

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

To: Regional Coordinators
National Business Agents
Resident Officers

From: Mike Morris
Director, Industrial Relations

Date: September 5, 2013

Re: Award on Pay for Travel Time on Shuttle Between USPS Lodging and Training Facility

Attached is a copy of a recent national award which denied APWU's grievance challenging management's refusal to compensate employees for time spent on a USPS-provided shuttle transporting them between Postal Service lodging and a training facility before and after their workdays or during their meal periods while at the National Center for Employee Development (NCED) in Norman, Oklahoma. (USPS #Q00T-4Q-C 05147379, 8/30/2013)

When Maintenance and Motor Vehicle Craft employees are trained at the NCED, some of the training occurs off-site at the Rock Creek Training Facility or the Maintenance Technical Support Center approximately seven miles from the hotel where employees stay. A shuttle can be taken to get back and forth between the hotel and these facilities at the beginning and end of the workday and to travel back and forth during lunch periods to the hotel where employees may eat lunch. The total amount of time spent by employees in travel is approximately 80 minutes per day.

The union's position was that time spent by employees on the shuttle is compensable in accordance with ELM Section 438.134 which provides compensation for travel time away from home overnight, since the Postal Service-provided housing facility in Norman is a "postal facility, or other work or training site" within the meaning of that ELM section. We argued also that the time spent on the shuttle doesn't constitute normal "commuting time" which isn't compensable under ELM Section 438.121, and that provision is inapplicable, since employees are not within their local commuting area but are often thousands of miles away from home. In addition, the APWU asserted that the ELM doesn't contain provisions of the Fair Labor Standards Act (FLSA) which exempt from working time certain travel and walking time and similar activities before or after the workday (Portal-to-Portal Act).

Arbitrator Das disagreed with our position. He determined that ELM Section 438.134 doesn't cover time spent traveling from the hotel in Norman to the Rock Creek training facility while the employee is on temporary reassignment, but rather covers circumstances such as "time spent going to and from an airport ..." and the hotel in Norman. Das reasoned that once

employees arrive at the hotel, “they establish their lodging or ‘home’ at that location for the duration of their stay in Norman and Rock Creek is their duty location.” Therefore, he found it reasonable to conclude that employee travel time between the hotel and Rock Creek before and after their regular workday constituted “commuting time” in accordance with ELM Section 438.121. The arbitrator noted also that APWU’s proposal amending Article 36.2 in the 2000 National Agreement, to add that “[a]ll travel for job-related training will be considered compensable work hours”, was intended to address disparities in employee payment for travel to Norman, Oklahoma due to variations between their normal work hours and travel schedules, and doesn’t cover time spent traveling by shuttle between the hotel and Rock Creek. In addition, Arbitrator Das found that the union failed to establish that ELM provisions require compensation for time spent on the shuttle from Rock Creek to the hotel for lunch, since employees perform no work during their lunch periods and are relieved of all duties and responsibilities at those times in accordance with ELM Section 432.711.

Please disseminate the attached memo to your Local and State Presidents and Arbitration Advocates. Thank you.

MM/MW:jm
OPEIU#2
AFL-CIO

NATIONAL ARBITRATION PANEL

In the Matter of the Arbitration	)	
	)	
between	)	
	)	
UNITED STATES POSTAL SERVICE	)	Case No. Q00T-4Q-C 05147379
	)	
and	)	
	)	
AMERICAN POSTAL WORKERS	)	
UNION, AFL-CIO	)	
	)	

BEFORE: Shyam Das

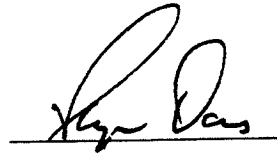
APPEARANCES:

For the Postal Service:	James P. Verdi, Esquire Brian M. Reimer, Esquire
For the APWU:	Darryl J. Anderson, Esquire Sarah T. Kanter, Esquire

Place of Hearing:	Washington, D.C.
Date of Hearing:	February 21, 2013
Date of Award:	August 30, 2013
Relevant Contract Provisions:	Article 19, ELM Chapter 4
Contract Year:	2000-2003
Type of Grievance:	Contract Interpretation

Award Summary:

The grievance is denied.

