

DOCUMENT RESUME

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Arbitrator's Award of Overtime. B-189163. October 11, 1977. 4 pp. + enclosure (1 pp.).

Decision re: Department of Agriculture: Plum Island Animal Disease Center; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation (305).

Contact: Office of the General Counsel: Civilian Personnel.  
Budget Function: General Government: Central Personnel Management (805).

Organization Concerned: Federal Labor Relations Council.

Authority: 5 U.S.C. 5542(b)(1). 5 U.S.C. 5544 (Supp. V). 5 U.S.C. 5348(a) (Supp.V). B-175452 (1972). B-177313 (1972).  
Agricultural Research Service Administrative Memorandum 402.2. P.P.M. Supplement 532-1.

The Federal Labor Relations Council requested a decision with regard to the implementation of an arbitrator's award for callback overtime to two employees of the Plum Island Animal Disease Center. The arbitrator's award of 2 hours minimum callback overtime for reporting to duty 45 minutes early may not be implemented since overtime performed prior to and continuing into regularly scheduled hours of labor merges with the regular tour. (Author/SC)

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*Ch. Bennett*

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548**

**FILE: B-189163 DATE: October 11, 1977**

**MATTER OF Plum Island Animal Disease Center -  
Arbitrator's Award of Overtime**

**DIGEST:** Arbitrator's award to two vessel employees of the Department of Agriculture awarding 2 hours minimum call-back overtime for reporting to duty 45 minutes early may not be implemented. Negotiated agreement incorporated the call-back overtime provision of a departmental regulation which was applicable to all wage grade employees. Overtime performed prior to and continuing into regularly scheduled tour of duty merges with the regular tour. Two-hour minimum does not apply in said situation for either General Schedule or wage grade employees. See cited decisions.

By letter of May 20, 1977, the Federal Labor Relations Council (FLRC No. 76A-153) requests a decision regarding the implementation of an arbitrator's award for call-back overtime to Messrs. Conway and Gibbs, vessel employees of the Department of Agriculture at the Plum Island Animal Disease Center. We have been requested to determine whether the award violates applicable laws and regulations.

The record shows that employee Conway was called in 45 minutes early on October 7, 1974, to substitute for a sick employee. Employee Gibbs was called in 45 minutes early on October 9, 1974, for the same reason. Both employees were paid for 45 minutes of overtime. The grievance arose when the employees, through their union, Local 1940 of the American Federation of Government Employees, contended that they were entitled to 2 hours of call-back overtime under a negotiated agreement between the Department of Agriculture and the American Federation of Government Employees.

The "Statement of Issue" agreed upon by the parties and submitted to arbitration is as follows:

"Did the employer violate Article XVIII, Section 3 of the negotiated agreement by denying unit employees, Conway and Gibbs, the minimum two hour call-back overtime

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when they were called to work 45 minutes early on October 7th and 9th, 1974, respectively"

The arbitrator noted in his opinion that the provisions of Article XVIII, Section 3 are understood to mean the provisions of AM 402.2 regarding call-back overtime for wage grade employees. Article XVIII, Section 3 of the negotiated agreement states:

"Premium pay for vessel employees shall be as prescribed for wage grade employees in AM 402.2 except that nighttime, shift, and Sunday differentials shall not be paid."

Department of Agriculture, Agricultural Research Service Administrative Memorandum 402.2 (AM 402.2), in effect on the day the grievance arose, provides for call-back overtime for wage grade employees, as follows, at paragraph V, "Premium Pay for Wage Grade Employees," subparagraph B8d:

"Call-Back Overtime Work. Irregular or occasional overtime work performed by an employee on a day when work was not scheduled for him, or for which he is required to return to his place of employment, is considered at least 2 hours in duration for the purpose of overtime pay, whether or not work is performed."

In reaching his decision in favor of employees Conway and Gibbs the arbitrator found that the quoted wording of AM 402.2 did not require the merger of overtime into a regular tour of duty when employees are called in early. He based his conclusion on the fact that, prior to 1970, AM 402.2 had specifically stated that the 2-hour minimum did not apply if an employee's early reporting for duty merged with and continued into his regular tour of duty. In 1970 the merger provision was deleted from the wage grade employees agreement (but was retained in the Classification Act employees agreement). The arbitrator concluded that the deletion of the merger provision of AM 402.2 for wage grade employees was not a nullity and had some meaning. Hence, he determined that AM 402.2, as amended in 1970, did not require the merger of call-back overtime into the regular tour for wage grade employees who are requested to report to duty early. Thus, he found employees Conway and Gibbs were entitled to the 2-hour minimum for call back overtime.

