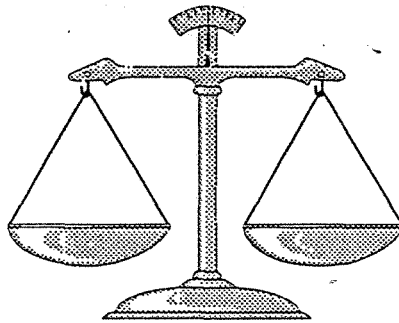
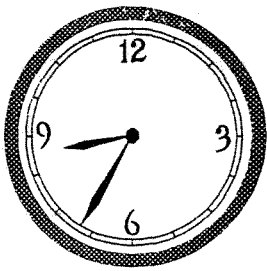
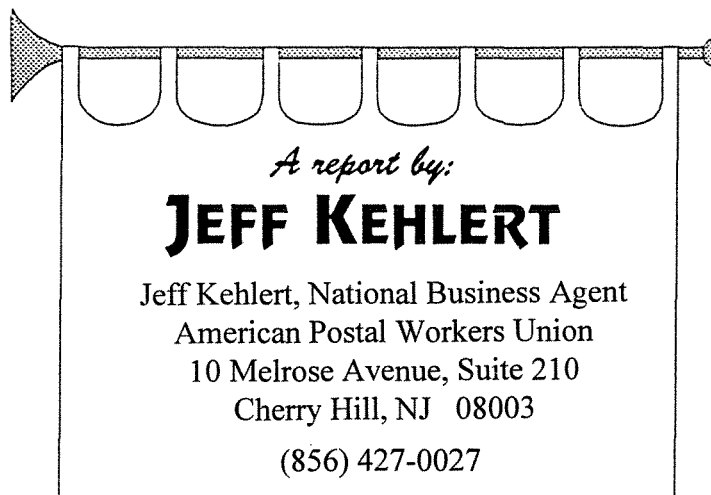


Out-of-Schedule Compensation

*Strategies for winning pay when
our Collective Bargaining Agreement is violated*



American Postal Workers Union, AFL-CIO

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OUT-OF-SCHEDULE COMPENSATION

Strategies for winning pay when our Collective Bargaining Agreement is violated

Violations of our Collective Bargaining Agreement in recent years have increasingly included instances in which employees are denied out-of-schedule compensation. When Management either changes a full-time regular's schedule with or without proper notice or fails to timely convert a part-time flexible to regular or fails to timely place a successful bidder into a new preferred duty assignment or improperly schedules a full-time flexible in an untimely fashion, the employee should be entitled to out-of-schedule compensation.

This report, my latest as a Clerk Craft National Business Agent, has as its purpose to place into an easily accessible package the contractual provisions, arbitral reference, Collective Bargaining Agreement interpretations and arguments necessary to enable us to successfully pursue Labor/Management negotiations and grievance proceedings whenever employees are due out-of-schedule compensation.

I. What is OUT-OF-SCHEDULE COMPENSATION?

Historically, in our Collective Bargaining and Grievance/Arbitration relationship with the United States Postal Service, out-of-schedule compensation has meant, for the most part, out-of-schedule premium pay. We have been successful in obtaining out-of-schedule premium pay (50% of the base hourly pay rate) as compensation for out-of-schedule violations. Part 434.611 of the *Employee and Labor Relations Manual* states:

434.6 *Out of Schedule Premium*

434.61 *Policy*

434.611 *"Out of schedule premium" is paid to eligible full-time bargaining-unit employees for time worked outside of, and instead of, their regularly scheduled workday or workweek when employees work on a temporary schedule at the request of management. Such notice is not required for "pool-type" employees.*

Part 434.62 identifies those Bargaining Unit employees eligible for out-of-schedule premium pay:

434.62 *Eligibility*

434.621 *Exhibit 434.621 indicates those employees who are eligible to receive "out of schedule premium" while working a qualifying temporary schedule within a bargaining unit or while detailed to a nonbargaining position. See exceptions in 434.622.*

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Exhibit 434.621 identifies full-time regular employees as eligible for out-of-schedule pay.

Part 434.622 goes on to list the conditions under which eligibles are not entitled to out-of-schedule premium pay:

434.622 *Eligible employees are not entitled to "out-of-schedule premium" under the following conditions:*

- a. When detailed to a postmaster position as officer in charge.*
- b. When detailed to a rural carrier position.*
- c. When detailed to an ad hoc position, for which the employee applied and was selected, when the core responsibilities of the position require work on an irregular schedule.*
- d. When detailed to either a bargaining unit or nonbargaining position in grade 19 and above.*
- e. When attending a recognized training session which is a planned, prepared, and coordinated program or course.*
- f. When assigned to light duty according to the provisions of the collective-bargaining agreement or as required by the Federal Employee Compensation Act, as amended.*
- g. When allowed to make up time missed due to tardiness in reporting for duty.*
- h. When in accord with and permitted by the terms of a bid.*
- i. When a request for a schedule change is made by the employee for personal reasons and is agreed to by the employee's supervisor and shop steward or other collective-bargaining representative.*
- j. Employees in the clerk-craft who are detailed to nonbargaining positions.*

(Similar language is also included in the F-22 Handbook, *PSDS Time and Attendance* under parts 232, 232.1, 232.11, 232.3, 232.31 and 232.32.)

Although we have often met with success in obtaining out-of-schedule premium pay, we must look further at the *Employee and Labor Relations Manual* and F-22:

434.612 *Payment of "out of schedule premium" is dependent on timely notice being given by management of the temporary schedule change, as follows:*

- a. If notice of a temporary change is given to an employee by Wednesday of the preceding service week, even if this change is revised later, the employee's time can be limited to the hours of the revised schedule and*

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"out of schedule premium" is paid for those hours worked outside of, and instead of, his or her regular schedule.

- b. If notice of a temporary schedule change is not given to the employee by Wednesday of the preceding service week, the employee is entitled to work her or his regular schedule. Therefore, any hours worked in addition to the employee's regular schedule are not worked "instead of" her or his regular schedule. Such additional hours worked are not considered as "out of schedule premium" hours. Instead, they are paid as overtime hours worked in excess of 8 hours per service day or 40 hours per service week.**

(Similar language also exists in the F-22 under part 232.12 a and b)

As you can see, Out-of-Schedule Premium Pay is dependent upon timely notification..." to an employee by Wednesday of the preceding service week..." Part 434.612b goes on to state, "If notice of a temporary schedule change is *not given* to an employee by Wednesday of the preceding service week, the employee is entitled to work his or her regular schedule." That is where compensation other than premium pay is argued and applied.

The following are illustrations for clarification of specific out-of-schedule premium pay and out-of-schedule compensation instances:

1. Employee June is given notice that her schedule of 3:30pm to 12:00pm is being temporarily changed to 1:30pm to 10:00pm. Notice is given on a Tuesday of the week prior to the required change. June works from 1:30pm to 10:00pm the following week and receives 6 (six) hours straight time pay for each day and two hours each day at the time and one-half rate ($1\frac{1}{2}$ x regular pay) as out-of-schedule premium pay. The period worked from 1:30-3:30pm is out-of-schedule premium pay. The period of 3:30 to 10:00pm is straight time pay. In this scenario, there is no violation of the Collective Bargaining Agreement. Notice was contractually proper and compensation was contractually proper (parts 434.611 and 434.612a of the Employee and Labor Relations Manual).

2. Employee Tom is told on Friday that starting the following Monday, his regular schedule of 3:30pm to 12:00pm is being changed to 1:30pm to 10:00pm. The following week, Tom works 1:30pm to 10:00pm and is paid 6 (six) hours straight time pay per day and two hours each day at the time and one-half rate as out-of-schedule premium pay. In this scenario, the Collective Bargaining Agreement **is violated** because the timely Wednesday notification requirement was not met.

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The provision that should have been applied to Tom is Part 434.612b which states (again) in part:

434.612b *If notice of a temporary schedule change is not given to the employee by Wednesday of the preceding service week, the employee is entitled to work her or his regular schedule.*

Tom was **entitled** to work his regular schedule that week when he worked 1:30pm to 10:00pm. Management should have brought him in for **overtime** from 1:30pm to 3:30pm with Tom working his regular shift of 3:30pm to 12:00pm. This did not happen. Tom was denied the work of two hours of his regular shift, 10:00pm to 12:00pm.

As remedy for the violation, Tom is entitled to pay of two hours at the straight time rate for each day he was denied those two hours of his regular, fixed schedule, applying part 434.612b of the Collective Bargaining Agreement to the fact circumstances. The straight time pay is identified as *guarantee time pay*.

Our argument for straight time pay/guarantee time pay as part or all of an out-of-schedule compensation remedy is derived from the fact that a full-time regular is entitled to a **regular work schedule** or basic work week. Part 432.31 defines basic work week:

432.31 *Basic Work Week. The basic work week for full-time bargaining-unit employees is defined in the respective Labor Agreements. Postmasters, Postal Inspectors, and exempt employees are assigned as needed. Otherwise, the basic work week consists of five regularly-scheduled 8-hour days within a service week.*

Note: The daily 8-hour schedule may not extend over more than 10 consecutive hours.

The Employee and Labor Relations Manual goes on to state that employees are paid for periods in which they are not permitted to work during their entitled regular work schedule or basic work week. These provisions are known as Guarantee Time:

432.6 *Guarantee Time*

432.61 *Explanation. Guarantee time is paid time which is not worked under the guarantee provisions of collective bargaining agreements for periods when an employee has been released by the supervisor and has clocked out prior to the end of a guarantee period. For example, most full-time regular employees in the bargaining units are guaranteed 8 hours of work (or pay in lieu) if they are called in on their nonscheduled day to work. If such an employee works 6 hours and is then told*

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by the supervisor to clock out because of lack of work, the remaining 2 hours of the employee's 8-hour guarantee is recorded as guarantee time. It is not possible for an employee to earn guarantee time as long as he or she is on the clock.

Thus, in Tom's case, his out-of-schedule compensation remedy is two hours per day straight time pay/guarantee time pay. A chart on the schedules and applicable out-of-schedule compensation in Tom's case is helpful:

Normal, Regular Schedule						
Sat	Sun	Mon	Tues	Wed	Thurs	Fri
NS	NS	3:30-12pm	3:30-12pm	3:30-12pm	3:30-12pm	3:30-12pm
Revised, Violation Schedule						
Sat	Sun	Mon	Tues	Wed	Thurs	Fri
NS	NS	1:30-10pm	1:30-10pm	1:30-10pm	1:30-10pm	1:30-10pm
Proposed Out-of-Schedule Compensation Entitlement						
Sat	Sun	Mon	Tues	Wed	Thurs	Fri
0 hours	0 hours	2 hours STP/GTP	2 hours STP/GTP	2 hours STP/GTP	2 hours STP/GTP	2 hours STP/GTP
* STP/GTP - straight time pay/guarantee time pay						
** OTP - overtime pay						
***NS - non-scheduled day						

Remember, the two hours straight time pay/guarantee time pay out-of-schedule compensation is due to the fact the employee was entitled to work his regular schedule and did not from 10:00pm to 12:00pm each day.

Another example of where an employee is entitled to out-of-schedule compensation is as follows:

3. Employee Donna is converted from part-time flexible to unencumbered (unassigned) full-time regular. She is given a schedule of 4:00pm to 12:30am with Sunday/Wednesday as non-scheduled days. She has no bid job and remains in the schedule for three weeks.

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During that third week, Management gives Donna written notice that her new schedule as an unassigned (unencumbered) full-time regular will be 1:00am to 9:30am with Saturday/Thursday as non-scheduled days. The new schedule is to begin on the following Saturday.

In this case, the employee is entitled to out-of-schedule compensation for being required to work a schedule other than the unencumbered/unassigned full-time regular schedule she was assigned when she was converted. This change by Management is not a "temporary change" as provided for in part 434.612a of the *Employee and Labor Relations Manual*; that provision is not applicable. We again turn to part 434.612b because this is not a temporary change and the employee is entitled to work **her regular schedule**.

