



UNITED STATES
POSTAL SERVICE

Certified# email

Date: March 9, 2009

26 grievances
See attached list

To: Dennis Taff
NBA, APWU
10841 West 87th St Ste 400
Overland Park KS 66214

Decision: **SETTLED in Part, DENIED in Part**
Issue Codes: 36.2000, 36.2200
Agency Rep: P Zimmerman
Meeting Date: 03/05/2009

Dear Mr. Taff,

You and I discussed the above-captioned grievance at Step-3.

The question(s) at issue in this grievance is: Travel

After a full review of the information, contentions and arguments submitted by the representative(s) at Step 2, the decision has been made to SETTLE in part and DENY in part for the following reasons:

Settlement: Dan Skemp, APWU and Hawkeye Labor Relations are to meet to apply the following to each of the listed grievances:

If the grievant voluntarily worked at another office in order to supplement work hours (not at the request of management), the grievance will be held in abeyance at Step 2 pending final adjudication of national case Q00C-4Q-C 04184581.

If the grievant worked at another office at the request of management, JCIM Q & A on Part-Time Flexible Clerks Working in Other Installations, #20, instructs to apply the provisions of ELM 438 and Chapter 7 of the F-15. ELM 438.11.b. states: Local commuting area - the suburban area immediately surrounding the employee's official duty station and within a radius of 50 miles.

Therefore, if the clerk is assigned to work at another office within a 50 miles radius and it is within the immediate suburban area, the clerk is not entitled to pay during travel. However, if the clerk is assigned to work at another office and it does not meet both the 50 mile radius and immediate suburban area, the clerk is entitled to travel pay (pay for time spent moving from one location to another during which no productive work is performed and excluding the normal mealtime if it occurs during the period of travel). Suburban is defined as: 1 a: an outlying part of a city or town b: a smaller community adjacent to a city c. plural : the residential area on the outskirts of a city or large town.

If this criteria applies, grievant will be made whole for any lost travel pay from 14-days prior to the filing of the grievance.

ELM 438.123 states that when an employee is employed to work on a permanent basis at more than one location in the same service day, the time spent commuting between the locations is not

compensable travel time. This section would only apply to permanent assignments, which do not appear to be the case in these grievances.

This criterion will also be applied to future travel by PTF clerks.

Denied: It is the Union's position that this is an ongoing violation and the Union had no knowledge or information regarding any of the individuals involved until they were contacted.

Management's position is that the liability in these cases is limited to 14-days prior to the filing of the Step 1 grievance in accordance with Article 15.2.Step 1.(a). The union contends the liability goes back beyond the 14-days as it was a continuing violation. As stated in JCIM, "...any liability normally could not extend retroactively more than fourteen days prior to the initiation of the grievance. An exception to that rule may occur when neither the grievant nor the union were aware or may reasonably have been expected to be aware (constructive knowledge) of the facts giving rise to the grievance." The state and national APWU officials handling grievances for Hawkeye District have challenged travel issues dating back to 1995, 2000, 2001. Clearly the union has had constructive knowledge of a contractual dispute on this issue. Therefore, the exception to 14 days would not be applicable in these grievances. The union's remedy to extend the period of liability beyond the contractual limit of 14-days is **DENIED** as it is outside the terms of Article 15. Furthermore, the majority of these grievances were filed over a six month period of time. It is highly unlikely that the PTF's in these individual offices all became aware of possible entitlement to travel pay and contacted the union within a relatively short period of time when some of them had been traveling between offices for years.

Based upon the aforementioned, these grievances are **SETTLED in part and DENIED in part. In accordance with Article 15.2.Step 3.(e), the union will select a representative case to arbitrate the denied portion of this issue.**



Pamela Zimmerman
Labor Relations Specialist
Western Area



Dennis Taff
NBA
APWU

cc: Western Area Processing Center