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**SECTION
438
OF THE ELM**

438 Pay During Travel or Training**438.1 Pay During Travel****438.11 Definitions**

Definitions relevant to pay during travel or training include the following:

- a. *Travel time* — time spent by an employee 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.
- b. *Local commuting area* — the suburban area immediately surrounding the employee's official duty station and within a radius of 50 miles.

438.12 Commuting To and From Work**438.121 Regular Commuting**

Commuting time before or after the regular workday between an employee's home and official duty station or any other location within the local commuting area is a normal incident of employment and is not compensable. It is not compensable regardless of whether the employee works at the same location all day or commutes home after the workday from a location different from the one where the workday started.

438.122 Commuting to a Different Worksite

Commuting time to and from work is not compensable when an employee is called back to work after the completion of the regular workday. However, such commuting time is compensable if the employee is called back to work at a location other than his or her regular work site.

438.123 Commuting With a Break in Duty Status

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, provided there is a break in duty status between the work performed in the different locations. A break in duty status occurs when an employee is completely relieved from duty for a period of at least 1 hour that may be used for the employee's own purposes. This 1-hour or greater period must be in addition to the actual time spent in travel and the normal meal period, if the normal meal period occurs during the time interval between the work at the different locations. (See 438.132 for travel time between job locations when there is no break in duty status.)

438.13 Types of Compensable Travel Time**438.131 General**

The determination of whether travel time is compensable or not depends upon (a) the kind of travel involved, (b) when the travel takes place, and (c) the eligibility of the employee (see [Exhibit 438.13](#)). The three situations that may involve compensable travel time are described below.

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438.132 **Travel From Job Site to Job Site**

The following applies to travel from job site to job site:

- a. *Rule.* Time spent at any time during a service day by an eligible employee in travel from one job site to another without a break in duty status within a local commuting area is compensable. (See 438.123, which makes the travel time noncompensable as commuting time when there is a break in duty status between the work performed in different locations.)
- b. *Eligibility.* This type of travel time is compensable for all employees during their established hours of service on a scheduled workday. At all other times, this type of travel time is compensable only for FLSA-nonexempt employees who are entitled to receive overtime pay.

Exhibit 438.13
Eligibility for Travel Time Compensation

Type of Travel	Scheduled Day		Nonscheduled Day	
	Within Established Hours of Service	Outside Established Hours of Service	Within Established Hours of Service	Outside Established Hours of Service
Job Site to Job Site.	All employees	Employees entitled to receive overtime pay	Employees entitled to receive overtime pay	Employees entitled to receive overtime pay
One-Day Assignment Outside Local Commuting Area	All employees	Employees entitled to receive overtime pay	Employees entitled to receive overtime pay	Employees entitled to receive overtime pay
Away from Home Overnight	All employees	None	All nonexempt employees	None

438.133 **One-Day Assignment Outside the Local Commuting Area**

The following applies to 1-day assignments outside the local commuting area:

- a. *Rule.* Except as stated in the next sentence, time spent at any time during a single service day by an eligible employee who is traveling on Postal Service business to one or more locations outside of the local commuting area and back to the home community is compensable. Time spent commuting in either direction between home and an airport, bus terminal, or railroad station within the local commuting area, if it occurs outside of established hours of service on a scheduled workday, and the usual mealtime, must be deducted from compensable travel time.
- b. *Eligibility.* This type of travel time is compensable for all employees during their established hours of service on a scheduled workday. At all other times, this type of travel time is compensable only for bargaining unit and nonexempt nonbargaining unit employees.

438.134 **Travel Away From Home Overnight**

The following applies to travel away from home overnight:

- a. *Rule.* Travel time spent by an eligible employee traveling on Postal Service business to and from a postal facility or other work or training site which is outside the local commuting area and at which the employee remains overnight is compensable if it coincides with the

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normal workhours for a bargaining unit employee's regular bid job, regardless of his or her schedule while away from the home installation, or for a nonbargaining employee's schedule in effect while traveling, whether on a scheduled or a nonscheduled day, subject to 438.141 and 438.142. For instance, an eligible employee with normal workhours of 7:00 p.m. to 3:30 a.m. Saturday through Wednesday is scheduled for training at another location from 8:00 a.m. to 4:30 p.m., Monday through Friday. If the employee travels from 6:00 p.m. to 8:00 p.m. on any day of the week, 1.0 travel hour is compensable. If the same employee travels from 5:00 p.m. to 7:00 p.m. on any day of the week, no travel hour is compensable. Compensable travel time includes the time spent in going to and from an airport, bus terminal, or railroad station.