The question as to whether or not an unencumbered/unassigned full-time regular is entitled to the fixed schedule protections of 434.6 and, in particular, 434.612 a & b is found in the EL-401, *Supervisor's Guide to Scheduling and Premium Pay* in part D5:¹

D. Out of Schedule Premium

5. Unassigned Regular Full-Time Employees Out-Of-Schedule.

All unassigned regular full-time employees must be assigned regular work schedules. When not assigned to a posted position, employees assume as their regular work schedule the hours worked in the first week of the pay period in which the change to unassigned regular occurred. When a part-time flexible (PTF) employee is converted to full-time regular and is not assigned to a full-time bid position, the employee becomes an unassigned regular. (See Article 7, Section 3 of the National Agreement.)

These employees are assigned regular work schedules and are eligible for out-of-schedule premium. Temporary rescheduling must be compensated at the appropriate premium rate(s).

A management-directed permanent assignment of an unassigned regular to a specific posted position, which went unbid in accordance with provisions in the National Agreement, requires no payment of out-of-schedule premium.

6. Rescinded Schedule Changes. Temporary changes in schedule can be rescinded at any time up to the day before the schedule change without incurring the out-of-

¹It must be noted that the EL-401 should be used as a guideline in support of our position in this regard and is not part of Article 19's Handbooks and Manuals (See Step 4 decision, addendum #3.) (although various arbitration decisions in this report do incorporate the EL-401).

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schedule overtime pay liability. The reason for paying out-of-schedule premium is for the inconvenience to the employee which is eliminated if the schedule change is rescinded in advance.

Eight hours per day additional applicable overtime premium for the schedule she worked because each day is considered overtime in addition to her **regular** schedule. Eight hours per day straight time pay/guarantee time pay for the regular schedule she was entitled to but not permitted to work. Each non-scheduled day she worked would be eight hours overtime pay and each normally regularly scheduled day she was not permitted to work would be eight hours straight time pay/guarantee time pay.

Normal, Regular Schedule						
Sat	Sun	Mon	Tues	Wed	Thurs	Fri
4-12:30am	NS	4-12:30am	4-12:30am	NS	4-12:30am	4-12:30am
Revised, Violation Schedule						
Sat	Sun	Mon	Tues	Wed	Thurs	Fri
NS	1-9:30am	1-9:30am	1-9:30am	1-9:30am	NS	1-9:30am
Proposed Out-of-Schedule Compensation Entitlement						
Sat	Sun	Mon	Tues	Wed	Thurs	Fri
8 hours STP/GTP	8 hours OTP	8 hours STP/GTP 8 hours OTP	8 hours STP/GTP 8 hours OTP	8 hours OTP	8 hours STP/GTP	8 hours STP/GTP 8 hours OTP
* OTP - over time pay ** STP/GTP - straight time pay/guarantee time pay ***NS - non-scheduled day (OTP is an additional premium to the straight time pay already received for those days so cited.)						

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The "proposed" entitlement is titled that way because this remedy may seem excessive in the minds of some arbitrators. However, careful reading and evaluation of the applicable Collective Bargaining Agreement provisions makes our arguing for that remedy a reasonable and sound approach.

A further example of where an employee is entitled to out-of-schedule compensation:

4. Full-time regular clerk Joan bids on a job and is declared successful bidder. This occurs on June 1. Yet, she is not placed into the bid job until September 1. The bid job the clerk occupies when she is declared successful bidder has as its schedule 9:00am - 5:30pm with Sat/Sun non-scheduled days. The new bid job she is declared successful for has as its hours 7:00am - 3:30pm with Sat/Sun non-scheduled days. Article 37.3F2 states:

The successful bidder must be placed in the new assignment within 21 days except in the month of December. The local agreement may set a shorter period.

(In this case, the LMOU does not set a shorter period.)

Because employee Joan was required to have been placed into her new bid assignment not later than June 22, she works out of the schedule she should and would have had under her new bid from June 23 through August 31. This is not a temporary schedule change situation, so 434.612a is not applicable. Conversely, *ELM* 434.612b is again applied and Clerk Joan is entitled to two hours straight time pay/guarantee time pay per day and an additional overtime premium of two hours per day.

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Here is the chart:

Schedule of bid job entitled to on June 23						
Sat	Sun	Mon	Tues	Wed	Thurs	Fri
NS	NS	7-3:30pm	7-3:30pm	7-3:30pm	7-3:30pm	7-3:30pm
Schedule of bid job worked until August 31						
Sat	Sun	Mon	Tues	Wed	Thurs	Fri
NS	NS	9-5:30pm	9-5:30pm	9-5:30pm	9-5:30pm	9-5:30pm
Proposed out-of-schedule compensation entitlement						
Sat	Sun	Mon	Tues	Wed	Thurs	Fri
0 hours	0 hours	2 hours STP/GTP 2 hours OTP	2 hours STP/GTP 2 hours OTP	2 hours STP/GTP 2 hours OTP	2 hours STP/GTP 2 hours OTP	2 hours STP/GTP 2 hours OTP
* STP/GTP - straight time pay/guarantee time pay ** OTP - overtime pay ***NS - non-scheduled day (OTP is an additional premium to the straight time pay already received for those days so cited.)						

These out-of-schedule premium arguments must be applied whenever an employee is denied what should have been an entitled to work schedule. If a full-time regular is improperly denied a bid job under Article 37.3F1 or if a part-time flexible is improperly denied a conversion under Article 37.2D5, that employee, if entitled to the job, is **entitled to the schedule that goes with the job.**

Some listed examples of out-of-schedule compensation issues are:

Denial of bid by senior or best qualified full-time regular
Denial of promotion of part-time flexible under 37.2D5
Delay in placement into a bid under 37.3F2
Involuntary change of schedule - no prior Wednesday notice
Involuntary change of schedule - unassigned full-time regular (unencumbered)

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Involuntary change of schedule - unauthorized/unofficial training procedure
Involuntary change of schedule - training less than planned time frame
Improper reassignment excess to section's needs 12.5C4
Improper reposting (and subsequent reassignment) of non-junior incumbent's assignment, 37.3A7
Improper reversion
Improper reassignment of limited duty employee
Improper reassignment from bid job

FULL-TIME FLEXIBLES

One of the most misunderstood categories of career employees is the full-time flexible. The Collective Bargaining Agreement provisions applying to the creation of full-time flexibles and the scheduling of those employees are found on page 266 of the 1990-1994 Collective Bargaining Agreement:

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

Re: Maximization/Full-time Flexible - APWU

Where a part-time flexible has performed duties within his craft and occupational group within an installation at least 40 hours a week (8 within 9, or 8 within 10, as applicable), 5 days a week, over a period of 6 months, the senior part-time flexible shall be converted to full-time status.

This criteria shall be applied to postal installations with 125 or more man years of employment.

It is further understood that part-time flexibles converted to full-time under this criteria will have flexible reporting times, flexible nonscheduled days, and flexible reporting locations within the installation depending upon operational requirements as established on the preceding Wednesday.

The parties will implement this in accordance with their past practice.

Date: July 21, 1987

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As you can see, full-time flexible assignments **may only be created in offices of 125 or more man years of employment**. Full-time flexibles may have their schedules changed by the Wednesday preceding the upcoming service week. The F-22 Handbook provides special regulations for full-time flexibles:

232.2 Full-Time Flexible Schedule Employees

- 232.21** *Full-time flexible schedule employees (see Pages 186-187 of the National Agreement) are entitled to all provisions of the National Agreement except for the basic workweek (ELM, section 432.3). The full-time flexible schedule employee's reporting time, non-scheduled days, and work locations may change each week, as established on the preceding Wednesday.*
- 232.22** *SPC "F" is used to identify Full-time flexible schedule employees. The SPC "F" can be input using transaction B3, item change, but will be rejected if the EMR D/A code is not 13-4 or 11-0.*
- 232.23** *If the schedule of the preceding Wednesday is subsequently changed, the employee coded with SPC F is entitled to work the set schedule and is entitled to regular overtime for work outside of this schedule. Also, the employee is entitled to administrative leave for any unworked portion of a tour if released from duty, without working a full tour.*
- 232.24** *Inasmuch as these employees do not have a "basic workweek" as contemplated in the ELM, section 432.3, the out-of-schedule premium provisions in the ELM, section 434.6 do not apply. OOS Premium authorizations and adjustments will be rejected for all employees with SPC F. These will appear on the Employee Activity Report with an appropriate error signal.*

Full-time flexibles are **not** eligible for out-of-schedule premium pay since they do not have a basic work week. However, even if the schedule established the preceding Wednesday is changed, the full-time flexible is entitled to work the previously set schedule with overtime for hours worked outside that schedule. The full-time flexible is also paid Administrative Leave for any unworked portion of the tour if released from duty without working a full tour.

An example of a full-time flexible entitled to out-of-schedule compensation is as follows:

5. Employee Dan, a full-time flexible, is notified on Wednesday that his schedule for the following week is to be 12:30am - 9:00am with non-scheduled days of Sunday/Monday. On Thursday, the day after he was notified of his schedule, he receives a letter telling him the Wednesday schedule is canceled and replaced by a schedule of 10:00am to 6:30pm with Tuesday/Wednesday as non-scheduled days. He goes on to work the substitute schedule at the straight time rate; Management refuses to pay Dan for either overtime or administrative leave for the substitute schedule. Part 232.23 is applied for our grievance remedy:

232.23 *If the schedule of the preceding Wednesday is subsequently changed, the employee coded with SPC F is entitled to work the set schedule and is entitled to regular overtime for work outside of this schedule. Also, the employee is entitled to administrative leave for any unworked portion of a tour if released from duty, without working a full tour.*

Again, the remedy is substantial:

Eight hours per day additional applicable overtime premium for the schedule he worked because each day is considered overtime in addition to his **entitled Wednesday notification** schedule. Eight hours per day straight time pay/administrative leave pay for the schedule he was entitled to but not permitted to work. Each non-scheduled day he worked would be eight hours overtime pay and each normally entitled to scheduled day he was not permitted to work would be eight hours straight time pay/administrative leave pay.

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The chart looks like this:

Wednesday Schedule Established and Entitled						
Sat	Sun	Mon	Tues	Wed	Thurs	Fri
12:30am-9:00am	NS	NS	12:30am-9:00am	12:30am-9:00am	12:30am-9:00am	12:30am-9:00am
Post Wednesday Substitute Schedule						
Sat	Sun	Mon	Tues	Wed	Thurs	Fri
10:00am-6:30pm	10:00am-6:30pm	10:00am-6:30pm	NS	NS	10:00am-6:30pm	10:00am-6:30pm
Proposed Out-of-Schedule Entitlement						
Sat	Sun	Mon	Tues	Wed	Thurs	Fri
8 hours OTP 8 hours STP (administrative leave)	8 hours OTP	8 hours OTP	8 hours STP (Administrative leave)	8 hours STP (Administrative Leave)	8 hours OTP 8 hours STP (administrative leave)	8 hours OTP 8 hours STP (administrative leave)
* OTP - over time pay ** STP - straight time pay (administrative leave) ***NS - non-scheduled day (OTP is an additional premium to the straight time pay already received for those days so cited.)						

The parallels between our argument for straight time pay/guarantee time pay on one end and overtime pay on the other for full-time regular's (previously stated in this report) and Part 232.23 of the F-22 as it applies to full-time flexibles, are significant and useful.

Whether we term compensation for unworked portions of regular tours of duty for full-time regulars as guaranteed time pay, (ELM 432.6) administrative leave (ELM 519) or simply as straight time pay (ELM 433), the important point is that both full-time regulars and full-time flexibles are entitled to pay at the straight time rate under certain conditions if they are not permitted to work their entitled regular schedules. They are also entitled to overtime pay for hours worked outside their entitled work schedules.

ARBITRAL THOUGHT ON OUT-OF-SCHEDULE COMPENSATION

For the most part, arbitrators are very reluctant to award compensations which appear to be excessive or appear to unreasonably "enrich" employees - even where bonafide Collective Bargaining Agreement violations occur. Out-of-schedule compensation awards are no different. However, there are examples of arbitrators applying some imagination and even aggressive philosophy in out-of-schedule cases. The extent and blatant nature of the violation greatly affects whether or not an arbitrator will award substantial compensation.

