

**American Postal Workers Union, AFL-CIO**  
**GRIEVANCE**  
**STATUS LETTER**  
**(CENTRAL REGION)**  
**APWU-USPS NAT. GRIEVANCE**

GRIEVANT-PERSON OR UNION FROM LINE 8 (LASTNAMEFIRST)		USPS REGIONAL GRIEVANCE
FERLITSCH, M.		190T-11-C95077348
WORK LOCATION CITY AND ZIP CODE FROM LINE 10		APWU REGIONAL GRIEVANCE
DES MOINES, IA.		13058
CONTRACT ISSUE	CRAFT	APWU LOCAL GRIEVANCE
ARTICLE 8 -- OT	MAINTENANCE	77-9510673
	DATE	
	August 14, 1997	

TO: DIRECTOR, INDUSTRIAL RELATIONS  
 AMERICAN POSTAL WORKERS UNION, AFL-CIO  
 1300 L STREET, N.W.  
 WASHINGTON, D.C. 20005

D/A: 8/9/97 EXP  
 DENIED  
 ADVOCATE:  
 Jon Arnold

- WITHDRAW FROM STEP 4 OR ARBITRATION
- SETTLEMENT
- ABITRATION AWARD
  - NATL. CERTIFICATION
  - LOCAL CERTIFICATION

Y.T.T.#504882

Arbitrator's Statement -- Thomas A. Cipolla  
 \$868.99 -- D/H: August 7, 1997

*ATTACHED IS DOCUMENTATION IN SUPPORT OF ACTION INDICATED*

The Arbitrator stated, "The grievance is denied and the Grievant is to be offered the original remedy noted hereinabove."

cc: NBA, Gary Kloepfer Maintenance Craft, APWU  
 President, Des Moines Area Local# (0044), APWU

LEO F. PERSAILS, COORDINATOR  
 CENTRAL REGION  
 AMERICAN POSTAL WORKERS UNION,  
 AFL-CIO

LFP:lnf

Expedited Arbitration Panel/Midwest Region

In the Matter of Arbitration )  
 ) Grievant: Mike Ferlitsch  
 between )  
 ) Post Office: Des Moines, IA  
 United States Postal Service )  
 ) Case No.: I90T-11C 95077348  
 and ) 779510673  
 )  
 American Postal Workers Union, )  
 Des Moines Area Local. )

Before: THOMAS A. CIPOLLA

Appearances:

For the Postal Service: Dan Archip,  
Labor Relations Specialist

For the Union: Jon Arnold,  
Union Advocate

Place of Hearing: Des Moines, IA

Date of Hearing: August 7, 1997

Date of the Award: August 9, 1997

Relevant Contract Provisions: Article 8.5; Memorandum of  
Understanding Regarding Article 8,  
pages 314-315; and Local  
Memorandum of Understanding, Items  
14 and 18

Contract Year: 1994 - 1998

Type of Grievance: Contract

Award: The grievance is denied.

  
Thomas A. Cipolla,  
Arbitrator

## AWARD SUMMARY

### ISSUE

Did Management violate the National Agreement by not granting the requested remedy for the violation? If so, what shall the remedy be?

### FACTS, ARGUMENT AND DISCUSSION

Mike Ferlitsch (hereinafter "Grievant") is an electronic technician at the main Post Office in Des Moines, Iowa. In 1995, the Grievant worked Tour 3 and had Wednesdays and Thursdays off. The Grievant filed a grievance when the Postal Service utilized an employee from Tour 2 rather than the Grievant for overtime. The Postal Service concedes that there was a violation and the proper remedy is a make-up opportunity for the lost overtime. The Union contends that the Grievant is entitled to be paid eight (8) hours penalty overtime for the overtime passby.