After careful examination of the record, applicable laws and regulations, and decisions of the Comptroller General we conclude that the holding of the arbitrator that early reporting overtime does not merge with a regular tour of duty for wage grade employees was incorrect. Although the Department of Agriculture changed the wording of AM 402.2 regarding call-back overtime for wage grade employees, that change had no legal effect because call-back overtime for wage grade employees is regulated by Federal Personnel Manual Supplement 532-1 at subchapter S8-4(b), section (8), which implements 5 U.S.C. § 5544 (Supp. V, 1975).

In our decision B-175452, May 1, 1972, we were asked to determine whether wage grade employees could be paid a minimum of 4 hours overtime for call-back work under a negotiated agreement between the Veterans Administration and the American Federation of Government Employees. In that decision we stated that the regulatory provisions of FPM Supplement 532-1, S8-4(b)(8) prescribing call-back overtime for wage grade employees parallel the statutory provision of 5 U.S.C. § 5542(b)(1) (1970) for General Schedule employees. We further stated that without the statutory authority of 5 U.S.C. § 5542(b)(1), which creates an exception to the general rule that overtime payments can be made only for the actual time duty is performed, a 2-hour minimum payment for call-back overtime could not be made. Accordingly, we held that said statute set the maximum time that an employee could be paid overtime in the absence of performance of duty. Additionally, we held that the regulatory provisions of FPM Supplement 532-1, S8-4(b)(8) must also be regarded as an exception to the general rule. Hence, we concluded that the proposal to pay a minimum of 4 hours overtime for call-back work was not authorized for either General Schedule or wage grade employees. See also B-177313, November 8, 1972.

In our decision 45 Comp. Gen. 53 (1945), we held that call-back overtime for General Schedule employees performed prior to and continuing into a regularly scheduled tour of duty merges with the regular tour. Hence, the 2-hour minimum for call-back overtime authorized by 5 U.S.C. § 5542 (b)(1) does not apply in such a situation. In light of B-175452, supra, this same rationale applies to call-back overtime authorized by FPM Supplement 532-1, section S8-4(b)(8) for wage grade employees. Thus, the Department of Agriculture was without authority to provide a 2-hour minimum call-back

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for wage grade employees who report to duty early. Accordingly, the arbitrator's interpretation of the Department's regulation to permit payment of a 2-hour minimum is incorrect.

Employees Conway and Gibbs contend that they are not covered by the provisions of 5 U.S.C. § 5544 and FPM Supplement 532-1, section S8-4(b) since they are vessel employees exempted by the provisions of 5 U.S.C. § 5348(a) (Supp. V, 1975). Nevertheless, the negotiated agreement incorporated certain overtime provisions of AM 402.2, including the call-back overtime provisions, and made them applicable to employees Conway and Gibbs. In reaching his decision the arbitrator found that employees Conway and Gibbs were covered by the call-back provisions of AM 402.2, as he based the award on his interpretation of the language of AM 402.2. The arbitrator did not find, as employees Conway and Gibbs contend, that the negotiated agreement incorporated the call-back overtime provisions of AM 402.2 only insofar as it did not conflict on its face with the prevailing practices of the maritime industry.

We express no opinion as to whether vessel employees, unlike wage grade employees, could, under 5 U.S.C. § 5348(a) be paid a 2-hour minimum for early reporting consistent with the prevailing practices of the maritime industry.

We conclude, therefore, that the arbitrator's award to employees Conway and Gibbs violates applicable laws and regulations and may not be implemented.

Deputy

  
Comptroller General  
of the United States



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

*Chas. Simon*  
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B-180163

October 11, 1977

Mr. Henry B. Frazier III  
Executive Director  
Federal Labor Relations Council  
1900 E Street, N.W.  
Washington, D.C. 20415

Dear Mr. Frazier:

Further reference is made to your letter of May 20, 1977, concerning Plum Island Animal Disease Center, Agricultural Research Service, U.S. Department of Agriculture and American Federation of Government Employees, Local 1940 (Levitt, Arbitrator), FLRC No. 76A-153, which requested a decision as to whether the arbitrator's award of overtime pay may be implemented.

Enclosed is a copy of our decision of today holding that the award to employees Conway and Gibbs of 2 hours minimum call-back overtime for reporting to duty 45 minutes early violates applicable laws and regulations and may not be implemented.

Sincerely yours,

*R. F. Katten*  
Deputy Comptroller General  
of the United States

Enclosure