- b. *Eligibility.* This type of travel time is compensable for all employees on their scheduled workdays. On nonscheduled days, this type of travel time is compensable only for nonexempt employees.
- c. *Intermediate Travel Home.* Employees who are on an extended assignment away from home may be given the opportunity during the assignment to return home for personal convenience. Although the cost of the round trip is a reimbursable travel expense, the travel time involved is not compensable when it falls outside of the scheduled service week given to the employee during the temporary assignment.
- d. *Scheduling of Travel.* Travel away from home overnight is to be scheduled by management on a reasonable basis without a purpose either to avoid compensation for the travel time or to make the travel time compensable.

438.14 **Special Travel Provisions**438.141 **Use of Private Automobile for Personal Convenience**

If an eligible employee who is traveling under the provisions of 438.132, 438.133, or 438.134 is offered public transportation but uses a personally owned conveyance for personal convenience, only the lesser of the time spent actually driving or those creditable hours that would have been spent in travel by public transportation are compensated.

438.142 **Required Use of an Automobile**

All time spent actually driving an automobile while traveling away from home overnight because no public transportation is available is compensable travel time for an eligible employee whether the time occurs within or outside of the employee's established hours of service.

438.143 **Work Performed While Traveling**

Any time spent by an eligible employee in actual work that is required or suffered or permitted to be performed while traveling is compensable.

438.15 **Compensation Provisions**

Provisions concerning compensation are as follows:

- a. Compensable travel time is counted as worktime for pay purposes and is included in hours worked in excess of 8 hours in a day, 40 hours in a week, or on a nonscheduled day for a full-time employee, for the determination of overtime for eligible employees (see 433 and 434.1).
- b. Out-of-schedule premium, nonbargaining rescheduling premium, and guaranteed time are not payable to employees while traveling away from home overnight.
- c. Night differential is paid to eligible employees during those hours of compensable travel between 6:00 p.m. and 6:00 a.m. on either a scheduled or nonscheduled day.
- d. Sunday premium is paid to eligible employees for paid travel time during a scheduled tour that includes any part of a Sunday.

438.16 **Effect on Other Travel Reimbursement**

The rules stated in 438.1 do not affect the entitlement of employees to other types of reimbursement under applicable regulations, such as reimbursement of certain travel expenses and per diem.

438.2 **Pay During Training**

438.21 **General**

Title 29, *Code of Federal Regulations* (CFR), provides as follows:

- a. 29 CFR 785.27 states:

"Attendance at lectures, meetings, training programs and similar activities need not be counted as working time if the following four criteria are met:

- (1) Attendance is outside of the employee's regular working hours;
- (2) Attendance is in fact voluntary;
- (3) The course, lecture, or meeting is not directly related to the employee's job; and
- (4) The employee does not perform any productive work during such attendance."

If any one of the four criteria is not met, the time must be counted as working time. (See exception in 438.21c).

Note: If the postal training imparts knowledge and skills uniquely beneficial to the Postal Service, it is to be considered as time worked whether the training is directly related to the employee's job or not.

- b. 29 CFR 785.28 states:

"Attendance is not voluntary. . . . in fact if the employee is given to understand or led to believe that his or her present working conditions or the continuance of her or his employment would be adversely affected by nonattendance."

**SECTION
261
OF THE F-21**

260 Travel Time

261 General

261.1 Definition

261.11 *Travel time* is compensable time spent by an eligible employee moving between one work facility and another, or between home and a work facility other than the employee's official duty station during which no productive work is performed and excluding the normal meal time if it occurs during the period of travel.

261.12 Travel time may occur on a scheduled or non-scheduled day during or outside of regular scheduled work hours depending on the type of travel and on the eligibility of the employee.

261.13 Travel time performed by eligible employees will be considered work hours.

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

261.15 Commuting to and From Work

261.151 Commuting time before or after the regular workday between one's home and official duty station, or any other location within the local commuting area, is a normal incident of employment and is not compensable. It is not compensable regardless of whether the employee works at the same location all day or commutes home after the workday from a location different from the one where the workday started.

261.152 Commuting time to and from work is also not compensable when an employee is called back to work after the completion of the regular workday, but such commuting time is compensable if the employee is called back to work at a location other than his regular work site.

261.153 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, provided there is a break in duty status between the work performed in the different locations. A break in duty status occurs when an employee is completely relieved from duty for a period of at least one hour that may be used for the employee's own purposes. This one hour or greater period must be in addition to the actual time spent in travel and the normal meal period, if the normal meal period occurs during the time interval between the work at the different locations. (See 261.162 for travel time between job locations when there is no break in duty status.)

261.16 Types of Compensable Travel Time

261.161 General.

The determination of whether travel time is compensable or not depends upon (1) the kind of travel involved, (2) when the travel takes place, and (3) the eligibility of the employee. (See [Exhibit 261.2](#).) The three situations that may involve compensable travel time are described below.

261.162 Travel From Job Site to Job Site**a. Rule.**

Time spent at any time during a service day by an eligible employee in travel from one job site to another without a break in duty status within a local commuting area is compensable. (See 261.153, which makes the travel time noncompensable as commuting time when there is a break in duty status between the work performed in different locations.)

b. Eligibility.