A handwritten signature in black ink, appearing to read 'Shyam Das', is written over a horizontal line.

Shyam Das, Arbitrator

BACKGROUND

Q00T-4Q-C 05147379

At issue in this case is whether employees who have traveled away from home overnight for training in Norman, Oklahoma, must be compensated for time spent on a USPS-provided shuttle transporting them between USPS-provided lodging and a training facility before and after their workday or during their meal period.

The Postal Service trains maintenance and motor vehicle craft employees at its National Center for Employee Development (NCED) in Norman, Oklahoma. For the most part, employees are housed in a hotel owned by the Postal Service and managed by Marriott. Meals are provided at the hotel and the employees' per diem is reduced accordingly. Much of the training is provided at a main campus located across the street from the hotel. Some training, however, is conducted off-site at the Rock Creek Training Facility (Rock Creek), as well as at the adjacent Maintenance and Technical Support Center (MTSC), located about seven miles from the hotel. The shuttle trip in each direction takes approximately 20 minutes. Employees who use the shuttle to get to and from Rock Creek at the beginning and end of their workday and to travel back and forth during the lunch period spend about 80 minutes on the shuttle each workday.

Many of the facts in this case are undisputed. The parties basically stipulated to the following items drafted by the Union:

1. Postal employees [including some who volunteer to attend training] are ordered to report to the training facility for training. Normally, this is held in Norman, Oklahoma at the National Center for Employee Development. This requires travel away from home overnight.
2. The travel from home [overnight] to the hotel is paid time.
3. Employees are provided food and lodging at a hotel specified by the Postal Service. Ordinarily, this is at a hotel owned by the Postal Service and run by Marriott under contract with the Postal Service. On some occasions, another hotel is used.
4. Transportation is provided from the hotel to the classroom building by the Postal Service by shuttle bus. [Employees are not required to use the shuttle bus.]

5. The Postal Service provides transportation from the airport to the hotel on this same type of shuttle bus that is used to transport employees from the hotel to the classroom site.
6. Employees are compensated for the time spent on the shuttle bus being transported from the airport to the hotel, and from the hotel to the airport.
7. Employees are informed of the bus schedule for transportation from the hotel to the classroom building and are expected to report at a certain time and place to board a bus for transportation to their classroom building.
8. Employees are informed of the bus schedule for transportation back to the hotel from the classroom building and are expected to report at a certain time and place for transportation back to the hotel by a bus provided by the Postal Service.
9. Employees are transported between the hotel and the classroom building for lunch at the hotel by the Postal Service-provided bus. [This is optional.]

* * *

11. The employees' per diem rate is reduced because lunch is provided at the hotel.
12. Employees are not compensated for the time spent travelling by bus between the classroom building and the hotel when they return to the hotel for lunch and then return to the classroom building.

* * *

14. Employees are paid for an eight hour day for all scheduled class days.
15. Employees are not paid for the time spent riding the Postal Service-provided bus between the hotel and the classroom building.

Union witness Greg See has attended training sessions at Rock Creek, most recently in 2004. He testified that there are no practical alternatives to taking the shuttle. Even those employees who drive to Norman in their personal cars, in his opinion, would take the

shuttle since use of their cars would be at their expense. Taking a cab would be expensive and walking that distance is impractical. He stated almost all of the employees use the shuttle. He also asserted that not only was the employees' per diem reduced because of the free lunch provided by the Postal Service at the hotel, but there were no real lunch alternatives. The nearest restaurant is about a mile from Rock Creek. A few employees might skip lunch, but they are the exception.