The parties made the following stipulations:

1. There are no threshold issues.
2. The Tour 2 employee (Schumaker) did incur two (2) hours of penalty overtime.
3. The overtime desired list (OTDL) is acceptable and the Grievant and employee Schumaker are on it.
4. Electronic technician Schumaker did work 1100 to 1950 at 1.5x (regular overtime), and from 1950 until 2150 at 2x pay (penalty overtime) on June 29, 1995.
5. Electronic technician normally reports to work at 0700.
6. June 29, 1995 was Schumaker's first day off.
7. June 29, 1995 was Ferlitsch's second day off and Ferlitsch worked eight (8) hours overtime on June 28, 1995 which was his first day off.

The Union contends that the local Memorandum of Understanding states that the OTDL will be by section, tour and skills. It specifically states

that when overtime is needed the supervisor in the section and the tour requiring the overtime shall inform the employees in his/her section who have placed their names on the list that they shall work overtime. There is a further agreement in this local post office that an employee may sign either the before and after tour list or the day off list or both. According to the Union, this Agreement means that there is actually a separate OTDL for each section and each tour within these sections. As a section in dispute in this case is defined as electronic technicians, there is no dispute regarding qualifications. With this language in mind, looking at the OTDL, this must be defined as representing six (6) distinctly different OTD lists. There will be one list for each tour for day off and one list for each tour for beginning and end tour.

The Union further argues that on January 13, 1995 that the Postal Service and the Union came to an agreement at the national level which indicates that when an employee on the overtime desired list who has the necessary skills and who is available is improperly passed over and another employee not on the list is selected for overtime work, the employee passed over shall be paid for an equal number of hours at the overtime rate for the opportunity missed.

Furthermore, on April 16, 1985, the Postal Service and the Union reached another agreement that local offices may discuss multiple overtime desired list during the current local implementation process and that the parties agree that employees on "sectional" overtime desired lists as

identified through Article 30 may not be used in other "sections" to avoid the payment of penalty pay.

The Postal Service contends that the relief sought is outside the Agreement. It cites the Memorandum of Understanding between the United States Postal Service and the Joint Bargaining Committee which indicate that in overtime passby situations the employer will not be obligated to any monetary obligation but be allowed to correct the matter within the opportunities available list. The letters between the Postal Service and the Union in 1975 and 1985 do not apply to this situation, but rather the contract in force applies to this situation. Furthermore, the overtime desired list (Joint Exhibit No. 4) is obviously a list and not "lists"

In the instant case, the Postal Service argues that the Tour 3 employee came in on Tour 2 and worked into Tour 3 and received 2 hours of penalty time. Management offered the appropriate remedy for the bypass, that is namely, an adjustment to the opportunities list for overtime. This was rejected by the Union who wanted pay for the bypass.

This arbitrator has read the cited provisions of the National Agreement including Appendix C regarding Memorandums of Understanding and Letters of Intent and the Memorandum of Understanding between the United States Postal Service and the Joint Bargaining Committee regarding Article 8. I have also read the January 13, 1975 and April 13, 1985 Letters of Understanding between the parties and the arbitration awards of Jonathan Dworkin (August 8, 1981) Richard Mittenthal (April 11, 1986). But for the

Memorandum of Understanding found in the current National Agreement on pages 314 through 316, the Union's argument would prevail based upon the January 13, 1975 Letter of Understanding between the parties. Based upon said Memorandum of Understanding in the National Agreement, the employer is not obligated to pay money where an overtime violation occurs but rather, correct the opportunity available list as noted in the Memo. It appears to this arbitrator that this Memo has, at the very least, modified the Letter of Understanding dated January 13, 1975. Although the Union did a commendable job in this case, it did not meet its burden of proof in showing that the January 13, 1975 Memo is either still effective or in some way supersedes the Memo of Understanding found in the current National Agreement. The Postal Service, therefore, offered the appropriate remedy, namely, two (2) consecutive days of make-up overtime to resolve the issue.

The grievance is denied and the Grievant is to be offered the original remedy noted hereinabove.