This type of travel time is compensable for all employees during their established hours of service on a scheduled workday. At all other times, this type of travel time is compensable only for employees entitled to receive overtime pay.

261.163 One-Day Assignment Outside the Local Commuting Area**a. Rule.**

Except as stated in the next sentence, time spent at any time during a single service day by an eligible employee 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. Time spent commuting in either direction between home and an airport, bus terminal, or railroad station within the local commuting area, if it occurs outside of established hours of service on a scheduled workday, and the usual meal time, must be deducted from compensable travel time.

b. Eligibility.

This type of travel time is compensable for all employees during their established hours of service on a scheduled workday. At all other times, this type of travel time is compensable only for employees entitled to receive overtime pay.

261.164 Travel Away From Home Overnight**a. Rule.**

Travel time spent by an eligible employee in travel on Postal Service business to and from a postal facility or other work or training site which is outside the local commuting area and at which the employee remains overnight is compensable if it coincides with the employee's normal work hours at the home installation, whether on a scheduled or a nonscheduled day, subject to 261.171 and 261.172. For instance, if an eligible employee with a regular schedule of 8:00 am to 4:30 pm, Monday through Friday, travels from 2:00 pm to 5:00 pm on any day of the week, 2.50 hours would be compensable. If the same employee travels from 5:00 pm to 8:00 pm on any day of the week, no hours would be compensable. Compensable travel time includes the time spent in going to and from an airport, bus terminal, or railroad station.

b. Eligibility.

This type of travel time is compensable for all employees on their scheduled workdays. On nonscheduled days, this type of travel time is compensable only for nonexempt employees.

c. *Intermediate Travel Home.*

Employees who are on an extended assignment away from home may be given the opportunity during the assignment to return home for personal convenience. The travel time involved in such intermediate travel home and return is not compensable.

d. *Scheduling of Travel.*

Travel away from home overnight is to be scheduled by management on a reasonable basis without a purpose either to avoid compensation for the travel time or to make the travel time compensable.

261.17 **Special Travel Provisions**

261.171 **Use of Private Automobile for Personal Convenience**

If an eligible employee traveling away from home overnight is offered public transportation but utilizes a personally owned conveyance for personal convenience, only the lesser of the time spent actually driving or those creditable hours which would have been spent in travel by public transportation will be compensated.

261.172 **Required Use of an Automobile**

All time spent actually driving an automobile while traveling away from home overnight because no public transportation is available is compensable travel time for an eligible employee whether the time occurs within or outside of the employee's established hours of service.

261.173 **Work Performed While Traveling**

Any time spent in actual work by an eligible employee that is required or suffered or permitted to be performed while traveling is compensable.

261.2 **Eligibility**

261.21 Eligibility for travel time is shown in Exhibit 261.2.

Exhibit 261.2
Eligibility for Travel Time

Type of Travel	Scheduled Day		Non-scheduled Day	
	Within Established Hours of Service (Use code 82)	Outside of Established Hours of Service (Use code 83)	Within Established Hours of Service (Use code 82)	Outside of Established Hours of Service (Use code 83)
Job Site to Job Site	All employees	Employees entitled to receive overtime pay.	Employees entitled to receive overtime pay.	Employees entitled to receive overtime pay.
One-Day Assignment Outside Local Commuting Area	All employees	Employees entitled to receive overtime pay.	Employees entitled to receive overtime pay.	Employees entitled to receive overtime pay.
Away from Home Overnight	All employees	None. Exception (see 261.17)	All nonexempt employees.	None. Exception (see 261.17)

261.22 Compensable travel time is counted as worktime for pay purposes and is included in hours worked in excess of 8 hours in a day, 40 hours in a week, or on a nonscheduled day for a full-time employee, for the determination of overtime for eligible employees.

261.23 Out of schedule overtime, non-bargaining rescheduling premium, and guaranteed time are not payable to employees while traveling away from home overnight.

261.24 Night differential is paid to eligible employees during those hours of compensable travel between 6 p.m. and 6 a.m. on either a scheduled or non-scheduled day.

261.25 **Effect on Other Travel Reimbursement**

The rules stated in section 261.1 do not affect the entitlement of employees to other types of reimbursement under applicable regulations, such as reimbursement of certain travel expenses and per diem.

261.3 **Authorization and Supporting Forms**

261.31 Whenever an employee is to be in a "travel" status, the employee's supervisor is to complete Form 7020, *Authorized Absence from Workroom Floor*. The supervisor should note the beginning travel time and the ending travel time on the form. When the form is completed, the supervisor should give it to the timekeeper. It is recognized that the employee is not officially absent from workroom floor, but this form is the most convenient method available to document that the employee was in a "travel" status.

261.32 The supervisor will give this copy of Form 7020 to the timekeeper. The timekeeper will use the form as the basis for making appropriate hours entries on the timecard.