Postal Service witness Terry LeFevre also attended training sessions at Rock Creek when he was in the bargaining unit, most recently in the early 1990s. He estimated that 10-15 percent of the employees drove their own cars between the hotel and Rock Creek. The Postal Service notes that employees also are free to take a cab, carpool or use public transportation to get to and from class. The Postal Service stresses that employees have a variety of options at lunch time besides taking the shuttle and having a Postal Service-provided meal at the hotel. They are free to stay at the Rock Creek facility. They can pack a lunch and store it in a refrigerator at Rock Creek. Recently, they have been able to order a packed lunch at the hotel the night before, which they pick up in the morning and take to Rock Creek. Employees also can drive or carpool to local restaurants or even walk to a restaurant located one mile away.

There is no claim that employees ever have been compensated for time spent on the Rock Creek shuttle. Postal Service witness William Bartley, who has been responsible for travel by maintenance employees at the Louisville, Kentucky PD&C for 16 years, testified that he is unaware of any of those employees seeking to be compensated for that time when they have received training at Rock Creek. Bartley also noted that most of the Louisville employees choose to drive their own cars to Norman for two-week or longer classes.

Provisions of the Employee and Labor Relations Manual (ELM) cited by the parties include the following:

432.7 Time Worked

See 444.22.

* * *

432.711 Disallowed Time

... Examples of time that may be properly disallowed include, but are not limited to:

* * *

- d. *Mealtime* -- time spent by employees "on the clock" during a designated meal period, provided, of course, that the employee was completely relieved of all duties and responsibilities and performed no work during this period.

* * *

434 Overtime and Premium Pay

434.1 Overtime and Compensatory Time

* * *

434.12 Definitions

Definitions relevant to overtime are as follows:

* * *

- c. *Paid hours* -- hours actually worked plus paid time off, as defined below:
 - (1) *Hours actually worked* -- time that management suffers or permits an employee to work. The hours actually worked include compensable travel and training time, standby time, or other time on duty....

* * *

438 Pay During Travel or Training

438.1 Pay During Travel

438.11 Definitions

Definitions relevant to pay during travel or training include the following:

- a. *Travel time* -- time spent by an employee moving from one location to another during which no productive work is performed and excluding the normal mealtime if it occurs during the period of travel.
- b. *Local commuting area* -- the suburban area immediately surrounding the employee's official duty station and within a radius of 50 miles.

438.12 Commuting To and From Work

438.121 Regular Commuting

Commuting time before or after the regular workday between an employee's home and official duty station or any other location within the local commuting area is a normal incident of employment and is not compensable....

* * *

438.13 Types of Compensable Travel Time

438.131 General

The determination of whether travel time is compensable or not depends upon (a) the kind of travel involved, (b) when the travel takes place, and (c) the eligibility of the employee.... The three situations that may involve compensable travel time are described below.

438.132 Travel from Job Site to Job Site

* * *

438.133 One-Day Assignment Outside the Local Commuting Area

* * *

438.134 Travel Away From Home Overnight

The following applies to travel away from home overnight:

- a. *Rule.* Travel time spent by an eligible employee traveling on Postal Service business to and from a postal facility or other work or training site which is outside the local commuting area and at which the employee remains overnight is compensable if it coincides with the *normal workhours for a bargaining unit employee's regular bid job*, regardless of his or her schedule while away from the home installation, or for a *nonbargaining employee's schedule in effect while traveling*, whether on a scheduled or a nonscheduled day, subject to 438.141 and 438.142.... Compensable travel time includes the time spent in going to and from an airport, bus terminal, or railroad station.

* * *

440 Fair Labor Standards Act Administration

441.1 Federal Statute

The Fair Labor Standards Act (FLSA), as amended, is a federal statute of general application which establishes requirements for: (a) child labor, (b) minimum wage, (c) equal pay, and (d) overtime pay.

* * *

444 Overtime Pay

444.1 Policy

The FLSA provides that the Postal Service must pay an employee covered by the overtime provisions of the Act (an FLSA nonexempt employee) at one and one-half times the employee's *regular rate* for all hours of *actual work* in excess of 40 hours in any FLSA *work week*....