Decisions range from arbitrators stating, yes, the Collective Bargaining Agreement was violated, but no monetary remedy is appropriate because such would amount to "unjust enrichment," to instances in which other umpires have awarded tens of thousands of dollars to an individual grievant.

To illustrate the varying degrees of arbitral thought—and positive results—along these lines, the following excerpts are included:

Arbitrator Zobrak
Case #E7C-2F-C 15685
Bid denial

Based on all of the foregoing, it is found that the Postal Service violated the Agreement when it added the typing requirement to Job Bid #15, thereby denying the senior qualified bidder the position. The Postal Service is directed to award the bid to the Grievant and make him whole for any difference in wages and benefits lost as the result of the improper awarding of the job bid to a

less senior qualified employee. The Grievant is also awarded out of schedule premium pay since the Bulk Mail Technician position had different non-scheduled days than the positions held by the Grievant pending the outcome of this grievance.

Arbitrator Cushman
Case #E4C-2F-C 4079
Difference in pay

We turn then to the remedy. The Postal Service contends in effect that if the Arbitrator should find a violation of the agreement that there is no remedy. The Postal Service addresses the Union's contention that out-of-schedule premium should be paid by stating that out-of-schedule pay is unwarranted and that the contractual provisions of

Article 8, Section 4B as implemented by the ELM 434.64 do not provide for the payment of out-of-schedule overtime under the circumstances presented in this case. The Postal Service asserts that there was no temporary schedule for which a Wednesday notice was required.

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The Arbitrator finds that the provisions of the ELM for out-of-schedule pay do not apply since management did not request that the Grievant work on a temporary schedule. However, the Grievant was wrongfully deprived of the opportunity to work a more desirable schedule than that of his LSM position. The Grievant's schedule as a Clerk was 3:30 p.m. to 12:00 midnight. The schedule of the Training Technician position was from 12:00 noon to 9:00 p.m. Moreover, the position of training technician would seem to have offered, as the Grievant testified, a better springboard for the pursuit of better positions in the future. As stated by Arbitrator McConnell in a similar situation in Case No. E4C-2D-C 10592, pay for time "not comprised within his old schedule is not unreasonable." The Grievant in this case should be compensated for the loss of more favorable hours of employment and the opportunity to use the Training Technician position as a springboard for career advancement. The Grievant should be compensated at straight time for the three and one-half hours per scheduled day not overlapped between the hours of his old job and his new position and for the period between the date upon which he would have commenced work in the training technician position if it had been awarded to him until he entered upon a new position at a higher level within the Postal Service plus interest.

Arbitrator Zack
Case #N1C-1N-C 41020
Bid Denial

DISCUSSION

The evidence shows that Sexton and Zabczyk both bid for Job #22, that Sexton has greater seniority than Zabczyk; and that based upon seniority the position should have been awarded to Sexton.

The Postal Service contends that the Grievant's tendency to Letters of Demand in the past and a reassignment away from a window clerk's position in February 1983 constituted an effective bar to his being granted the bid on Job 22 in September 1984. If there had been such an understanding or agreement that was to exist beyond the period from February 1983 to September 1984, in contravention of the Grievant's contractual seniority rights, it was incumbent on the Postal Service to prove the existence of such arrangement. That is particularly true if the surrender of contractual rights was to continue for an extended period. But the Postal Service failed to prove the existence of such agreement, let alone agreement on the duration of the bidding bar. Such a personal agreement, if shown, could be construed as a waiver of Sexton's right to invoke his contractual seniority rights. But in the absence of evidence of such commitment by Mr. Sexton, the conclusion must be that he was entitled to fill the Job 22 bid effective September 29, 1984, and be made whole for any earnings lost working outside the hours which would otherwise have been his.

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Arbitrator Stoltenberg
Case #E7C-2F-C 37153/37154
Reversion-improper notice

The Postal Service did, however, violate the Agreement at Article 37, Section 3A2, when it failed to post its reversion actions on the three disputed jobs. The Postal Service failure to post is established through the testimony of Supervisor Cook who straightforwardly admits that no posting was made. Critically, failure to post the

reversions and the reasons for such actions is an express violation of Article 37, Section 3A2. Accordingly, it must be found that the reversions of jobs 1M-2, 3M-26 and 3M-16 were improperly reverted. The Postal Service is directed to post these three jobs for bid and to fill them in accordance with the Agreement. Any reversion thereafter must be in accordance with the strictures of the Agreement. The successful applicants shall be paid any difference between levels of pay, if any, and all out of schedule pay.

Arbitrator Zumas
Case #E7C-2E-C 24974/29185
Training

After review of the record, it is this Arbitrator's finding that these grievances must be sustained. This decision is based upon the following:

1. While the provisions cited above, arguably, are ambiguous in the sense that the Service, in drafting these regulations, with subsequent

approval by the Union, did not contemplate a situation where a scheduled 8 hour training period was concluded in less than 8 hours and the trainees were sent back to the workroom floor to perform their assigned duties. However, construed strictly, the plain language indicates that out-of-schedule pay is not compensable during the time that the training is conducted. It follows, therefore, that if trainees are required to perform work during that scheduled training tour that is not related to training, there is entitlement to compensation at the out-of-schedule premium rate.

Arbitrator Condon
Case #E1C-2F-C 16877
Reversion

DISCUSSION AND FINDINGS

The Arbitrator has reviewed the testimony and evidence submitted by both parties. During the opening remarks of the Management Advocate, he readily admitted that an error was committed in reverting the Grievant's position. It should have

been abolished. However, it is Management's belief that it was merely a technical error and did not alter the final results of eliminating the position when the Post Office operations were moved from the old facility to the new facility. It is the Arbitrator's determination that the parties did, indeed, have a purpose in mind when they included definitions of Abolishment,

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Article 37, Section 1F and Reversion, Article 37, Section 1G in the National Agreement. It is my determination that the application of one term in place of the other is a violation of the jointly negotiated agreement. Since evidence submitted, and testimony offered, indicate that the duties of the Grievant were not abolished, I believe she should never have been directed to perform other duties or be canvassed for another position. The privileges related to seniority are quite meaningful and should be so honored by both parties. To ignore the Grievant's length of longevity with the Postal Service and subject her to a Part Time Flexible position both as a Letter Carrier and a Clerk in order to exercise her right to a Tour II position is difficult to accept. This is especially true when it is a fact that the duties of her original position have been, and still are, being assigned as a necessary part of the New Castle Post Office operation.

It is my determination that the Grievant should be returned to the duties of Job #90 with her original seniority date of September 27, 1975.

In regard to back pay for the period of time she was not in her original bid position, she is to be paid for out-of-schedule pay for all hours she worked out of her scheduled tour of duty in Job #90. The out-of-schedule is to be computed as provided for in Section 434.63 of the Employee and Labor Relations Manual. In addition, if there were any weeks wherein the Grievant was not assigned to work a full forty hours while assigned as a Part Time Flexible Letter Carrier or Clerk, she is to be paid for those hours less than forty at the straight time rate she would have earned in Job #90.

* * *

Arbitrator Eaton
Case #W4C-5K-C 42866/43344
Unassigned Regular

The Grievant was not assigned to a posted position. In that circumstance he is to assume as his "regular work schedule", and this provision seems quite clear, "the hours worked in the first week of the pay period in which the change to unassigned regular occurred." The change to unassigned regular occurred during pay period 5.

The hours worked during the first week of that pay period were the same hours worked during the second week, "hours" being interpreted to encompass the work week, including regular days off, as indicated above. Thus, the "regular work schedule" of the Grievant was established as a schedule providing Sunday and Monday as his scheduled days off. He is therefore entitled to out-of-schedule premium pay for all weeks during which his scheduled days off were Tuesday and Wednesday, rather than Sunday and Monday, until such time as proper schedule changes are made pursuant to provisions of the National Agreement and the EL-401 Handbook, or he is returned to his former schedule.

In the particular facts of this case it should be added that, had the Grievant's hours during the first week of pay period 5 been different from those during the second week (his first week

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as an unassigned regular), the result would be the same. This is for the reason that the requirement clearly is that the hours worked during the pay period in which an employee becomes an unassigned regular are to be his or her regular hours thereafter. Section III D 5 simply cannot be read to fix the regular work schedule in reference to any but the pay period in which the change to unassigned regular occurs.

* * *

Arbitrator Gamser Case #H1C-5F-C 1004/1007 Unassigned Regular

Because of this contractual obligation, Management attempted to distinguish between being placed in a particular duty assignment and being placed in a schedule of hours and days off. That is a distinction that does not appear to find support in the filling of vacancy provisions of the National Agreement. The description of what

motivated management to reassign Anderson and Bendekovic other hours than those they worked in the first week they became unassigned regulars established that this was caused by the existence and filling of permanent vacancies which the senior bidders were not as yet qualified to fill. Anderson and Bendekovic had their tours and days off changed to meet manpower needs of the moment. The testimony of the Acting Manager of Customer Services at Colorado Springs pointed out the existence of a manpower shortage at the time these two grievants had their assignments changed. The other requirement, "to assign regular work schedules" when they became unassigned regulars appears to have been overlooked.

Again, despite the contention that Anderson and Bendekovic were given permanent rather than temporary assignments when their hours and days off were changed from those of their initial assignment in their first week in the new payroll status, the testimony of this same witness revealed that, as of the date of the arbitration hearing, one of them did bid a preferred bid assignment and was in a deferment period and the other was also in a deferment period after having been assigned a particular residual vacancy. From these subsequent assignments, it does not appear that either of these grievants could have been regarded as filling a permanent vacancy when they were assigned to Tour One.

For all the reasons set forth above, the Undersigned must find that these two grievants were temporarily assigned to out-of-schedule hours on October 23, 1981 and October 30, 1981 respectively, and that the USPS is obligated, under Article 8, Section 4-B of the National Agreement to pay them overtime for working outside their regularly scheduled work week at the request of the Employer. That obligation of the USPS shall cease or shall have ceased when proper schedule changes were made as required by the cited provisions of the National Agreement and the guidance contained in Handbook EL 401, or these employees are returned to their former schedules.

* * *

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Arbitrator Goldstein
Case #C8N-4J-C 12091
Limited Duty Reassignment

Absent clear evidence on the record that the parties did not anticipate some way to make whole the individual employee harmed by a clear breach, I agree with the logic and reasoning presented by the Union in support of its claim for premium pay for the contract violation which clearly effected substantially this grievant's

individual rights. The two precedent awards cited to me by the Union certainly support the sensible posture that an arbitrator under this contract has the authority to order a remedy which will make this grievant whole for the harm done him. In the instant matter, unlike the Gamser award noted above, no equalization formula or restructuring of future opportunities can be had. Instead, like the holiday scheduling breach facing Arbitrator Fasser, no possible future remedy can make up for time worked out of craft, away from the normal work location, and outside normal tour hours, when such assignment clearly breaches the collective bargain between the parties. Moreover, an insufficient remedy of this grievance would be an instruction to the parties - and particularly the employer - not to breach the agreement in the future. Thus, the only reasonably appropriate remedy available in light of the above fully-explicated facts is the premium pay requested by the Union herein.

The arbitrator must note this opinion and award does not in any way relate to general light duty assignments and issues of out-of-schedule pay for injured individuals in this assignment category. Clearly, prior precedent and the contract itself require no premium pay for light duty assignment since no regular or bid entitlement is involved. The same would be true if grievant had been appropriately assigned under part 546.141(b)(c) or (d) of the Employee and Labor Relations Manual. The facts of this particular case, including my findings that the facts and controlling contract language result in an improper limited duty assignment in clear contravention of Joint Exhibit 3, form the basis for the award immediately following.

Arbitrator Marlatt
Case #S4C-3U-C 18837
Limited Duty Reassignment

Union witnesses testified manual distribution work was available at Union 030 at all hours of the afternoon and evening. Occasionally when an LSM unit was not operating, its entire crew of 17 employees would be sent to Unit 030 to work there. The employees on light duty at Union 030 during the week in question reported for work at

various times between 2:50 p.m. and 10:50 p.m. and with various non scheduled days.