261.33 It is the responsibility of the supervisor at the employee's official duty station to approve mode and hours of travel. Any necessary deviations must be documented by the employee and reported to the supervisor for verification and authorization.

262 **Timecard Procedures**

262.1 **Timecard Handling**

There are no special timecard handling procedures for employees who are in a "travel" status.

262.2 **Timecard Recording**

262.21 Timekeepers will be responsible for totaling the amount of time spent by an employee in a "travel" status, as documented by Form 7020. The timekeepers are to enter this time in the OTHER PREM column of the timecard.

262.22 If the "travel" time occurs within the employee's established work schedule then it is to be identified by the code number "82." If the "travel" time occurs outside the employee's established work schedule then it is to be identified by the code number "83."

SECTION
5-5
OF THE F-15

Use a GSA-contracted vehicle only in these circumstances:

- a. For short-term rentals, such as daily or weekly.
- b. When no vehicle owned or leased by the Postal Service is available.

The approving official may approve use of a GSA-contracted vehicle after determining that there is no vehicle owned or leased by the Postal Service available.

5-4.2.3 **GSA-Owned Vehicle**

A GSA Interagency Motor Pool System (IMPS) vehicle is available only on a monthly basis. For information about leasing a GSA-owned vehicle, contact the Motor Equipment Services Division of the appropriate GSA regional office servicing your installation.

5-4.2.3.1 **Your Responsibilities When You Receive the Vehicle**

When you receive the vehicle, you must do the following:

1. Sign GSA Form 2556, *Misc. Charges & Adjust.* Keep a photocopy of the form in your office for reference.
2. Complete GSA Form 494, *Monthly Motor Vehicle Use Record*, a two-part form.

5-4.2.3.2 **Your Responsibilities Each Month**

Each month during the lease, GSA will send you Form 494 with the pertinent information preprinted — tag number, region number, motor pool number, and Billing Office Address Code (BOAC) number. At the end of each month, you must do the following:

1. Complete the form for that month.
2. Return the first part to GSA for processing.
3. Send the second part to the St. Louis Accounting Service Center. They use it to verify the billing charges that GSA will send to them.
4. To be reimbursed for parking, follow the same rules as for privately owned vehicles (see 8-1.3).

5-5 Arranging to Use Your Privately Owned Vehicle

A privately owned vehicle (POV) may be an automobile, a motorcycle, or an airplane.

5-5.1 **Determining When to Use**

5-5.1.1 **Circumstances That May Justify Use of Your POV**

You may receive approval to use your POV in the following circumstances:

- a. It will be advantageous to the Postal Service.
- b. You are on specific assignments, such as investigation and route examinations, customer service travel, and postal systems reviews.

- c. You are participating in civil defense tests and activities. Employees traveling for civil defense purposes to and from emergency locations are considered to be on official business and acting within the scope of their employment.

You may also receive approval to use your POV for personal convenience. However, you must submit a cost comparison with your expense report. See 5-1.4 for information on performing a cost comparison.

5-5.1.2 **Criteria That the Approving Official Will Use**

The approving official's decision will be based on, but not limited to, the following criteria:

- a. Whether commercial air, train, or bus service is suitable.
- b. Whether Postal Service or GSA vehicles are available.
- c. Whether using your POV would reduce the overall cost of travel, such as by saving on per diem or local transportation expenses.
- d. Whether using your POV would save time, either travel time or overall work time.
- e. Whether your POV would be used extensively in the vicinity of the temporary duty station.
- f. Whether the vehicle is required for civil defense travel.

5-5.2 **Allowable Expenses When Using Your POV**

5-5.2.1 **For Your Car or Motorcycle**

The allowable expenses for using your car or motorcycle vary according to whether you are using it because no Postal Service or GSA vehicle is available or because it is more convenient for you to do so.

5-5.2.1.1 **If No Postal Service or GSA Vehicle Is Available**

Mileage and Travel Time

If no Postal Service or GSA vehicle is available, you can be reimbursed for all mileage incurred for official business. Use odometer readings or standard mileage guides to determine the number of miles.

Travel time is the reasonable driving time for the distance you traveled.

You must explain any substantial deviation from either mileage or travel time on your expense report.

Parking

If you are required to use your POV on official business at a temporary duty station and if you have paid for monthly parking at your permanent duty station, you may be reimbursed the portion of your monthly parking fees at your permanent duty station that you paid for but did not use. See 8-1.3c for information on how to calculate the reimbursable amount.

5-5.2.1.2 If You Are Using Your POV as a Personal Convenience

Reminder: If you are using your POV only as a personal convenience, you must submit a cost comparison with your expense report. See 5-1.4 for information on performing a cost comparison.