444.2 Explanation of Terms

* * *

444.22 Actual Work

444.221 Definition

Actual work is defined as all time which management suffers or permits an employee to work.

444.222 Exclusions

Actual work does not include any paid time off, but does include steward's duty time, time off authorized for a city letter carrier under the 7:01 rule (see 432.53), and travel, meeting, and training time (see 438).

In a 1992 National Arbitration Award, H7T-3W-C 12454 et al., Arbitrator Richard Mittenthal decided that even when time spent by APWU bargaining unit employees traveling away from home overnight was not compensable under ELM 438.134 -- because it did not coincide with the normal workhours for the employee's regular bid job -- that time nonetheless must be considered "actual work" under ELM 444.22 for purposes of calculating FLSA overtime compensation covered by ELM 434.132. In effect, this resulted in such employees being "paid" for that time at about 50 percent of their regular hourly rate.

The 2000 National Agreement was the result of an interest arbitration award issued on December 18, 2001 by a panel chaired by Arbitrator Stephen Goldberg (Goldberg Award). The Award amended Article 36, Section 2 of the National Agreement by adding:

- C. All travel for job-related training will be considered compensable work hours.

The Goldberg Award's discussion relevant to this provision is as follows:

Pay: Travel for Training - Article 36, Section 2

APWU asserts that maintenance craft employees must frequently travel to Norman, Oklahoma, for training, and that, under current USPS practice, some of those employees receive full compensation for travel time, while others receive less than full compensation. If an employee travels during his/her regular shift hours, even on a non-work day for that employee, such as a Sunday, his/her travel hours are paid for as if they were normal work hours. If, however, a second employee travels on the same

day and the same hours as the first employee, but those hours fall outside the second employee's regular shift, the second employee receives approximately 50% of his/her normal compensation. The Postal Service justifies this treatment on the grounds that the Fair Labor Standards Act does not require compensation for time spent in travel away from home with an overnight stay when the employee travels outside normal work hours. The parties disagree about whether this is a correct interpretation of the Act.

This difference in compensation between two employees traveling on the same day at the same time is attacked by APWU as inherently unfair, whether or not allowed by FLSA, and is the subject of numerous pending grievances, as well as APWU-sponsored litigation. In order to cure this unfairness, and to insure that all employees are paid for travel time, APWU demands that Article 36, Section 2 be amended by adding the following:

C. All travel for job-related training will be considered compensable work hours.

The Postal Service is opposed to this proposal on the grounds that it goes beyond the strict requirements of the FLSA, and would cost the Postal Service approximately \$1.2 million annually (a figure not contested by APWU).

The panel awards the APWU proposal, with two qualifications. First, this proposal will take effect only after the 2000 Agreement is effective, which is the date of the Award, unless otherwise indicated. It is not effective retroactively. Second, as a condition of obtaining pay for all future travel for job-related training, APWU is directed to end all financial and other support for existing and future litigation regarding pay for travel to job-related training under the 1998 Agreement. APWU is further directed to withdraw all pending grievances, including claims for back pay, related to travel to job-related training under the 1998 Agreement.

UNION POSITION

The Union contends that the provisions of the ELM, not the FLSA, govern this dispute. While the Postal Service cannot compensate an employee below the standards prescribed by the FLSA, it certainly can (and does) compensate employees beyond what the

FLSA requires. For example, the Postal Service has its own form of overtime compensation, beyond that required by the FLSA.

The Union also stresses that the ELM does not contain the Portal-to-Portal Act or an equivalent provision.¹ The Union rejects the Postal Service claim that ELM 438.121 relating to regular commuting -- which the Union denies applies to the present situation -- is analogous to the Portal-to-Portal Act. Normal commuting is not treated as hours worked under the FLSA regardless of the Portal-to-Portal Act, which focuses on the performance of the principal work activity and makes an exception to the compensability of work that is preliminary or postliminary to the principal work activity. Moreover, the Portal-to-Portal Act by its own terms does not apply to this dispute, because the parties' collective bargaining agreement makes the work at issue compensable.

