication of fraud, misrepresentation, fault, or lack of good faith.
- c. Collection of the claim would be against equity and good conscience and would not be in the best interest of the USPS.

"Management admits that an administrative error by the Postal Service caused the overpayment. There was no evidence that the Grievant did know, or could have known, of the

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<sup>13</sup>Attachment #13. *Arbitrator Carol Wittenberg, N7C-1W-C 36010/36011, Syracuse, New York, December 10, 1991, pp. 12-14.*

error. Therefore the first two requirements of the ELM 437.6 are met. As to the last requirement, management argues that there is no contractual limit on its right to correct the error and issue a letter of indebtedness. However, it is generally agreed that if a party sits on its rights, the mere passage of time makes the enforcement of those rights inequitable. In this case, management not only failed to place the grievant in the proper code classification for four years, it then waited another four years to begin collection efforts. After ten years, to demand that the grievant bear the burden of management's error by requiring him to pay the Postal Service a substantial sum of money is against equity and good conscience."<sup>14</sup>

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<sup>14</sup>Attachment #14. *Arbitrator Kathy Fragnoli, H90C-1H-C 95037221, Tampa, Florida, September 8, 1997, p. 8.*