If you are a supervisor, you will be reimbursed at either the daily rate or the standard mileage rate, whichever is greater, when you have been approved to use your POV for either of the following assignments:

- a. Supervising carriers.
- b. Inspecting routes.
- c. Motor vehicle service operations, supervising Postal Vehicle Service (PVS).
- d. Airport ramp operations.



Important: If you are a supervisor, you must submit Form 4570, *Vehicle Time Record*, to the servicing Vehicle Maintenance Facility (VMF) to report one of the following:

- a. Your mileage, if you are claiming mileage. Odometer readings are not required; however, you are responsible for the integrity of the claim. If the approving official questions your claim, you must provide evidence that supports the distance traveled.
- b. The actual time devoted to the duties listed above, if you are claiming the daily rate.

If you are a postmaster, follow the instructions for local travel and transportation of supervisory and nonsupervisory personnel. See Handbook F-1, *Post Office Accounting Procedures*, Subchapter 740.

5-5.2.2 For Your Airplane

If you have approval to use your own airplane, you are allowed to charge as air mileage only the distance between the airport where the trip began and the airport where it ended.

If you had to make a detour because of adverse weather, mechanical difficulty, or other unusual conditions, you may include the additional air mileage; however, you must explain the circumstances.

To determine the air mileage, use the airway charts issued by the National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

If you get approval to use your personally owned airplane for official travel to areas where there is no commercial air service, you may be reimbursed an amount computed by multiplying the mileage rate for airplanes (see Appendix B) times the total mileage as shown on the charts issued by NOAA.

SECTION
7
OF THE F-15

7 Determining Daily Expenses

When traveling for the Postal Service, you are reimbursed for your daily expenses — the money you spend for meals, laundry, and other miscellaneous expenses while you are away from home.

This chapter explains when you're allowed to claim your actual expenses and when you're allowed to claim per diem. It also explains how per diem works and the fine points of the policy for calculating it.

! Important: Be aware that the reason for your travel might influence how you determine your daily expenses. See Chapter 9, Handling Expenses for Special Travel Situations, for information on what's allowed if you're traveling as a witness, juror, nonemployee of the Postal Service, or in other capacities.

7-1 When to Claim Per Diem Versus Actual Expenses

Whether you're allowed to claim per diem or your actual expenses depends on your destination and the duration of your trip.

7-1.1 **According to Your Destination**

7-1.1.1 **Local Travel**

7-1.1.1.1 **What Constitutes Local Travel**

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. See 7-1.1.2 for information on what's allowed for regular travel.

7-1.1.1.2 **What's Allowed**

For local travel, the Postal Service reimburses you for your actual expenses — all reasonable subsistence expenses that you incur as a result of your official travel. You are not eligible to claim per diem.

Specifically, you are entitled to the following:

- a. Meals that you are required to attend as part of an official business session. You may be reimbursed for out-of-pocket expenses. You are

not reimbursed for meals that are part of a normal workday, such as a typical lunch break.

! Important: To claim meals that you are required to attend as part of an official business session, you must state on your expense report that attendance was required.

- b. Telephone charges necessary for conducting official business.
- c. Miscellaneous expenses such as renting viewgraphs or movie screens for training sessions or meetings.

! Important: To claim miscellaneous expenses, you must attach a receipt for any expenditure of more than \$50 which you did not download into your report from the prepopulated company card data in the eTravel system. You must explain the expense in your expense report.

- d. Mileage. When it is advantageous to the Postal Service, you may be authorized to depart directly from and return directly to your home. The Postal Service may reimburse you for any mileage that *exceeds* the distance between your home and your *permanent* duty station. If the mileage is less than that between your home and your permanent duty station, you may not claim a mileage reimbursement. You may claim out-of-pocket expenses such as tolls, parking, etc.

Use the formula below to calculate the amount for which you may be reimbursed.

$$\begin{array}{r}
 \text{_____} \quad \text{Mileage from home to } \textit{temporary} \text{ duty station} \\
 - \quad \text{_____} \quad \text{Mileage from home to } \textit{permanent} \text{ duty station} \\
 \text{_____} \quad \text{Allowable mileage} \\
 \times \quad \text{_____} \quad \text{Standard mileage rate from Appendix A} \\
 \text{_____} \quad \text{Amount you may claim for reimbursement}
 \end{array}$$

! Important: Your daily commute between your residence and your permanent duty station is *not* considered local travel. Getting to work is your responsibility; therefore, you may not claim that mileage.

7-1.1.1.3 Reimbursement for Local Travel

a. For Employees Using the eTravel System

An employee who uses the eTravel system to claim regular travel reimbursements must also use the eTravel system to claim local travel reimbursements of \$15 or more. The eTravel system will reimburse the employee through direct payment to the employee's bank account via electronic funds transfer. A check will be issued to bargaining unit employees not using EFT.