The Union maintains that time spent on the shuttle is "actual work" under the ELM, which incorporates many provisions of the FLSA including, in ELM 444.221, the definition of "actual work." Because the ELM does not contain the Portal-to-Portal Act or an equivalent provision, it is like the pre-Portal-to-Portal Act FLSA. In Tennessee Coal, Iron & R. Co. v. Muscoda Local 123, 321 U.S. 590 (1944), the Supreme Court interpreted "work" in the pre-Portal-to-Portal Act FLSA as: "physical or mental exertion (whether burdensome or not) controlled or required by the employer, pursued necessarily and primarily for the benefit of the employer and his business." Both factors, the Union asserts, are present here. These employees are required to attend training in Norman, they then are required to attend classes at these off-site facilities, and the only way for nearly all of them to report to those off-site facilities is to take the Postal Service-provided shuttle, in the exact manner, method and time specified by the Postal Service. The training also is, without question, required by the Postal Service and done primarily for the benefit of the Postal Service. The Court also held that it is not necessary for an activity to be directly productive or involve exertion in order to constitute "work". See:

¹ The 1947 Portal-to-Portal Act amended the Fair Labor Standards Act of 1938. As stated in §785.9(a) of the Code of Federal Regulations (CFR): "The Portal-to-Portal Act...eliminates from working time certain travel and walking time and other similar 'preliminary' and 'postliminary' activities performed 'prior' or 'subsequent' to the 'workday' that are not made compensable by contract, custom or practice."

Armour & Co. v. Wantock, 323 U.S. 126 (1944). The Union points out that the Portal-to-Portal Act -- enacted in response to the Supreme Court's decisions -- created certain exceptions, but did not change the definition of "work" in the FLSA as it had been interpreted by the Court. Time spent by employees on the shuttle, the Union insists, fits squarely in the definition of "actual work" under the FLSA, as restated in the ELM, and the employees must be compensated accordingly.

The Union states that time spent by employees on the shuttle is made compensable by ELM 438.134 which provides compensation for travel away from home overnight.² As postal employees currently are compensated under 438.134 for time spent traveling from their home to the Postal Service-provided housing facility in Norman, it is clear that such housing is a "postal facility, or other work or training site" within the meaning of ELM 438.134. Accordingly, time spent by employees on the shuttle is time spent traveling "to and from a postal facility or other work or training site" within the meaning of 438.134, and that time, therefore, is compensable.

The Union rejects any claim by the Postal Service that the Union has acquiesced in the Postal Service's compensation policy regarding time spent on the shuttle, asserting that there have been grievances pending on this matter since the 1980s.

The Union further insists that time spent on the shuttle is not normal "commuting time" which is non-compensable pursuant to ELM 438.121. Employees in this situation are not at home, and in many cases are actually thousands of miles from their home; they are staying at a facility that they are required to stay at and that is owned by the Postal Service; and the employees are not within their local commuting area. Thus, ELM 438.121 is not applicable.

Accordingly, the Union contends that APWU employees must be compensated for time spent being transported on the shuttle between the Postal Service-provided housing

² Since the 2000 National Agreement took effect, the Union points out, Article 36.2.C supplants or negates the requirement in 438.134 that travel thereunder coincide with the normal workhours for the employee's regular bid job to be compensable.

and the various off-site training facilities. It requests that the remedy in this case be remanded to the parties to determine, and that the Arbitrator retain jurisdiction over the remedy.