This evidence would indicate that the Postal Service failed to follow the policy set out in Section 546.141(a) of the Employee and Labor Relations Manual. The burden of proof thereupon shifted to the Postal Service to establish that adequate duties within the Grievant's

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work limitation tolerance were unavailable during his regular hours of duty. No such proof was offered.

I find, therefore, that the Grievant's Schedule was improperly changed in violation of Article 19 of the National Agreement which incorporates the provisions of the Employee and Labor Relations Manual, and that the Grievant is entitled to out-of-schedule overtime pay pursuant to Article 8.4.

* * *

Arbitrator Ordman
Case #E4C-2U-C 40077/40078
Denial Bid Test Error

The dispute between the parties in the two subject cases is a narrow one and merits only brief discussion.

The Union, in addition to invoking Article 8, 15, and 37 of the National Agreement, relies also on Section 232 of F-21, the Time and Attendance

Manual, dealing with out-of-schedule premium, and on Section 434.611 of the Employee and Labor Relations Manual, also dealing with out-of-schedule premium.

Management admits that an error was made by NATC (sic) in its initial finding that Brown had failed the qualification test for Data Conversion Operator and that the erroneous assignments of Brown and Keller thereafter, spanning a 5-month period, were the consequence of that error. But apart from a generalized undocumented assertion that the National Agreement was not violated, the sole defense offered by Management is that the error, while "regrettable," did not originate with the local office, but was committed by NTAC, a separate postal instrumentally not under control of the local office. In Management's view, upon discovery of the error, Brown was awarded the position in issue and Keller was returned to her former assignment. Accordingly, Management argues, Grievants were not entitled to be compensated at the out-of-schedule rate.

I find Management's argument wholly wanting in merit. Management cannot escape liability for its errors by allocating fault among its numerous facilities and departments and thereby leaving its errors or faults immune from remedial action.

Upon all the evidence and authorities submitted, I conclude and find that the Brown and Keller grievances are meritorious and should be sustained.

The grievances are sustained.

Wanda D. Brown shall be paid out-of-schedule pay for the period from May 31, 1986 through November 8, 1986.

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Anna Keller shall be paid out-of-schedule pay for the period from May 31, 1986 through November 8, 1986.

Arbitrator Searce
Case #S1C-3A-C 2638
Fitness-for-duty delay
Limited Duty Reassignment

The essential question here is: did the Service properly question the grievant's medical status in light of the obvious dispute in this regard; and, if not, is out-of-schedule overtime in order, and for how long. This precise matter is not a case of first impression for this arbitrator in that he has ruled on essentially this same narrow point in an

earlier case involving the Service and NALC (S1N-3W-C80). I find the circumstances here different, however. There was no demonstrated "lag-time" here in that the veritable phalanx of doctors involved here had to be well-known and locally-situated to the Service; additionally, it was clearly in the Service's best interest to resolve this matter as soon as possible. In sum, I consider the delays in sending the grievant for a fitness-for-duty examination unjustifiable; the award is drawn accordingly.

AWARD

The Agreement and applicable regulations were violated to the extent that the delay in scheduling the grievant for a fitness-for-duty examination was unjustifiably delayed. She should be paid out-of-schedule overtime for those hours she actually performed Service duties outside of her regular tour from November 1, 1981 until she returned to duty in December of that year.

Arbitrator Jewett
Case #AC-S-23681
Denial Bid

In the original hearing it was established that the Grievants had been improperly denied the positions for which they had bid, after the two more senior bidders failed to qualify for these positions even though the employer granted them - improperly - an additional 10 days in which to qualify. The date from which the Grievants' claim

for back pay begins is on February 11, 1978.

The original cause of this grievance arose from an error by management in figuring the amount of time the two senior employees, Cruz and Clarke, were given in order to qualify for the positions in question. Testimony at the first hearing refers to an alleged agreement between the supervisor and a Union official that resulted in Messrs. Cruz and Clarke being given 10 additional days beyond the 90 days provided for in the Agreement. This was never proved or

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disproved, but in the final analysis, it is the Employer who is responsible for running the organization, therefore, it bears the burden for this contract violation.

Following the contractual violation, the two Grievants were deprived - until the dates indicated above - of their rightful claims to the positions. The positions which they held in the interim were, tacitly or "at the request of management", the result of management's orders. The fact that they made voluntary bids to other positions does not alter the fact that they were not in the positions they should have been. The fault lies with the Employer, not with the Grievants, therefore, out of schedule overtime pay must be paid for the periods in question.

Award

After careful consideration of all oral and written argument and evidence, and for the reasons set forth above, it is awarded that,

The Grievants, Mr. Tucker and Mr. Rodriguez, are to be paid for the number of hours they lost from February 11, 1978, until they were finally awarded their rightful positions. Such payment will include out of schedule overtime pay, all of which will be reduced by the amount of leave taken by each man.

For Mr. Tucker, his total payment is \$7376.00. For Mr. Rodriguez, his total payment is \$9572.00.

Arbitrator Snow
Case #W4C-5S-C 36083
Unassigned Regular

It, however, is important to stress that the analysis in this case has not been based on some technical question of contract interpretation. Fundamental concepts of fair dealing and contractual intent have been applied, and those principles may not be weakened by the sort of exception sought by the Employer in this case.

The search in a case of this sort is for the intent of the parties, and it is clear that the out-of-schedule premium pay provision has been designed to compensate employees (sic) for the inconvenience they incur in working outside their schedules. In this case, but for the Employer's cancellation of the reposting of August 19, 1986, the clerks would have had to endure only one change in their starting times. Because of the Employer's changed desires regarding the employees' (sic) schedules, management required the employees (sic) to undergo an additional schedule change. It is the Employer that has designed the reposting procedures. To pay the clerks an out-of-schedule premium for the inconvenience they sustained because of the Employer's change of mind falls squarely within the contractual intent of the reposting provisions.

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The parties have agreed that employees working out of the schedule will be paid a premium for doing so. While the specific factual situation in this case may not have been foreseen by the parties, the language of Section 434.611 of the Employee and Labor Relations Manual is clear. Consequently, it is reasonable that the affected Markup Clerks be paid out-of-schedule premium for those hours worked outside their normal schedules.

* * *

Arbitrator McConnell
Case #E4C-2D-C 10591/10592
Denial Bid, imminent excess

The Postal Service did violate the National and Local Agreements by refusing to place Charles Hurt on job #268: Accountable Cage and Window Relief for which he was the successful bidder. The Postal Service argues that, in its judgment, it would not have been worthwhile for the Postal Service or Hurt to have trained him on a job when

he was to be excessed to another facility within a few weeks following his training. That may have been a reasonable judgment, but the Agreements do not give management that discretionary power. Article 37 Section 3.F.2 states

The successful bidder must be placed in the new assignment within 21 days.....the local agreement may set a shorter period.

In fact, the local agreement item #22.B states

The successful bidder shall be scheduled to work her new job within 11 days.....

The words must and shall in the National and Local Agreements do not grant discretionary authority. It is mandatory that the successful bidder be placed in his/her new job within the time period specified. No flexibility is allowed for possible future developments such as excessing of employees.

What is the remedy?

The Union proposes that Hurt be given money equivalent to the unscheduled pay for those hours of the bid job which were not included in the hours of his own job, specifically, the hours of the 6:30 am - 3:00 pm schedule which were not included in the 3:00 am - 11:30 am schedule of his existing job, plus 8 hours for the day off which was not the same as Hurt's previous non-scheduled day. This amount is estimated by the Union as 22 hours per week. The Postal Service protests the remedy of out-of-schedule pay. Hurt was not trained on the accountable cage/window clerk job and never served in that job. There is no basis for out-of-schedule pay.

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Remedies cannot always "fit the crime" as the Mikado holds, but the Postal Service violation of contract in denying Hurt the job on which he bid entitles him to a tangible remedy. His loss of training as an accountable cage/window clerk placed him at a serious disadvantage in his pursuit of better jobs in the future. Out-of-service pay for time not comprised within his old schedule is not unreasonable. However, I see no basis for the inclusion of non-scheduled days in this calculation. Hurt enjoyed his days off. The Union made no showing that Hurt was disadvantaged by having Wednesday off rather than Thursday. No pay for the day off per week is directed.

Award

To compensate for the loss of advantage in training for the accountable cage/window clerk job and for the loss of more favorable hours of employment in that job, Charles Hurt shall be paid non-schedule pay for hours not overlapped between new and old jobs from March 17 to May 23, 1986. He shall not be paid for the non-scheduled days of the accountable cage/window clerk job.

Arbitrator Schedler
Case #S7C-3S-C 7668
Improper Reversion

After a careful consideration of all the evidence and upon the foregoing findings of fact, I find that the answer to the question at issue is, "Yes, the Employer violated the 1987-90 National Agreement and the Local Memorandum of Understanding when management reverted 5 newly established Clerk positions at the Temporary Carrier Annex on February 2, 1988." The Employer will immediately offer to pay each Grievant out-of-schedule premium pay for the out-of-schedule hours worked from January 29, 1988 to June 25, 1988.

Arbitrator Johnston
Case #S7C-3W-C 3269/3270
Denial Bid, test error

It is a well known and generally accept (sic) principal of equity and industrial relations cases that if one party is guilty of committing an error or mistake that results in a loss to the other party, then upon proper and timely filing of a grievance the party without fault will be made whole.

This case before me to be a good example of such a situation. If the testing center had not erroneously graded Mr. Farmer's test none of the resulting changes would have occurred. However, changes did occur and grievances were properly and timely filed seeking to make the grievants whole. The relief sought in the grievances should be granted.

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AWARD

The grievances of Michael Farmer and Harold Brown are sustained. The United States Postal Service is directed to compensate each of them for any and all losses they incurred due to the changes in their scheduled work hours and off days brought about by the testing center's incorrect grading of Mr. Farmer's test. The Arbitrator will retain jurisdiction of this matter in the event the parties cannot agree on the compensation required to make both grievants whole.

* * *

Arbitrator Schedler
Case #S4C-3W-C 55281
Unassigned Regular

In this grievance, the Union maintained that management violated Postal regulations by not paying the Grievants out-of-schedule premium pay to Unassigned REGulars (sic) when the Grievants' schedule was changed so that they reported for work 1 hour early starting February 28, 1987. The Employer maintained there was no violation of

the 1984-87 National Agreement and/or Postal regulations.

After carefully considering all the evidence, I find that management violated the 1984-87 National Agreement and Postal regulations. I will explain my reasons for this finding.

1. The subject matter of this grievance is not a new issue for the United States Postal Service. In September 1982, Arbitrator Howard Gamser issued a National Level Arbitration Award (H1C-5F-C 1004 and H1C-5F-C 1007) concerning a change in schedule for Unassigned Regulars Anderson and Bendekovic at the Colorado Springs, Colorado Post Office. The change in schedules were:

- (a) 1. Clerk Anderson's schedule was 0900 to 1800 with Thursday and Sunday his non-scheduled days.
- 2. On October 31, 1981, Anderson's schedule was changed to 2200 0650 with Tuesday and Wednesday his non-scheduled days.
- (b) 1. Clerk Bendekovic's schedule was 0850 to 1750 with Thursday and Sunday his non-scheduled days.
- 2. On October 31, 1981, Bendekovic's schedule was changed to 2200 to 0650 with Tuesday and Wednesday his non-scheduled days.

In reaching his conclusion, Arbitrator Gamser noted that the implementation of scheduling practices and the payment of premium pay were guided by the Handbook-401, hereinbefore referred to as the Supervisor's Guide to Scheduling and Premium Pay, which was issued in March 1981. The Handbook provided guidance for management to comply with established postal policy and established contractual

agreements regarding out-of-schedule assignments. Item 5 required that Unassigned Regulars "must be assigned regular schedules. When not assigned a posted position, employees assume as their regular work schedule the hours worked in their first week of the pay period in which the change to unassigned regular occurred." Furthermore, Arbitrator Gamser noted that Item 5 provided that "These employees are assigned regular work schedules and are eligible for out-of-schedule premium.