If a claim for local travel reimbursement is less than \$15, the employee should accumulate claims until the cumulative total reaches \$15 or more before submitting an eTravel report. However, the employee

should accumulate claims for just one accounting month before submitting an eTravel report, even if at the end of the accounting month the cumulative total is less than \$15.

b. **For Employees Not Using the eTravel System**

An employee not using the eTravel system to claim regular travel reimbursements should submit all claims for local travel reimbursement using PS Form 1164, *Claim for Reimbursement for Expenditures on Official Business*. The employee will receive reimbursement by cash or check.

7-1.1.2 **Regular Travel Within the Contiguous United States**

If you are on regular travel within the contiguous United States, including any overnight trips within a 50-mile radius of your permanent duty station, your daily expenses are reimbursed at the per diem rate for that area. The eTravel system will compute your per diem for you based on the temporary duty station location and the number and type of meals to be deducted that you enter on the per diem expense line entry. See 7-4 for information on calculating per diem if you are not using the eTravel system.

7-1.1.3 **International Travel**

If you are traveling to another country, your daily expenses are reimbursed at the per diem established by the Department of State for the areas where you are traveling. These rates are published monthly by the Department of State. The eTravel system will compute your per diem for you based on the temporary duty station location and the number and type of meals to be deducted that you enter on the per diem expense line entry. To claim your standard per diem, you do *not* need receipts or an itemized list of expenses. Your trip must be preauthorized.

7-1.2 **According to the Duration of Your Trip**

7-1.2.1 **Travel Completed Within 12 Hours During the Same Day**

If you are in travel status for less than 12 hours during the same calendar day, no per diem is allowed.

7-1.2.2 **Travel Lasting More Than 12 Hours but Less Than 24 Hours With or Without Lodging**

Without Lodging — If you are in a travel status for 12 hours but less than 24 hours, you are reimbursed 75 percent of a full day's per diem at the rate listed for your travel destination.

With Lodging — If you are in a travel status for 12 hours but less than 24 hours over a 2-day period and lodging is required, you are reimbursed 75 percent of the 2 days per diem at the rate listed for your travel destination.

7-1.2.3 Extended Duty Assignments or Details

If you are required to be away from your permanent duty station for more than 6 months, the Postal Service may pay the less expensive of the following:

- a. Per diem.
- b. The expenses for transporting your immediate family and household goods. This cost must be less than the estimated per diem for the entire period.

Only one of the above benefits may be authorized.

7-2 What Per Diem Includes

Per diem includes the following expenses:

- a. Meals.
- b. Incidental expenses, such as fees, and any tips to waiters, bellhops and porters, laundry and cleaning expenses.
- c. Laundry and dry cleaning.

7-3 How Per Diem Works

7-3.1 The Per Diem Calculation

On the first day of your trip, you are reimbursed 75 percent of the daily per diem rate of your destination, regardless of the time that you left to go on official travel. On the last day of your trip, you are reimbursed 75 percent of the daily per diem rate of the last destination of your trip regardless of the time that you returned to your home or duty station. The location of your permanent duty station or residence is *not* considered a destination for per diem purposes.

If your trip has a single temporary duty station destination, the per diem for the entire trip is that of your temporary duty station destination. For example: if you travel to Denver, CO, for a 3-day meeting, your per diem for the entire trip is at the rate for Denver.

If your trip has multiple temporary duty station destinations, the duty station destination where you end the day determines the per diem rate for the entire day. For example: if you travel from Washington, DC, to Minneapolis, MN, for a morning meeting and then travel on to St. Louis, MO, that afternoon for business, and you spend the night in St. Louis, you are reimbursed at the rate for St. Louis for the entire day.

7-3.2 Different Types of Rates

7-3.2.1 According to Your Destinations

Some areas that you travel to are more expensive than others. Per diem rates are set to reflect this difference.

The high-cost rates are in Appendix A.

If you travel to several areas with different rates in the same trip, you will need to use different rates for each area. See 7-4.2.1.2 for more information.

7-3.2.2 According to Whether Meals Are Provided

If meals are provided at no cost to you or at a nominal fee, you must reduce the per diem by an appropriate amount.

For example, meals might be provided to you by any of the following:

- a. If you stay with your immediate family while performing temporary duty at a former permanent duty station from which your family has not moved, you must reduce the cost of per diem for any meals they provide.
- b. The sponsors of a meeting, conference, or training session.
- c. The Postal Service Technical Training Center in Norman, OK, or the Management Academy in Potomac, MD.
- d. An agency of the federal government.

The amount by which you should reduce your per diem varies according to the meal provided and whether you are traveling in an average-cost or high-cost area of the United States. If you are traveling to a foreign country, you must reduce the per diem by a percentage instead of by a specific amount. See Appendix A for the current amounts or percentages. The eTravel system calculates per diem for you. You enter the number of breakfasts, lunches, and/or dinners provided in the appropriate fields of the per diem expense type entry.