EMPLOYER POSITION

The Postal Service contends that the FLSA, as the Union acknowledges, does not require compensation for commuting time or for meal periods. The Portal-to-Portal Act specifically exempts "walking, riding, or traveling to and from" work when such activities are "preliminarily or postliminary" to the principal activity. FLSA regulations interpreting this language define noncompensable travel as "that which occurs, whether on or off the employer's premises, in the course of an employee's ordinary daily trips between his home or lodging and the actual place where he does what he is employed to do." 29 CFR §790.7. While in Norman, the employee's place of lodging is the hotel and the training facility is where the employee "does what he is employed to do." Under applicable FLSA regulations, voluntary shuttle time during meal periods also is not work. 29 CFR §785.19(a). Employees are not entitled to compensation for their *bona fide* meal periods in which the employee is "completely relieved from duty." Here, the Postal Service asserts, employees are completely relieved of their duties at the time they choose to take the shuttle to the hotel and are free to do whatever they choose for lunch. Employees can drive their own car or carpool to any restaurant (or anywhere else), eat a packed lunch at the Rock Creek or Norman facility, or walk to get food. The shuttle is simply one option among many from which employees may choose. Moreover, the reduction in per diem because the Postal Service provides a free lunch at the hotel does not mean an employee's decision to use the complementary shuttle and eat a lunch provided by the Postal Service is mandatory. An optional shuttle to receive a free lunch is not "work" within the meaning of the relevant federal regulations.

The Postal Service further asserts that postal regulations, which follow the FLSA, do not permit compensation for commuting time or for meal periods.

The similarities between ELM 438.12 and the Portal-to-Portal Act, the Postal Service contends, underscore the fact that commuting time is not compensable. The title of the

pertinent ELM section, "Commuting To and From Work," is equivalent to "walking, riding, or traveling" to work in the Portal-to-Portal Act. The time of the travel described in ELM 438.121 ("before or after the regular workday") is analogous to that in the Portal-to-Portal Act. Further, the destination of such travel in ELM 438.121 ("between an employee's home and official duty location") also is analogous to that in the Portal-to-Portal Act. No ELM provision states that this type of commute is compensable, and these similarities with the Portal-to-Portal Act show that commuting time on the shuttle is not compensable under the ELM.

The Postal Service insists that the ELM regulations on commuting apply to an employee's daily commute while attending classes in Norman. When employees are in training, they are assigned a new official duty location. They also are provided a new place of lodging, or a home, for the week. According to ELM 438.12, the daily travel between the hotel and their official duty location is a normal incident of employment and not compensable.

Postal Service policies also demonstrate that meal time is not compensable. The provision in ELM 432.711 provides that a meal period does not qualify as "time worked" if the employee "was completely relieved of all duties and responsibilities and performed no work during this period." This is practically identical to the language in the FLSA regulations, 29 CFR §785.19.

The Postal Service stresses that its longstanding and accepted past practice in the period since the FLSA was made applicable to the Postal Service has been not to compensate employees for commuting time and meal periods while in Norman. Nor have APWU members sought compensation for shuttle time when filling out their time cards, as attested to by Postal Service witness Bartley. While other provisions on travel, such as "travel away from home overnight," have been the subject of consistent litigation, these ELM provisions -- 438.12 and 432.711 -- have been in existence and consistently applied since the early 1980s without similar objection.

The Postal Service argues that Article 36.2.C -- added to the National Agreement as a result of the 2000 Goldberg Award -- does not change or otherwise affect the conclusion

that the parties have not agreed to compensate employees for commuting time or meal periods. During negotiations for the 2000 National Agreement, the Union submitted the same demand it had made in 1994 and 1998 with respect to Article 36.2.C. It consistently represented in the 2000 interest arbitration proceeding that its bargaining proposal addressed long distance travel, as defined in ELM 438.134, not commuting time and meal periods. As a result of the 2000 Goldberg Award, the Union achieved uniform compensation for the long distance travel to Norman, Oklahoma. There is no reference to commuting time in Norman or use of the voluntary shuttle during the meal period in the Goldberg Award, the interest arbitration record, or the parties' past demands concerning Article 36.2.C. The changes in that provision were not intended to impact or otherwise address time spent on complimentary shuttles at Norman, and the Postal Service certainly did not understand or anticipate that they would.

