

12/60 Work Limitations and the Appropriate Remedy for Exceeding the Ceiling

As management continues to right size our work force we will see an increase in overtime hours to cover the shortage in the workforce. Along with this increase of overtime come increasing attempts by management to deny the Bargaining Unit of its rights. Article 8 overtime provisions of the Collective Bargaining Agreement has been arbitrated and been put to rest, I thought... I see some of the same issues that we fought hard and long for resurfacing.

The question of working over 60 hours within a service week continues to surface even after being settled 16 years ago. The issue of 12/60 work hour limitations and the appropriate remedy when management allows you to work beyond the daily/weekly work limitation has been a problem since the 1988 settlement.

A brief history of this 12-hour daily 60-hour weekly limitation would be in order. The issue was arbitrated before Arbitrator Richard Mittenthal back in 1986 and 1987. Several questions were presented to him for interpretation.

Whether a violation of article 8, section 5G2, i.e., working an employee more than 12 hours in a day or 60 hours in a service week, justifies a remedy apart from beyond the penalty overtime pay provided by article 8, section 4C and D? If so what would be the remedy?

Mittenthal ruled in part that Article 8, Section 5G2 does establish an absolute bar against employees working more than 60 hours in a service week. The pay question was remanded back to the parties for further consideration.

Whether an employee sent home in the middle of his tour on a regularly scheduled day, because of the bar against employees working more than 60 hours in a service week, is entitled to be paid?

He additionally ruled that an employee having been sent home on his regularly scheduled day before the end of his tour on account of the 60- hour ceiling and having experienced no temporary change of schedule, must be paid for the hours he lost that day.

Whether management may ignore the pecking order in a holiday period scheduling, as established by article 11 section 6B or a local Memorandum of understanding in order to avoid payment of penalty overtime pay under article 8?

Management may not ignore the “pecking order” in a holiday period scheduling under Article 11, Section 6 in order to avoid penalty overtime pay under Article 8. Management may not treat regular volunteers for holiday period work as having volunteered for up to 12 hours on whatever day(s) they are asked to work.

He also remanded the remedy back to the parties in this grievance. As a result of Arbitrator Mittenthal’s decisions to remand the remedies back to the parties the following memorandum came into existence.

The United States Postal Service, NALC and the APWU agreed to compensate the aggrieved employees an additional 50 percent premium of the base hourly straight time rate for those limited instances when employees are permitted to work beyond the 12/60 limitation.

Memorandum of Understanding

Between

The United States Postal Service

And

The American Postal Workers Union, AFL-CIO

And

The National Association of Letter Carriers, AFL-CIO

The United States Postal Service, the American Postal Workers Union, AFL-CIO, and the National Association of Letter Carriers, AFL-CIO, hereby agree to resolve the following issues, which remain in dispute and arise from the application of the overtime and holiday provisions of Articles 8 and 11 of the 1984 and 1987 National Agreements. The parties agree further to remand those grievances which were timely filed and which involve the issues set forth herein for resolution in accordance with the terms of this Memorandum of Understanding.

12 Hours In A Work Day and 60 Hours In a Service Week Restrictions

The parties agree that with the exception of December, full-time employees are prohibited from working more than 12 hours in a single workday or 60 hours within a service week. In those limited instances where this provision is or has been violated and a timely grievance filed, full-time employees will be compensated at an additional

premium of 50 percent of the base hourly straight time rate for those hours worked beyond the 12 or 60-hour limitation. The employment of this remedy shall not be construed as an agreement by the parties that the Employer may exceed the 12 and 60-hour limitation with impunity.

As a means of facilitating the foregoing, the parties agree that excluding December, once a full-time employee reaches 20 hours of overtime within a service week, the employee is no longer available for any additional overtime work. Furthermore, the employee's tour of duty shall be terminated once he or she reaches the 60th hour of work, in accordance with Arbitrator Mittenthal's National Level Arbitration Award on this issue, dated September 11, 1987, in case numbers H4N-NA-C 21 (3rd issue) and H4C-NA-C 27.