The evidence disclosed there was a letter mailed to employees Allman, Caudill, Vetter, and Donohue on February 20, 1987 that rescinded an action taken 1 year earlier, February 21, 1986. That letter was apparently issued to correct a mistake.

There was a 2nd letter issued on February 20, 1987 to employees B. Honeyman, L. Soares, D. Donohue, and E. Kevin (the Grievants) that changed their schedule so that they reported for duty 1 hour earlier. In my opinion, that change in schedule for these Unassigned Regulars clearly fell within the meaning of Arbitrator Gamser's award and the subsequent memoranda issued by the Postal Service at the national level and at the Southern Region Office; therefore, I will award the Grievants out-of-schedule premium starting with April 8, 1987.

* * *

**Arbitrator Goldstein
Case #C4C-4U-C 29429
Authority of Arbitrator to grant
out-of-schedule pay**

In sum, then, I believe the Union has sustained its burden of proof in this case. The Employer has acknowledged the merits of the grievance. The sole issue was the ability of an arbitrator to grant out-of-schedule premium pay when Grievant was delayed in a bid job assignment through an administrative error of Management. As I read the

pertinent contractual clauses and particularly Part 434.611 of the ELM, such a remedy is clearly permissible. Further, other arbitrators have historically found this remedy appropriate. The Step Four settlements also tend to favor the APWU, since at least four cases exist where settlements were entered into at the National Level involving premium pay for similar violations, as opposed to the single denial of such a remedy at the Fourth Step relied on by the Service. In light of all of the above, the grievance is sustained. Award follows.

IV. AWARD

For the reasons stated in the foregoing Opinion and Award, incorporated herein as if fully rewritten, the Employer violated the 1984 National Agreement, Joint Exhibit 1, and the Local Memorandum of Understanding (LMOU) (Joint Exhibit 1(a)) when it failed to pay Grievant Thomas Keller out-of-schedule premium pay from October 11, 1986 to December 6, 1986. Management's contention that the applicable National Agreement does not have provision for out-of-schedule compensation as a result of an administrative error, i.e., a delay in placing

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Grievant into a bid position, is hereby rejected. Accordingly, the grievance is sustained and Grievant Keller shall be awarded out-of-schedule pay at fifty percent (50%) in accordance with the terms of this Award; the Postal Service is directed to pay such compensation to the Grievant.

* * *

**Arbitrator Epstein
Case #C4C-4U-C 31048
Administrative Error in
awarding job**

The record clearly indicates that the Grievant should have been placed in Job 057-13057 on January 3, 1987, and it is equally clear that she was not placed into that job until January 17, 1987. It is also equally clear that the assignment of the Grievant to assume Job 389-11841 was an admitted administrative error on the part of Postal

Service management. Therefore, it follows that the Grievant was improperly assigned for the two-week period involved in this grievance. The fact that she failed to file a ten day letter in order to keep her job bid alive for Job 389-11841 is of no consequence because the Grievant was entitled to that job immediately when it was determined that the prior bidder was unqualified. The Grievant, therefore, worked on a schedule other than the one to which she was definitely entitled and thus she worked out of schedule for the two week period involved.

The remedy which the Grievant seeks is the appropriate remedy under the circumstances in this case. The Postal Service cannot shelter itself from liability for out of schedule premium pay because of a series of events which arose from the error and the administrative operations of the Postal Service. The Postal Service is not entitled to invalidate the claim of the Grievant which in fact she was allowed in the Step 2 settlement, which was subsequently abandoned by the Postal Service, which based its position on technical application of Postal Service rules. The Grievant could not have been placed on two permanent assignments simultaneously so that her assignment to Job No. 389-11841 was in effect a temporary assignment - thus countering the Postal Service position on that point. I agree with the Union that the wrong in this case deserves the remedy requested. An award will issue accordingly.

AWARD

1. The United States Postal Service was in violation of the Labor Agreement between the parties when it failed to place Kathy Ortiz into Job No. 057-13057 on January 3, 1987.
2. The United States Postal Service was in violation of the terms of the Labor Agreement between the parties when it failed to pay Kathy Ortiz out of schedule premium pay from January 3, 1987, through January 17, 1987. The Postal Service is directed to pay such compensation to the Grievant.

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Arbitrator Erbs Case #C4S-4S-C 32965 Improper Schedule Change

As this Arbitrator has previously ruled in Case C4C-4Q-C22321 this Arbitrator is reluctant to award punitive damages without clear contractual authority. It was further indicated in that award that there was an inadvertant (sic) administrative error for which no specific contractual remedy was provided. The Union in that case was not

able to prove that there was any type of specific authority to award out of schedule premium based on the facts in that case. However, this case is substantially different. As was said by this Arbitrator in the previously cited case "in order for the penalty payment that is sought by the Union to be granted, this Arbitrator requires the efficacy for the punitive damage award to draw some essence from the agreement of the parties." In this case the Arbitrator does not believe that this is a punitive damage case but instead that the award of out of schedule premium is in accordance with the provisions of the ELM which requires that out of schedule premium pay

"is paid to an eligible full-time bargaining unit employee for time worked outside of, and instead of, the employee's regularly scheduled workday or workweek when the employee is working on a temporary schedule at the request of management,...."

That is exactly what has happened in this case. In effect the Grievant was verbally assigned to a schedule which was not made permanent in accordance with the contract until May 4, 1987. Under these facts the Grievant is entitled to out of schedule premium because it is specifically authorized under the terms of the contract.

In view thereof the Arbitrator has no choice but to sustain the grievance. The Grievant shall be entitled to out of schedule premium from January 10, 1987 to May 4, 1987 when the permanent schedule was posted. The Arbitrator will retain jurisdiction for thirty (30) days after the date of this award to resolve any disputes that might arise by reason of this award.

Arbitrator Schedler Case #S4T-3A-C 16738 Not Official Training

In this grievance, the Union maintained the Employer violated the National Agreement as well as part 434.6 of the Employee and Labor Relations Manual when management refused to pay out-of-schedule premium pay to the Grievants. The Employer maintained that the exception of Part 434.622 e. applied because the training was

a planned, prepared, and coordinated course. In my opinion, the training was not a planned, prepared, and coordinated session. I will explain my reasons for this finding.

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1. Planning a training session is the development of a course outline of the material to be covered and the objectives that a trainee must achieve. Planning comes before preparation, because the instructor needs to know what he is to teach the student and the instructor must know how to evaluate whether or not the student has achieved the objectives of the training.
2. There was no evidence to show that Mr. Allmond was a training instructor. That does not mean that he did not do his job well, but ordinarily teaching a class requires a substantial amount of preparation. An experienced teacher who has taught a particular subject many times may not need much preparation, but an inexperienced teacher needs a great amount of time for preparation -- this preparation becomes even more necessary in the "hands on" laboratory type of training that occurred in this situation. There was no evidence of Allmond's preparation and merely bringing a schematic to the break room does not show preparation.

Award

After a careful consideration of all the evidence and upon the foregoing findings of fact, I find that the answer to the question at issue is, "No, the training on the dates in question was not an exception to out-of-schedule premium pay." Page 6 of Joint Exhibit 2 contained a detailed statement of the Union's financial claim for each Grievant. The Employer will immediately offer to pay the Union's claim for each Grievant.

* * *

Arbitrator McKissick
Case Number E7C-2A-C 25359
Conversions and
Unassigned Regulars

Now that the violations and loss have been determined, let us turn to issue of the appropriate remedy. The Service argues that neither Part-Time Flexibles nor Unassigned Regulars were adversely affected and any remedy would be punitive. Lost in pay and positions for three pay periods from June 2, 1989 to the actual

conversion from the Part-Time Flexibles, to Full-Time Regulars on July 15, 1989 constitutes adverse treatment. Since the 28 -day requirement, applicable to Part-Time Flexible, is also applicable to Unassigned Regulars, they are similarly adversely affected. Retroactivity as to each would not be punitive.

The Union contends that a make whole remedy is appropriate which should include: guaranteed pay, out of schedule overtime and differentials of Sunday and Night. The Service contends that the out of schedule overtime is not applicable to the PTF's. ELM #434.611 to be read in conjunction with the National Agreement states:

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Out of schedule premium is paid to eligible full-time bargaining-unit employees for time worked outside of, and instead of, their regularly scheduled workday or workweek when employees work on a temporary schedule at the request of management...

A Part-Time Flexible is a bargaining-unit employee. Since July 15, PTF's have been converted to FTR's thus making them eligible for out of schedule overtime because they are requesting differential pay for Night and Sunday. That is, "time worked outside of, and instead of, and instead of, their regularly scheduled workday or workweek."

On the basis of the foregoing, this Grievance is sustained. The Arbitrator will retain jurisdiction for a period of 45 calendar days from the date of this Award, thereafter upon the written request of either Party received during that period, for the limited purpose of determining the amount of compensation.

AWARD

Grievance sustained. Grievants of this Class Action comprised of Part-Time Flexibles converted to Full-Time Regulars and Unassigned Regulars shall each be compensated with a make whole remedy with retroactivity to comport with the 28-day requirement as per the Article 37.2.D.5.(9) and Article 37.3.F.10.a. and b. of the National Agreement.

* * *

Arbitrator Rimmel
Case Number E4C-2D-C 38795
Delay in Assignment to Bid

In reading the provisions of Article 37, Section 3(f)(1), it can be noted that the parties employed the disjunctive term "or" in describing the types of bidders that might be considered. As such, I believe that it was clearly recognized by the parties that the successful bidder might not always be the senior bidder. In any event, I hold

that it is reasonable to conclude that within the purview of the term "successful bidder," a candidate for a best qualified position can be found. Accordingly, Management was contractually obliged to assign Mr. Shaw to the position of Data Collection Technician no later than 24 September 1986. Where the afore date falls in relation to a pay period, I cannot accurately state, however, the latitude provided for pay periods under the LMOU cannot be found in the National Agreement. As such, I have no latitude in that regard and must apply the 21 day period as prescribed under the afore-referenced contractual provisions.

Simply stated, I find that Management did violate the terms of the National Agreement when they failed to award grievant the position of Data Collection Technician on or before 24 September 1986. As such, I believe that grievant is entitled to out-of-schedule pay for the

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period between 24 September through and inclusive of 10 October 1986. Therefore, the parties are directed to determine what monies are due grievant under the applicable contractual and ELM provisions/regulations dealing with the matter of out-of-schedule pay.

■ ■ ■ ■ ■ ■ ■ ■

As you can see, the degree of varying arbitral thought on compensation for out-of-schedule violations is wide. However, there are enough decisions on which we can rely that positive results can be obtained.

The full texts of the arbitration decisions cited are available from my office.

REQUESTED REMEDIES

When filing grievances on out-of-schedule violations, I strongly recommend requesting "Out-of-Schedule Compensation" rather than "Out-of-Schedule Premium Pay". If you limit your remedy to the premium of 434.6, then you **may** be limiting what you can receive, even if you are entitled to more. This is not to mean that there will not be circumstances when Out-of-Schedule Premium is the proper remedy. If a temporary schedule change **is given**, but no premium is paid, then your remedy is found under 434.611. However, if we limit our proposed remedies, then Arbitrators will, in all likelihood, also limit their awards to those remedies.

In closing, if you become aware of a past instance in which you believe someone is entitled to out-of-schedule compensation, and you are beyond the fourteen (14) day time limit for filing a grievance, **do not grieve it at that time**. Review and follow the strategy in my report, "*Winning Claims for Back Pay*". Copies are also available from my office. (A list of all my reports appears on the last page.)

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Strategies for winning pay when our Collective Bargaining Agreement is violated
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If you have any questions regarding this report or any others I have authored, please call me at (609) 273-1551 or write:

JEFF KEHLERT
National Business Agent-Clerk Craft
American Postal Workers Union
302 Harper Drive, Suite 302
Moorestown, New Jersey 08057

Many violations occur which should result in out-of-schedule compensation. We can better protect members' rights on the workroom floor through careful investigation and processing of these cases. Our Collective Bargaining Agreement gives us the tools. This report will help us use them.

