

UNITED STATES POSTAL SERVICE

Washington,

DATE: October 15, 1993
OUR REF: LR120:DStanton:br:20260-4140
SUBJECT: Mittenthal Award on Compensability of Travel Time

TO: Area Managers, Customer Services
Area Managers, Processing and Distribution
Managers, Human Resources, All Areas
Managers, Human Resources, All Districts

National Arbitrator Richard Mittenthal issued an award in Case No's H7T-3W-C 12454, et al. on April 12, 1993, which addressed the question of how time spent in travel away from home overnight should be treated for pay purposes. Mittenthal's decision was based on his interpretation of the proper reading of ELM Sections 438 and 444. Grievances held pending resolution of the National Level travel cases can be resolved by providing lump sum payments in accordance with the attached Memorandum of Understanding.

On a prospective basis the Award, which provides difficult reading, should be applied in the following fashion:

1. Travel time spent by an eligible Postal Service 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 as work time if it coincides with the normal work hours for a bargaining-unit employee's regular bid job, whether on a scheduled or non-scheduled day, and regardless of his or her schedule while away from the home installation, subject to the limitations of ELM 438.141 and 438.142. This is consistent with past postal practice and policy.
2. Travel time spent by an eligible Postal Service 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 not compensable as work time if it occurs outside the normal work hours for a bargaining-unit employee's regular bid job, whether on a scheduled or non-scheduled day, and

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regardless of his or her schedule while away from the home installation. This much again is consistent with past practice and policy. As a result of the Mittenthal award however, such travel time must be considered "actual work" for purposes of determining entitlement to overtime pursuant to the Fair Labor Standards Act (FLSA).

3. FLSA overtime is provided for all hours of actual work in excess of 40 hours in any FLSA workweek. As stated in his award:

[T]he treatment of travel time outside 'normal work hours' as 'actual work' under 444.22a will have certain pay consequences, other hours being paid at FLSA overtime rather than straight time. This does not mean, however, that such travel time has itself become compensable. Opinion, at 11-12.

As a consequence, this award does not require that time spent in travel away from home overnight outside of an employee's normal work schedule be compensated as work hours. It does require, however, that the time spent in such travel status be counted towards determining whether or not an employee worked more than forty hours for purposes of determining eligibility for FLSA overtime. The fact that an employee has such noncompensable travel hours could result in a FLSA overtime payment. This type of payment is required when such travel hours, when added to the employee's work hours, exceed forty work hours in a FLSA workweek.

By November 3, 1993, please provide the names and Social Security Numbers of all employees who are entitled to a lump sum payment under the MOU to: EMMA HOM, ACCOUNTING, ROOM 8831, 475 L'ENFANT PLAZA, SW, WASHINGTON, DC 20260-5242.


Timely filed grievances which have either not been previously settled, or are not settled by the attached MOU will be resolved under the terms of the Mittenthal Award. Therefore, it will be necessary to manually track non-compensable travel time by bargaining unit employees occurring since April 12, 1993.

The payroll/time and attendance systems will be modified to record and process non-compensable travel time as a separate hours code. Additional information will be provided for

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processing pay adjustments for the retroactive timeframe as well as recording such data into the time and attendance systems for prospective weeks.

Please ensure this decision is carefully applied to ensure proper compensation is provided in travel situations. If you need further information, please contact Dave Stanton of my staff at (202) 268-5125.



Anthony J. Vegliante
Manager
Grievance and Arbitration
Labor Relations

attachment

MEMORANDUM OF UNDERSTANDING
 BETWEEN THE
 UNITED STATES POSTAL SERVICE
 AND THE
 AMERICAN POSTAL WORKERS UNION, AFL-CIO

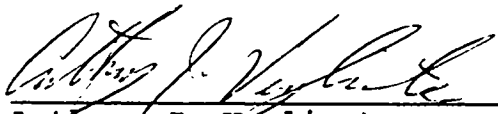
Re: Application of Arbitrator Mittenthal's
 Award in Case Nos. H7T-3W-C 12454 et al.

In order to resolve outstanding grievances that were held pending possible application of Case Nos. H7T-3W-C 12454 et al. the parties have agreed to the following:

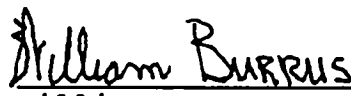
Any timely-filed grievance which can be resolved by application of Mittenthal's decision in Case No. H7T-3W-C 12454 et al. which has not been settled as of the signing of this Memorandum shall be settled by paying the grievant(s) who travelled outside of their schedule a lump sum payment of \$150.00 for each round trip.

Class action grievances shall be settled by paying each member of the class who travelled outside of their schedule, a lump sum payment of \$150.00 for each round trip.

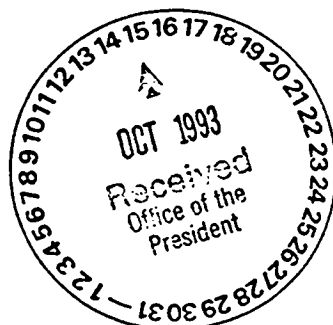
This settlement does not prejudice either parties position concerning the application of the Mittenthal award.



 Anthony J. Vegliante
 Manager
 Grievance and Arbitration
 Labor Relations

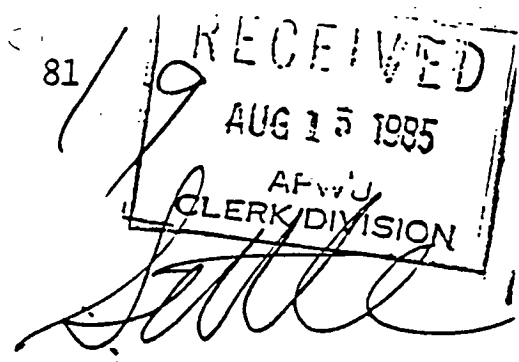


 William Burrus
 Executive Vice President
 American Postal Workers
 Union, AFL-CIO





UNITED STATES POSTAL SERVICE
475 L'Enfant Plaza, SW
Washington, DC 20260-0001



AUG 14 1985

Mr. James Connors
Assistant Director
Clerk Craft Division
American Postal Workers
Union, AFL-CIO
817 14th Street, NW
Washington, D.C. 20005-3399

Re: L. Hammond
Columbus, MS 39701
H1C-3Q-C 39681

Dear Mr. Connors:

This letter supersedes my letter of March 14, 1985.

On February 2, 1985, we met to discuss the above-captioned grievance at the fourth step of our contractual grievance procedure.

The question in this grievance is whether the grievant was properly required to travel between two locations on his own time.

During our discussion, it was mutually agreed that the following would represent a full settlement of this case:

As the employees had not been relieved from duty for a period of at least 1 hour (F-21, 260.153), management shall compensate the employees named in the grievance at the applicable rate for the amount of time requested by the union in the "corrective action" contained on the Step 2 appeal form.

In determining the total hours to be paid, management will figure from 14 days prior to the filing of the grievance at Step 1.

Mr. James Connors

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

The time limits were extended by mutual consent.

Sincerely,

Barbara J. Lerch James Connors

Barbara J. Lerch
Labor Relations Department

James Connors
Assistant Director
Clerk Craft Division
American Postal Workers Union,
AFL-CIO