Holiday Work

The parties agree that the Employer may not refuse to comply with the holiday scheduling "pecking order" provisions of Article 11, Section 6 or the provisions of a Local Memorandum of Understanding in order to avoid payment of penalty overtime.

The parties further agree to remedy past and future violations of the above understanding as follows:

1. Full-time employees and part-time regular employees who file a timely grievance because they were improperly assigned to work their holiday or designated holiday will be compensated at an additional premium of 50 percent of the base hourly straight time rate.
2. For each full-time employee or part-time regular employee improperly assigned to work a holiday or designated holiday, the Employer will compensate the employee who should have worked but was not permitted to do so, pursuant to the provisions of Article 11, Section 6, or pursuant to a Local Memorandum of Understanding at the rate of pay the employee would have earned had he or she worked on that holiday.

The above settles the holiday remedy question, which was remanded to the parties by Arbitrator Mittenthal in his January 19, 1987 decision in H4N-NA-C 21 and H4N-NA-C 24.

As with every agreement the parties enter into with the Postal Service, it never seems to put the issue to rest. Additional disputes are always guaranteed to surface.

The following information is from the New York Metro USPS/APWU Joint Contract Application Manual. This manual may not be applicable for your area but the references and resources sure are. This information is only provided to assist you in protecting your rights.

Questions and Answers

If management violates the 12-hour or 60-hour restriction, what is the remedy for said violation?

Response: *In instances where this provision is or has been violated and a timely grievance is filed, the full-time employee(s) will be compensated at an additional premium of 50 percent of the base hourly straight time rate for those hours worked beyond the 12 or 60 hour limitation.*

Source: MOU between USPS, NALC and the APWU, October 19, 1988. National Arbitration Award, H4M-NA-C 21 and H4C-NA-C 27, Mittenthal, fourth issue), A90N-4A-C 94042668, Snow

After a full time employee reaches 20 hours of overtime within a service week is he/she still available for overtime?

Response: *No. Once the employee reaches 20 hours of overtime within a service week, the employee is no longer available for any additional overtime work.*

Source: MOU between USPS, NALC and APWU, October 19, 1988.

What is management's obligation when an employee reaches the 60th hour of work?

Response: *The employee's tour of duty shall be terminated once he/she reaches the 60th hour of work.*

Source: MOU between USPS, NALC and the APWU, October 19, 1988. National Arbitration Award, H4M-NA-C 21 and H4C-NA-C 27.

Does paid leave count toward the 12 and 60 work limits?

Response: Yes

Source: ELM 434

Is an employee who is sent home in the middle of the tour on a regularly schedule day, because of the bar against employees working more than 60 hours in a service week, entitled to be paid for the remainder of his scheduled day?_

Response: Yes, an employee having been sent home on his regularly scheduled day before the end of his tour due to the 60-hour ceiling and having experience no temporary change of schedule, must be compensated for the hours he lost that day.

Source: National Arbitration Award, September 11, 1987, Arbitrator Mittenthal

H4M-NA-C 21 and H4C-NA-C 27.

Does “Holiday Work Pay” count towards the 56 and 60 hour work limits?

Response: No. “Holiday Work Pay” is a premium paid to eligible employees for hours worked on a holiday. However, since employees are given credit for paid leave on a holiday, the holiday leave time would count toward the 56 and 60 hour limits.

Source: ELM 434

As clear as the language and the arbitrations cited may seem, we still continue to see violations of the 12/60 limits. If you work beyond the 12/60 limitations you **MUST** file a grievance for the additional 50 percent premium. You are still entitled to the premium even if you take paid leave during the time frame. If you need additional information or copies of the arbitration awards or the memorandum of understanding please contact me. This information is only provided to assist you, contact your local union representative to see if your rights have been violated.

Yours in education,

Bill Lewis