Yours for Democracy in our Union,



Jeff Kehlert
National Business Agent
Clerk Craft

JDK:svv
OPEIU #2/afl-cio

attachments

the holiday schedule is not posted in accordance with the National Agreement, as follows:

a. If the schedule is not posted as of Tuesday preceding the service week in which the holiday falls, a full-time regular bargaining-unit employee who is required to work on his or her holiday or designated holiday, or who volunteers to work on such day, will receive *holiday scheduling premium* for each hour of work, not to exceed 8 hours. This premium is in addition to both holiday leave pay and holiday worked pay.

b. In the event that, subsequent to the Tuesday posting period, an emergency situation attributable to Act(s) of God arises which requires the use of manpower on that holiday in excess of that scheduled in the Tuesday posting, full-time regular employees who are required to work or who volunteer to work in this circumstance(s) will not receive *holiday scheduling premium*.

c. When a full-time regular employee who is scheduled to work on a holiday is unable to or fails to work on the holiday, the supervisor may require another full-time regular employee to work such schedule, and such replacement employee is not eligible for *holiday scheduling premium*.

d. Employees are not eligible for holiday scheduling premium while temporarily assigned to nonbargaining positions.

434.534 For those eligible employees who receive TCOLA (439.1), Christmas Worked Pay and the holiday scheduling premium are paid at 50% of the employee's base rate, plus TCOLA, in those workweeks when FLSA overtime is earned. In those workweeks when FLSA overtime is not earned, these premiums are calculated in accordance with 434.532 or 434.533.

434.6 Out of Schedule Premium

434.61 Policy.

434.611 "Out of schedule premium" is paid to eligible full-time bargaining-unit employees for time worked outside of, and instead of, their regularly scheduled workday or workweek when employees work on a temporary schedule at the request of management. Such notice is not required for "pool-type" employees.

434.612 Payment of "out of schedule premium" is dependent on timely notice being given by management of the temporary schedule change, as follows:

a. If notice of a temporary change is given to an employee by Wednesday of the preceding service week, even if this change is revised later, the employee's time

can be limited to the hours of the revised schedule and "out of schedule premium" is paid for those hours worked outside of, and instead of, his or her regular schedule.

b. If notice of a temporary schedule change is *not* given to the employee by Wednesday of the preceding service week, the employee is entitled to work her or his regular schedule. Therefore, any hours worked in addition to the employee's regular schedule are not worked "instead of" her or his regular schedule. Such additional hours worked are not considered as "out of schedule premium" hours. Instead, they are paid as overtime hours worked in excess of 8 hours per service day or 40 hours per service week.

434.613 "Out of schedule premium" hours cannot exceed the unworked portion of the employee's regular schedule. If employees work their full regular schedule, then any additional hours worked are not "instead of" their regular schedule and are not considered as "out-of-schedule premium" hours.

434.614 Any hours worked which result in paid hours in excess of 8 hours per service day or 40 hours per service week are to be recorded as overtime (See 434.1).

434.615 Examples. See Exhibit 434.61.

Example: An employee is notified by Wednesday of the preceding service week to work a temporary schedule the following service week from 6:00 a.m. to 2:30 p.m., instead of her or his regular schedule from 8:00 a.m. to 4:30 p.m. The employee is paid 2 hours "out of schedule premium" for the hours worked from 6:00 a.m. to 8:00 a.m. and 6 hours straight time for the hours worked from 8:00 a.m. to 2:30 p.m. If, in this situation the employee continues to work into or beyond the balance of her or his regular schedule (2:30 p.m. to 4:30 p.m.), then she or he is to be paid for hours worked in accordance with Exhibit 434.61.

Hours Worked	Total Work Hours	"Out of Schedule Premium" Hours	Straight Time Hours	Overtime Hours
6:00 AM - 2:30 PM	8	2	6	0
6:00 AM - 3:30 PM	9	1	7	1
6:00 AM - 4:30 PM	10	0	8	2
6:00 AM - 5:30 PM	11	0	8	3

Exhibit 434.61, Computing Out of Schedule Premium Hours

Example: An employee's regular schedule is Monday through Friday and she or he is given a temporary schedule of Sunday through Thursday. The hours worked on Sunday are "out of schedule premium" hours provided they are worked instead of the employee's regularly scheduled hours on Friday. If, however, the employee also works his or her regular schedule on Friday, then there can be no "out of schedule premium" hours; the hours worked on Sunday would be paid as regular overtime hours worked in excess of 40 in the service week.

434.62 Eligibility

434.621 Exhibit 434.621 indicates those employees who are eligible to receive "out of schedule premium" while working a qualifying temporary schedule within a bargaining unit or while detailed to a nonbargaining position. See exceptions in 434.622.

434.622 Eligible employees are not entitled to "out-of-schedule premium" under the following conditions:

- a. When detailed to a postmaster position as officer in charge.
- b. When detailed to a rural carrier position.
- c. When detailed to an ad hoc position, for which the employee applied and was selected, when the core responsibilities of the position require work on an irregular schedule.
- d. When detailed to either a bargaining unit or nonbargaining position in grade 19 and above.
- e. When attending a recognized training session which is a planned, prepared, and coordinated program or course.
- f. When assigned to light duty according to the provisions of the collective-bargaining agreement or as required by the Federal Employee Compensation Act, as amended.
- g. When allowed to make up time missed due to tardiness in reporting for duty.
- h. When in accord with and permitted by the terms of a bid.
- i. When a request for a schedule change is made by the employee for personal reasons and is agreed to by the employee's supervisor and shop steward or other collective-bargaining representative.

Rate Schedule	Employee Classification			
	Full Time Regular	Part Time Regular	Part Time Flexible	Casual,* Temporary and PM Relief
A--MTEC	YES	NO	NO	.....
B--Rural Auxiliary	.....	.....	NO	NO
C--MESC	YES	NO	NO	.....
E--EAS	NO ²	NO	.....	NO
F--Postmasters (A-E)	.....	NO	.....	NO
G--Nurses	YES	.....	NO	NO
K--HQ Op. Services Div.	YES	.....	.....	.....
L-- Postmaster Replacement	.....	.....	.....	NO
M-- Mailhandlers	YES	NO	NO	.....
N--Data Center	YES ¹	.....	NO	.....
P--PS	YES ³	NO	NO	.....
R--Rural Carriers	NO	.....	NO	.....
S--PCES	NO	.....	.....	.....
T--Tool & Die Shop	YES	.....	NO	.....
Y--Postal Police	YES	.....	NO	.....

* Casual employees are covered in RS-E regardless of the bargaining unit they supplement.

Footnotes:

¹ Grades 18 and below when the change exceeds 1 hour and lasts for more than 1 week.

² See 434.7 for coverage under the Nonbargaining Rescheduling Premium.

³ Employees in the clerk-craft are not eligible for out of schedule premium when detailed to a nonbargaining position.

Exhibit 434.621, Out of Schedule Premium Pay Eligibility Table

j. Employees in the clerk-craft who are detailed to nonbargaining positions.

434.63 Pay Computation

434.631 Out of Schedule premium is paid to eligible personnel in addition to the employee's base hourly rate and at 50% of the base hourly rate for qualifying hours worked up to 8 hours in a service day or 40 hours in a service week.

434.632 For those eligible employees who receive TCOLA (439.1), this premium is paid at 50% of the employee's base rate, plus TCOLA, in those workweeks when FLSA overtime is earned. In workweeks when FLSA overtime is not earned, this premium is calculated in accordance with 434.631.

434.633 All leave paid to an employee who is in an "out of schedule" status will be paid at the employee's straight time rate.

434.7 Nonbargaining Rescheduling Premium

434.71 Policy. "Nonbargaining rescheduling premium" is paid to eligible nonbargaining-unit employees for time actually worked outside of, and instead of, their regularly scheduled workweek when less than 7 calendar days notice of the schedule change was given. It is not paid beyond the seventh calendar day after the notice of schedule change is given.

434.72 Eligibility. All nonexempt full-time nonbargaining-unit employees grade 18 and below are eligible for "nonbargaining rescheduling premium." Full-time nonexempt postmasters and officers-in-charge, however, are only eligible when their schedule is changed because their relief is not available to work the sixth day (see 432.34).

434.73 Pay Computation

434.731 Nonbargaining rescheduling premium is paid to eligible personnel in addition to the employee's base hourly rate and at 50% of the base hourly rate for all actual work hours up to 8 hours in a service day or 40 hours in a service week.

434.732 For those employees who receive TCOLA (439.1), this premium is paid at 50% of the employee's base rate, plus TCOLA, in those workweeks when FLSA overtime is earned. In those workweeks when FLSA overtime is not earned, this premium is calculated in accordance with 434.731.

434.8 Pyramiding of Premiums.

See Exhibit 434.8 for a decision table for situations when an employee may be eligible for more than one type of premium pay for the same hour of work.

435 Severance Pay

435.1 Eligibility

Any career USPS employee who is involuntarily separated and who has been employed continuously by the USPS and/or other federal agency for at least 12 consecutive months (without a break in service of 3 or more consecutive days) immediately prior to the separation is eligible for severance pay, *except* in the following circumstances:

a. The employee is entitled to an immediate retirement annuity.

b. At the time of separation, the employee is offered and declines to accept a position in the USPS or in any other federal agency of like seniority, tenure, and pay within the same commuting area.

c. The employee is separated because of entry in the military service.

d. The employee is separated for cause on charges of misconduct, delinquency, or inefficiency.

e. The employee, at the time of separation, is receiving compensation as a beneficiary of the Federal Employees Compensation Act except when receiving this compensation concurrently with postal pay.

435.2 Computing Severance Fund

435.21 Limitation. In no case shall the severance pay fund exceed 52 weeks basic compensation.

435.22 Creditable Service. Creditable service means all service as a paid federal civilian or postal employee and all military service which interrupted a period of paid federal civilian or postal service--excluding any period of federal or postal service for which severance pay has previously been paid.

435.23 Paid Allowances. The employee is credited with 1 week's basic compensation (the weekly basic rate of pay, excluding COLA, in effect at the time of separation) for each year of creditable service up to 10 years. The employee is credited with 2 weeks' basic compensation for each year of creditable service in excess of 10 years. Each 3-month period of service that exceeds 1 or more full years of service is computed as 25% of a full year.

a. *Employee in Nonpay Status.* In this case, the basic compensation is the basic compensation the employee would have received had she or he been in a pay status at the time of separation.

b. *Part-Time Regular Employee.* In this case, determine the basic weekly compensation by multiplying the number of hours in the employee's regular schedule by the employee's hourly rate of compensation.

c. *Part-Time Flexible Employee.* In this case (1) divide by 52 the total number of hours--excluding overtime hours but including paid leave hours--that the employee had to his or her credit during the previous 52 weeks to find the average hours worked per week and (2) multiply the average hours worked per week by the employee's hourly rate of compensation to determine the basic weekly compensation.

c. Basic Hourly Rates

(1) Full-time and part-time regular employees	BAR/2080
(2) Part-time flexible employees	
(a) For calculation of straight time pay and night differential only	BAR/2000
(b) For calculation of overtime and all other premiums	BAR/2080

432.22 Base Rate. The base annual, daily, or hourly rate is the appropriate basic rate--except that it includes COLA.

432.23 Regular Rate (see 444.21).

432.24 Rounding of Rates. In computing individual earnings, the daily or hourly rate is calculated from the annual rate to four decimal places. The fourth place is rounded up to the next higher figure if the fifth place is 5 or more. Total earnings are rounded to the nearest cent, counting one-half or more as a whole cent and dropping less than one-half cent.

432.3 Work Schedules and Overtime Limits

432.31 Basic Work Week. The basic work week for full-time bargaining-unit employees is defined in the respective Labor Agreements. Postmasters, Postal Inspectors, and exempt employees are assigned as needed. Otherwise, the basic work week consists of five regularly-scheduled 8-hour days within a service week.

Note: The daily 8-hour schedule may not extend over more than 10 consecutive hours.

432.32 Maximum Hours Allowed. Except as designated in labor agreements for bargaining-unit employees or in emergency situations as determined by the PMG (or designee), employees may not be required to work more than 12 hours in 1 service day. In addition, the total hours of daily service, including scheduled work hours, overtime, and mealtime, may not be extended over a period longer than 12 consecutive hours. Postmasters, Postal Inspectors, and exempt employees are excluded from these provisions.