7-4 Policy for Calculating Per Diem

Although the fundamental concept of per diem is straightforward, travel isn't. When you travel to several areas in one trip, each with different per diem rates, when must you switch from one rate to another? How do you handle combining official travel with annual leave? What about nonworkdays? Are you eligible for per diem then? This section covers the details on how to calculate per diem in a variety of circumstances.

7-4.1 Determining the Beginning and End of Your Official Travel Status

7-4.1.1 Standard Policy

When calculating per diem allowances, your official travel begins when you leave your permanent duty station, home, or other authorized point, and ends when you arrive back at your permanent duty station, home, or other authorized point. Official travel may include nonworkdays.

! Important: If your travel status is interrupted for any reason, you must clearly document these periods on your expense report.

7-4.1.2 Policy for Nonworkdays While in a Travel Status

If you are en route to or from a temporary duty station on a nonworkday, you are entitled to per diem (75 percent of the daily rate) for the day.

If you are in travel status on a nonworkday but are not en route to or from your permanent duty station or home, you are entitled to per diem for the full day.

7-4.1.3 Policy for Annual Leave

If you take annual leave while in a travel status, the following rule applies:

If you take 4 hours or less of annual leave, you are reimbursed per diem for the full day.

If you take more than 4 hours of annual leave, you are not reimbursed per diem for the day.

If you take more than 4 hours of annual leave on the day immediately before or after a nonworkday, you are not reimbursed per diem for the nonworkday.

To enter this per diem into eTravel, you should split the per diem by leg into 2 entries. The first entry should use the start date of travel, and include the check box for includes first day of travel. The second per diem entry should start on the day that per diem resumes, and include the checkbox for includes last day of travel. Trip length on both entries should be 24 hours or longer, and the calendar count should exclude the day for which per diem is not being paid.

7-4.1.4 Policy for Sick Leave

You are allowed per diem for any days of sick leave that you take while traveling.



Reminder: If you take more than 3 calendar days as sick leave, you must provide a physician's certificate.

If you are hospitalized while in travel status and you are reimbursed for hospital expenses under any health benefit plan offered by the Federal Employees Health Benefit Act of 1959, the Postal Service reimburses you for

any meals and lodging for which you already paid but didn't use because of your hospitalization.

7-4.2 Determining the Rates to Use

7-4.2.1 For Travel Within the Contiguous United States

7-4.2.1.1 Average-Cost Versus High-Cost Areas

Because some areas are more expensive than others, the rates for those areas are higher than the standard rate in effect for average-cost areas.



Reminder: If you travel to several areas with different rates in the same trip, you may need to use different rates for each area. See 7-4.2.1.2.

7-4.2.1.2 When Traveling Between Average- and High-Cost Areas

When you travel from an average-cost area to a high-cost area or vice versa, the per diem rate for the entire day becomes that of your final destination for the day.

If You Are . . .	Then . . .
a. Leaving your home duty station	Use the per diem rate of your first temporary duty station destination.
b. Traveling between duty station destinations	Use the rate of your next temporary duty station destination. Change to this rate at the beginning of the day of your departure.
c. Returning to your home duty station	Use the per diem rate of your last temporary duty station destination prior to returning home.



Reminder: Be sure to reduce the per diem rate for any meals that you received at no cost or at a nominal fee. Complimentary breakfast provided by hotels are not claimed as a meal deduction. On eTravel system under expense type "Per Diem," click in the field labeled "# of Breakfast Provided," and enter number. Do the same in fields labeled "# of Lunches Provided," and "# of Dinners Provided."

7-4.2.2 For International Travel

For international travel, you must use the current rates provided monthly by the Department of State.

If You Are . . .	Then . . .
a. Leaving your home duty station	Use the per diem rate of your first temporary duty station destination.
b. Traveling between duty station destinations	Use the rate of your next temporary duty station destination. Change to this rate at the beginning of the day of your departure.
c. Returning to your home duty station	Use the per diem rate of your last temporary duty station destination prior to returning home.

SNOW AWARD

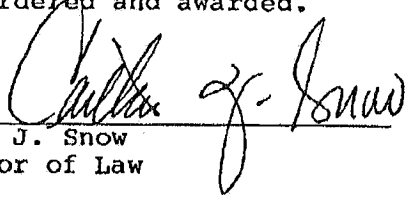
I90V-4I-C 94005141

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

NATIONAL ARBITRATION PANEL

IN THE MATTER OF ARBITRATION)
)
 BETWEEN)
) ANALYSIS AND AWARD
 UNITED STATES POSTAL SERVICE)
)
 AND) Carlton J. Snow
) Arbitrator
 AMERICAN POSTAL WORKERS UNION)
 (Travel Time Compensation)
 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.

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.

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

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.

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.

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

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, 87 LRRM 1700 (1974).)