432.33 Mealtime. Except in emergency situations or where service conditions preclude compliance, no employee may be required to work more than 6 continuous hours without a meal or rest period of at least one-half hour.

432.34 Postmasters. A full-time postmaster is scheduled to work a 40-hour workweek. Normally, this regular work schedule is set at 8 hours a day and 5 days a week, Monday through Friday. When a nonexempt postmaster is required to work on the sixth day because relief is not available, premium pay at 150% of the postmaster's base salary is paid for this time. Equivalent time off from work is not authorized to avoid the payment of this premium. Thus, either nonbargaining rescheduling premium or the better of postal or FLSA overtime, as appropriate, is paid.

432.4 Service Periods

432.41 Pay Period. A pay period begins on Saturday and ends on Friday. Each pay period comprises 2 service weeks.

432.42 Service Week. A service week is the calendar week beginning at 12:01 a.m. Saturday and ending at 12:00 midnight the following Friday. This service week remains fixed regardless of the schedule of hours worked by individual employees.

432.43 Service Day. The service day is a calendar day, 12:01 a.m. to 12 midnight. An employee's service day depends on her or his schedule.

a. Full-Time Employees. For a full-time employee whose regular schedule begins at 8:00 p.m. or later, the service day is the next calendar day and all work hours (including preshift work hours), as well as leave hours, are recorded on that calendar day. If the employee's regular schedule begins prior to 8:00 p.m., the service day is the calendar day on which the schedule began and all work and leave hours are recorded on that calendar day.

b. Part-Time Employees. For all part-time employees who begin work or leave at 8:00 p.m. or later, the service day is the next calendar day and all hours are recorded on that calendar day. If such employees begin work or leave prior to 8:00 p.m., the service day is the calendar day on which they began work or leave and all hours are recorded on that calendar day.

c. Casual and Temporary Employees. For casual and temporary employees who begin work at 8:00 p.m. or later, the service day is the next calendar day and all hours are recorded on that calendar day. If such employees begin work prior to 8:00 p.m., the service day is the calendar day on which they began work and all hours are recorded on that calendar day.

432.44 FLSA Workweek (see 444.23)

432.45 Work Assignments. In order to comply with the postal policy of paying overtime for all hours worked in excess of 8 hours in a service day, managers must assign the workhours of all employees in such a manner (a) that employees do not perform continuous work that is reported in 2 different service days, and (b) that any scheduling changes would not be construed as tentative of evading the payment of overtime under the provisions of the FLSA (see 432.441).

432.46 Five Minute Leeway Rule

432.461 Although each employee at installations with time recording devices is required to clock in and clock out on time, congestion at time clocks or other conditions can sometimes cause clock time to vary slightly from the established work schedule. Therefore, a deviation may be allowed from the scheduled time for each clock ring up to 0.08 hours (5 minutes). However, the sum of the deviations for the scheduled tour must not exceed 0.08 hours (5 minutes). This 5-minute leeway rule applies only to full-time and part-time regular schedule employees. Part-time flexible, casual, and temporary employees are allowed the five-minute

privilege for clocking purposes but are paid on the basis of their actual clock rings.

432.462 The *5-minute leeway rule* applies only to the scheduled tour of duty. If an employee works in an overtime status that is contiguous with the scheduled tour, the *5-minute leeway rule* does not apply to any clock rings for the entire tour. Employees in this situation are paid for their actual clock time (unless the time is disallowed as described in 432.7). However, the *5-minute leeway rule* does apply to temporary schedules including any out of schedule overtime hours outside of and instead of the employee's regular schedule.

432.463 After extending clock rings, if (in the case of a full-time regular schedule employee) the clock ring totals for the tour are between 7.92 and 8.06 hours, the time should be adjusted to 8.00 hours. If a part-time regular schedule employee's clock time is between 0.08 of an hour less than or greater than her or his established schedule, then the time should be adjusted to the employee's scheduled tour.

432.464 The *5-minute leeway rule* for night differential and Sunday premium hours is peculiar and requires special attention:

a. In the case of night differential, eligible employees are to be paid night differential for the exact amount of time they work between 6:00 p.m. and 6:00 a.m. However, in no case can the total night differential hours exceed the total hours for the tour. If the only reason that part of an employee's clock time falls between 6:00 p.m. and 6:00 a.m. is because the employee clocked in .08 hours or less before 6:00 a.m. or clocked out .08 hours or less after 6:00 p.m., then the employee is not eligible to be paid night differential.

b. Eligible employees receive Sunday premium for all hours worked during a scheduled tour any part of which falls on Sunday. The amount of Sunday premium cannot exceed the hours worked nor can it exceed 8.00 hours per tour. If the only reason that part of an employee's clock time falls on Sunday is because the employee clocked in 0.08 hours or less before the scheduled tour started or 0.08 hours or less after the scheduled tour ended, then the employee is not eligible for any Sunday premium.

432.465 On some occasions, an employee may have a combination of work and paid leave. In such cases, the *5-minute leeway rule* does not apply, and the employee is credited with the actual hours worked. The balance of the employee's scheduled tour is charged to sufficient leave to give the employee credit for the total scheduled tour.

432.5 Work Credit

432.51 Postal Inspectors and FLSA Exempt Postmasters.

Time for these employees is credited in units of whole days--except for the purpose of terminal leave payments or leave payments immediately preceding a period of LWOP. Note: FLSA exempt postmasters are those who supervise at least two full-time equivalent employees.

432.52 Full-Time and Part-Time Employees. These employees are credited as follows:

a. Full-time employees who are credited (work or paid leave) for all scheduled service in a pay period are paid on the basis of 80 hours.

b. Part-time employees who are credited (work or paid leave) for all scheduled service in a pay period are paid on the basis of the hours of scheduled service.

c. If an employee performs only part of the scheduled work in a pay period and does not have leave credits to cover the balance of the scheduled work, the employee is paid for time actually worked.

432.53 City Letter Carriers (7:01 Rule). A City Letter Carrier who actually works more than 7 hours, but less than 8 hours of a regular scheduled day and who is officially excused from the completion of the 8 hour tour is credited with 8 hours of work time for pay purposes. This is known as the *7:01 rule*. (See 444.211(g).)

432.54 Rural Carriers. See 445.

432.6 Guarantee Time

432.61 Explanation. Guarantee time is paid time which is not worked under the guarantee provisions of collective bargaining agreements for periods when an employee has been released by the supervisor and has clocked out prior to the end of a guarantee period. For example, most full-time regular employees in the bargaining units are guaranteed 8 hours of work (or pay in lieu) if they are called in on their nonscheduled day to work. If such an employee works 6 hours and is then told by the supervisor to clock out because of lack of work, the remaining 2 hours of the employee's 8-hour guarantee is recorded as *guarantee time*. It is not possible for an employee to earn *guarantee time* as long as he or she is on the clock.

432.62 Eligibility. Exhibit 432.62 indicates by rate schedule code and employee classifications those persons who are eligible to receive pay for *guarantee time*. If an employee is eligible for more than one time guarantee, the guarantee for the highest number of hours will apply. For example, if an employee is eligible for either 2 or 4 hours of guarantee pay, the 4-hour guarantee will apply. Employees are not eligible for guarantee time while temporarily assigned to nonbargaining positions.

432.63 Pay Computation. As a general principle, when employees are told to *clock out* by management prior to the end of the guarantee period, such employees will be compensated for the hours of the guarantee period at the rate of pay they would have received had they actually worked such hours. There are, however, conditions under which employees will not be compensated for the remaining hours of the guarantee period. Generally, this would occur when an employee requests to leave the postal premises because of an illness or for personal reasons or leaves without proper authorization. Note: The *5-minute leeway rule* does not apply to any clock rings for an employee entering a "*guarantee time*" status. The employee will be credited with the time reflected by her or his clock rings.

Supervisor's Guide to Scheduling and Premium Pay

**Handbook EL-401
November 1983**

D. Out-of-Schedule Premium

5. **Unassigned Regular Full-Time Employees Out-Of-Schedule.** All unassigned regular full-time employees must be assigned regular work schedules. When not assigned to a posted position, employees assume as their regular work schedule the hours worked in the first week of the pay period in which the change to unassigned regular occurred. When a part-time flexible (PTF) employee is converted to full-time regular and is not assigned to a full-time bid position, the employee becomes an unassigned regular. (See Article 7, Section 3 of the National Agreement.)

These employees are assigned *regular work schedules* and are eligible for out-of-schedule premium. Temporary rescheduling must be compensated at the appropriate premium rate(s).

A management-directed permanent assignment of an unassigned regular to a specific posted position, which went unbid in accordance with provisions in the National Agreement, requires no payment of out-of-schedule premium.

6. **Rescinded Schedule Changes.** Temporary changes in schedule can be rescinded at any time up to the day before the schedule change without incurring the out-of-schedule overtime pay liability. The reason for paying out-of-schedule premium is for the inconvenience to the employee which is eliminated if the schedule change is rescinded in advance.



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

OCT 1 1984

Mr. Jim Lingberg
National Representative-at-Large
Maintenance Division
American Postal Workers Union,
AFL-CIO
817 14th Street, N. W.
Washington, D.C. 20005-3399

Re: M. Biller
Washington, D.C. 20005
HLC-NA-C 114

Dear Mr. Lingberg:

On September 19, 1984, we met to discuss the above-captioned national level grievance.

The issue in this case is whether management was proper in the manner under which EL-401 (Supervisor's Guide to Scheduling and Premium Pay) was issued.

In final resolution of this grievance we agreed on the following clarification of the purpose and intent of EL-401.

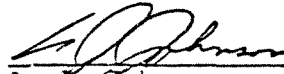
The EL-401 has no authority as a handbook or manual and should never be cited or referred to in any manner to support management's position with regard to scheduling and premium pay for bargaining unit employees. When support of management's position is needed, reference should be made to the applicable handbook or manual (e.g., ELM, F-21, F-22 etc). The purpose of EL-401 is to provide supervisory personnel with a greater understanding and awareness of the Postal Service's scheduling and premium pay regulations. It should not be relied upon as interpretative authority, but is only intended as guidance for managers and supervisors on how to effectively follow these regulations on a daily basis.

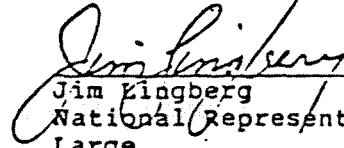
Mr. Jim Lingberg

2

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

Sincerely,


A. J. Johnson
Labor Relations Department


Jim Lingberg
National Representative-at-
Large
Maintenance Division
American Postal Workers Union,
AFL-CIO

**COLLECTIVE BARGAINING AGREEMENT
1990-1994**

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

RE: MAXIMIZATION/FULL-TIME FLEXIBLE — APWU

Where a part-time flexible has performed duties within his craft and occupational group within an installation at least 40 hours a week (8 within 9, or 8 within 10, as applicable), 5 days a week, over a period of 6 months, the senior part-time flexible shall be converted to full-time status.

This criteria shall be applied to postal installations with 125 or more man years of employment.

It is further understood that part-time flexibles converted to full-time under this criteria will have flexible reporting times, flexible nonscheduled days, and flexible reporting locations within the installation depending upon operational requirements as established on the preceding Wednesday.

The parties will implement this in accordance with their past practice.

Date: July 21, 1987

230 Overtime (refer to the ELM, section 434.1)

231 General

231.1 Definition

231.11 Postal Overtime. A premium paid to eligible employees for actual work hours in excess of 8 paid hours in a service day, 40 paid hours in a service week or, for a full time bargaining unit employee on a non-scheduled day.

231.12 Fair Labor Standards Act (FLSA) Overtime. A premium paid to eligible employees for all work time that management suffers or permits to be actually worked in excess of 40 hours within an FLSA work week (no authorization is required to identify FLSA overtime).

231.13 Penalty Overtime. A premium paid to eligible employees at a rate of two times the base hourly straight time rate, except during the month of December.

231.2 Eligibility

231.21 Two exhibits have been prepared that identify employees eligible to receive overtime pay. Exhibit 2-7 indicates employees eligible to receive pay for hours served in excess of 8 hours a day. Exhibit 2-8 describes employees eligible to earn overtime pay for hours served in excess of 40 hours per week.

231.22 Note that eligible part-time regular and part-time flexible schedule employees receive overtime only for hours in excess of eight in a day or 40 in a week. Casual and temporary employees receive overtime only for hours worked in excess of 40 hours in a work week as provided by FLSA.

231.23 Penalty overtime is paid if any of the following conditions are incurred:

a. For a full-time employee:

(1) Overtime is worked on more than four of the employee's five scheduled days in a service week; or

(2) For work/paid leave over 10 hours on a regularly scheduled day; or

(3) For work/paid leave over 8 hours on a non-scheduled day; or

(4) Over six days in a service week

b. For a part-time employee: All work/paid leave in excess of 10 hours in a service day; or 56 hours in a service week.

231.3 Unauthorized Overtime

231.31 Postal Service policy requires time worked in excess of 8 hours in a service day or 40 hours in a service week to be paid at an overtime rate. Unauthorized overtime occurs when an employee's clock time exceeds 8 hours in a day or 40 hours in a week without prior authorization from a supervisor. That time must be paid unless the employee's supervisor observed, or had reason to know, that the employee did not work during the period in question.

231.32 Periods of unauthorized overtime must be recorded on Form 1017B, *Unauthorized Overtime Record*.

231.4 Authorization and Supporting Forms

231.41 The employee's supervisor records all overtime authorization on the Employee Work Assignment Schedule where practicable. The supervisor must record the entry in whole hours and code with OT.

231.42 The timekeeper must enter the authorizations for overtime.

231.43 Occurrences of unauthorized overtime are recorded on Form 1017B.

231.5 Transactor Screen Settings. For the transactor screen settings of an overtime authorization, see Exhibit 2-21. Guarantee overtime transactor screen settings are shown in Exhibit 2-22.

231.6 Verification of Input. Overtime is an authorization that must be verified by the supervisor or his designee (see part 646).

232 Out-Of-Schedule Premium (refer to the ELM, section 434.6)

232.1 Definition

232.11 Out-of-Schedule Premium (OOS) is paid to an eligible full-time bargaining unit employee for time worked outside of, and instead of, the employee's regularly scheduled workday or workweek when the employee is working on a temporary schedule at the request of management.

Notice of the temporary schedule change must be given to the employee by Wednesday of the preceding service week.

232.12 Payment of Out-of-Schedule Premium depends on timely notice being given by management of the temporary schedule change, as follows:

a. If an employee is notified of a temporary schedule change by Wednesday of the preceding service week, even if this change is revised later, the employee's time can be limited to the hours of the revised schedule. OOS Premium is paid for those hours worked outside of, and instead of, his regular schedule.

b. If an employee is not notified of a temporary schedule change by Wednesday of the preceding service week, the employee is entitled to work her regular schedule. Therefore, any hours worked in addition to the employee's regular schedule are not worked instead of her regular schedule. Such additional hours worked are not considered as OOS Premium hours. Instead, these hours are paid as overtime hours worked in excess of 8 hours per service day or 40 hours per service week.

232.13 OOS Premium hours cannot exceed the unworked portion of the employee's regular schedule. If the employee works his full regular schedule, then any additional hours worked are not substituted for his regular schedule and are not considered as OOS Premium hours.

232.14 Any hours worked that result in paid hours in excess of 8 per service day or 40 hours per service week are to be recorded as overtime.

232.15 Some examples of out-of-schedule premium are as follows:

a. An employee is notified by Wednesday of the preceding service week to work a temporary schedule from 6:00 a.m. to 2:30 p.m., instead of his regular schedule from 8:00 a.m. to 4:30 p.m., for this schedule, the employee is paid two hours OOS Premium for the hours worked from 6:00 a.m. to 8:00 a.m. and 6 hours straight time for the hours worked from 8:00 a.m. to 2:30 p.m. If, in this situation, the employee continues to work into or beyond the balance of his regular schedule (2:30 to 4:30 p.m.), then he is paid for 10 total hours: 8 hours of straight time and 2 hours of regular overtime. No OOS would be given to this employee (see Exhibit 2-3).

b. An employee's regular schedule is Monday through Friday, and she is given a temporary schedule for Sunday through Thursday. The employee will be paid OOS Premium hours for

Sunday, provided she does not work her regularly scheduled hours on Friday. If, however, the employee also works her regular schedule on Friday, then the hours worked on Sunday would be paid as regular overtime hours worked in excess of 40 in the service week.

232.2 Full-Time Flexible Schedule Employees

232.21 Full-time flexible schedule employees (see Pages 186-187 of the National Agreement) are entitled to all provisions of the National Agreement except for the basic workweek (ELM, section 432.3). The full-time flexible schedule employee's reporting time, non-scheduled days, and work locations may change each week, as established on the preceding Wednesday.

232.22 SPC "F" is used to identify Full-time flexible schedule employees. The SPC "F" can be input using transaction B3, item change, but will be rejected if the EMR D/A code is not 13-4 or 11-0.

232.23 If the schedule of the preceding Wednesday is subsequently changed, the employee coded with SPC F is entitled to work the set schedule and is entitled to regular overtime for work outside of this schedule. Also, the employee is entitled to administrative leave for any unworked portion of a tour if released from duty, without working a full tour.

232.24 Inasmuch as these employees do not have a "basic workweek" as contemplated in the ELM, section 432.3, the out-of-schedule premium provisions in the ELM, section 434.6 do not apply. OOS Premium authorizations and adjustments will be rejected for all employees with SPC F. These will appear on the Employee Activity Report with an appropriate error signal.

232.25 When SPC F employees are converted to regular schedule status, an SPC 0 should be annotated on Form 1476 when processing the personnel action. The input of SPC 0 (zero) will delete the SPC F. If the employees' D/A is changed, the "F" will be deleted automatically.

232.3 Eligibility

232.31 Exhibit 2-9 indicates those employees who are eligible to receive OOS Premium while working a qualifying temporary schedule within a bargaining unit, or while detailed to a nonbargaining position.

232.32 Employees are not entitled to OOS Premium under the following conditions, when:

- a. Detailed to a postmaster position as officer in charge;
- b. Detailed to a rural carrier position;
- c. Detailed to an ad hoc position, for which the employee applied and was selected, when the core responsibilities of the position require work on an irregular schedule;
- d. Detailed to either a bargaining unit or nonbargaining unit position in grade 19 and above;
- e. Attending a recognized training session that is a planned, prepared, and coordinated program or course;
- f. Assigned to light duty according to the provisions of the collective bargaining agreement, or as required by the Federal Employee Compensation Act, as amended;
- g. Allowed to make up time missed due to tardiness in reporting for duty;
- h. In accord with and permitted by the terms of job bid;
- i. A request for a schedule change is made by the employee for personal reasons and is agreed to by the employee's supervisor and shop steward or other collective bargaining representatives;
- j. Clerk craft employees represented by the American Postal Workers Union are detailed to higher level nonbargaining positions.

232.4 Authorization and Supporting Forms

232.41 For a change of schedule at management's request, the supervisor must complete a Form 1723. For instructions on how to complete it, see Exhibit 2-27.

232.42 For a change in schedule at the employee's request, the employee must complete Form 3189, *Request For Temporary Schedule Change For Personal Convenience*. See Exhibits 1-12 and 2-28.

232.5 Transactor Screen Settings. See Exhibit 2-23.

232.6 Verification of Input. OOS must be verified by the supervisor or her designee.

233 Holiday Scheduling Premium (refer to the ELM, section 434.533)

233.1 Definition. Holiday Scheduling Premium (HSP) is paid to eligible full-time bargaining unit employees for time actually worked on a holiday or

on the employee's designated holiday (except Christmas) when the holiday schedule is not posted in accordance with the National Agreement.

233.2 Eligibility (See Exhibit 2-10)

233.21 If the schedule is not posted as of the Tuesday preceding the service week in which the holiday falls, a full-time regular bargaining unit employee who volunteers or is required to work her holiday or designated holiday, shall receive HSP for each hour of work, not to exceed 8 hours. This premium is paid in addition to both holiday leave pay and holiday worked pay.

233.22 If the schedule is posted according to the National Agreement and the scheduled reporting time for an employee on that list is changed due to the needs of the service, the employee is due the difference between the original and revised scheduled starting times. The amount of this difference is paid as HSP.

233.23 Subsequent to the Tuesday posting, an emergency situation attributable to an Act of God may arise that requires the use of manpower on a holiday in excess of the posted schedule. In this event, full-time regular employees who volunteer or are required to work or who volunteer to work in this circumstance do not receive HSP.

233.24 When a full-time regular employee scheduled to work on a holiday under the circumstances described in section 233.21 is unable to or fails to work on the holiday, the supervisor may require another full-time regular employee to work such schedule. The replacement employee is not eligible for HSP.

233.3 Authorization and Supporting Forms. The supervisor must review all time and attendance records for bargaining unit employees who worked on a holiday and must identify those employees who qualify to receive HSP. The supervisor will then send the employee work assignment schedule to the timekeeper. The schedule must indicate employees that should be credited with HSP.

233.4 Transactor Screen Settings. See Exhibit 2-24.

233.5 Verification of Input. HSP must be verified.

REPORTS BY JEFF KEHLERT

American Postal Workers Union • 302 Harper Drive, Suite 302 • Moorestown, New Jersey 08057

The following reports are available, upon request, from my office:

1. SKY'S THE LIMIT

Produced with former National Business Agent for the Maintenance Craft, Tim Romine. This report addresses our ability to obtain "restricted" forms of documentation necessary for enforcement of the Collective Bargaining Agreement with particular emphasis on medical records/information.

2. YOUR RIGHTS IN GRIEVANCE INVESTIGATION AND PROCESSING

An alphabetical compilation of Step 4 Interpretive Decisions on shop stewards' rights and related subjects.

3. MORE RIGHTS IN GRIEVANCE INVESTIGATION AND PROCESSING

A second volume of the Your Rights report including numerous Step 4 decisions.

4. GRIEVANCES IN ARBITRATION

A compilation of arbitration decisions on various subjects with a brief synopsis of the awards included.

5. VENDING CREDIT SHORTAGES AND OTHER ISSUES

A report on multiple subjects including the title subject, use of personal vehicles, Letters of Demand, etcetera.

6. LETTERS OF DEMAND - DUE PROCESS AND PROCEDURAL ADHERENCE

A history in contractual application of the due process and procedural requirements of the Employer in issuing Letters of Demand including numerous arbitration decision excerpts and the application of the principle of due process to discipline.

7. RANKING POSITIONS TO A HIGHER LEVEL

Utilization of Article 25 and Employee and Labor Relations Manual Part 230 to upgrade Bargaining Unit Positions to Higher Levels based upon work being performed. (With authoritative arbitral reference)

8. WINNING CLAIMS FOR BACK PAY

Applying Part 436 of the Employee and Labor Relations Manual in conjunction with our Grievance Procedure to obtain denied pay and benefits, up to six years in the past.

9. LETTERS OF DEMAND—SECURITY AND REASONABLE CARE

As Management corrects due process and procedural errors when issuing letters of demand, we must turn to other methods of prosecuting grievances for alleged debts. This report addresses F-1 and DMM regulations to enable us to prove security violations exist.

10. SURVIVING THE POSTAL INSPECTION SERVICE

This report brings together the crucial information (*Situations, Questions and Answers, National APWU Correspondence*) necessary for employees and shop stewards on what rights must be utilized when Postal Inspectors come calling. Its goal is to enable Postal Workers to *Survive* and not lose their livelihood.

11. OUT-OF-SCHEDULE COMPENSATION, STRATEGIES FOR WINNING PAY WHEN OUR COLLECTIVE BARGAINING AGREEMENT IS VIOLATED

This report places into a readily accessible package the controlling Collective Bargaining Agreement provisions, arbitral reference, contractual interpretation and strategies necessary to pursue violations of the National Agreement in which out-of-schedule compensation would be an appropriate remedy.