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

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

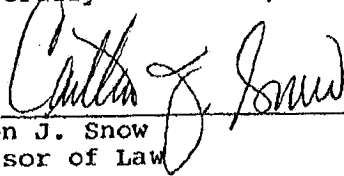
The question needing to be determined in this case as well as those held in abeyance is fact-based. It is necessary to determine when a grieving employee or union obtained either actual or constructive knowledge that contractual rights had been violated. If such notice was not received within 14 days 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

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.

Respectfully submitted,



Carlton J. Snow
Professor of Law

Date: March 28, 1998



American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

Leon Tatum
National Business Agent
Oklahoma City
405-631-9733 (Office)
405-634-2192 (Fax)

October 27, 2009

TO: State and Local Presidents, Wichita Region

RE: PTF Travel under Hub Clerk Memo

Please see enclosed my position letter to the Manager, Central Plains District Labor, on the APWU's position on PTF compensable travel when assigned to other offices. Also enclosed are numerous Step 4s, MOUs and applicable USPS Handbook and Manual excerpts on this issue. Please ensure these are properly cited when developing your grievance.

Any questions, please feel free to contact this office as necessary.

In Union Solidarity,

Leon Tatum
NBA Clerk Division, APWU

LT/cb
opeiu
afl-cio

National Executive Board

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Robert C. "Bob" Pritchard
Director, MVS Division

Sharyn M. Stone
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Mike Gallagher
Eastern Region Coordinator

Elizabeth "Liz" Powell
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Ken, per my emails last week on PTF's and compensable travel, I am enclosing, for your reference, the following:

Step 4 Q90C-4Q-C 93034651

This is the S-4 that created the Hub Clerk

Step 4 H4C-4A-C 10349

This S-4 defines the issue for entitlement for pay within a 50-mile radius and what is a "local commuting area". The agreed upon language states: ***"including both whether the travel involved is within a distance of fifty miles AND whether it is within the suburban area immediately surrounding the employee's duty station"***.

Step 4 H4N-3W-C 17913

This S-4 states: ***"PTF's should not be required to end their tour and then report to another station to continue working without being compensated, as provided for in 438.132 of the ELM"***.

F-15 Chapter 7-1.1.1 Local Travel

MOU Re: Use of Privately Owned Vehicles Step 4 H7C-NA-C 6

Memo from Regional Counsel USPS

This memo states: ***"Unless there is a contract between the employee and the Postal Service for the use of the private vehicle, there could NEVER be any circumstance in which the Postal Service could order the***

employee to use his private vehicle. If such order were given, the employee would be entitled to refuse to obey".

The APWU also states the following ELM, F-21, F-15 and EL-301 provisions are clearly applicable:

ELM 444.21 *"All time which management offers or permits an employee to work".*

ELM 438.11a *"Travel time is time spent by an employee moving from one location to another during which no productive work is performed and excluding the normal meal time if it occurs during the period of travel".*

ELM 438.11b *"Local commuting area-the suburban area surrounding the employee's official duty station AND within the radius of 50 miles".*

ELM 438.133 A. Rule *"Except as stated in the next sentence, time spent at any time during a single service day by an eligible employee who 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."*

F-21 Section 261.11 *"Travel time is compensable time spent by an eligible moving between one work facility and another, or between home and a work facility other than the employee's official duty station during which no productive work is performed and excluding the normal meal time if it occurs during the period of travel."*

F-21 Section 261.12

F-21 Section 261.13 *"Travel time performed by eligible employees APWU also believes there is a very fine line between "volunteering" will be considered work hours".*

F-21 Section 261.14

F-21 Section 261.151

EL-301 Exhibit 110 *Defining the employee's official duty station*

The issue of whether a PTF who VOLUNTEERS for a Hub Clerk assignment is compensated for travel time and/or mileage is now at the national level.

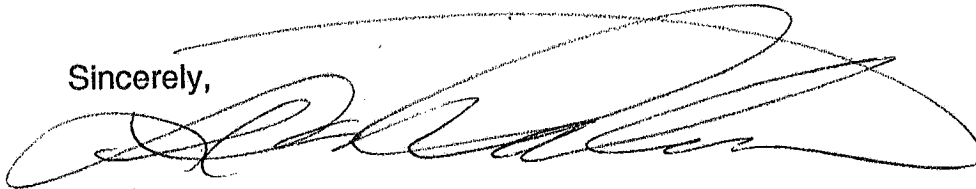
Q00C-4Q-C 04184581

The APWU also believes there is a very fine line between "volunteering" and "coercion" and "intimidation" and "favoritism" and "arbitrary and capricious". So much so, that these issues will all be addressed and grieved at the local level as the fact circumstances warrant.

As you can see, we believe the APWU's position on compensable travel is clearly defined and established. A copy of this letter and all applicable citations will be sent to each local APWU president to ensure appropriate contract provisions are followed.

Any questions or concerns please feel free to contact me at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "Leon Tatum", written over a large, loopy flourish that extends across the width of the signature area.

Leon Tatum
NBA Clerk Division, APWU