The type of travel described in ELM 438.134 which was at issue in the Mittenthal Award, the Postal Service maintains, is distinct from the types of travel at issue in this case. Commuting time is a normal incident of employment, not an integral part of the assignment. The shuttle during the meal period is completely voluntary and not an integral part of the assignment. Indeed, employees are completely relieved of their duties before taking the shuttle during the meal period. Moreover, in contrast to the version of the ELM before Arbitrator Mittenthal, ELM 444.22 -- which states that "travel time" is included in "active work" -- now specifically references the provisions of ELM 438, under which commuting time is not compensable.³

The Postal Service rejects the APWU's argument that the Portal-to-Portal Act does not apply here because it was not incorporated into postal regulations. On the contrary, ELM 441.1 references both the FLSA and its amendments, which include the 1947 Portal-to-Portal Act that was enacted decades before the Postal Service was created. The Postal service also cites a 1994 National Arbitration decision in a case between the Postal Service and the NALC in which it states Arbitrator Mittenthal applied the Portal-to-Portal Act to the Postal

³ Arbitrator Mittenthal concluded that the reference to "travel time" in ELM 444.22 ought or need not be read as equivalent to "compensable travel time."

Service based on the language in ELM 444.1. See: U.S. Postal Service and NALC, Case No. H1N-5D-C-297 et al.

Finally, the Postal Service contends that an interpretation of the ELM that compensates employees for taking a free, voluntary shuttle produces absurd and harsh results and, therefore, should be rejected on that basis as well. If commuting time and travel during a meal period constitute "hours worked," then any voluntary movement where no "actual work" is performed at Norman could be considered "hours worked." Under the APWU's interpretation, the Postal Service claims, no limiting principle prevents the employee's travel to a movie theatre or an off-site restaurant, for example, from constituting "actual work;" the Postal Service arguably would be required to compensate APWU members for every moment they spend in Norman. In contrast, the Postal Service maintains that its interpretation produces reasonable results that Congress sanctioned in 1947 with the passage of the Portal-to-Portal Act. This interpretation provides the same definition of "work" as the amended FLSA and does not produce harsh or absurd results or deprive its employees of any expected compensation.

FINDINGS

The Union's claim in this case is based on the provisions of the ELM, which are enforceable under Article 19 of the National Agreement. ELM 438.13 provides for three situations that may involve compensable travel time. Only one of those, 438.134 which applies to travel away from home overnight, is at issue here.

ELM 438.134 applies to "[t]ravel time spent by an eligible employee traveling on Postal Service business to and from a postal facility or other work or training site which is outside the local commuting area and at which the employee remains overnight." For employees who travel to Norman, Oklahoma to undergo training at the NCED, the hotel at which they are lodged in Norman constitutes a "postal facility" for purposes of receiving compensation for travel time to Norman under 438.134.⁴ Under 438.134, compensable travel time includes "time spent in going to and from an airport...." On that basis -- not because they

⁴ Article 36.2.C, of course, applies in the implementation of 438.134 in these circumstances.

may travel from the airport to the hotel in a complimentary shuttle provided by the Postal Service -- the employees are compensated for the time spent traveling between the airport and the hotel in Norman.

I do not agree with the Union's contention that ELM 438.134 covers time spent traveling from the hotel in Norman to the Rock Creek training facility while the employee is on temporary reassignment. If it did, employees who drive in their own car or carpool between the hotel and Rock Creek would be entitled to be paid for that travel time under 438.134 to the same extent as those who take the Postal Service-provided shuttle, and the Union makes no claim on their behalf. It is the kind of travel involved -- not the mode of transportation -- that 438.134 addresses. In the context of the circumstances at issue in this case, it is appropriate and reasonable to treat employee travel time between the hotel and Rock Creek before and after the regular workday as commuting time under 438.121, as has long been the Postal Service's practice. Once the employees arrive at the hotel, in essence, they establish their lodging or "home" at that location for the duration of their stay in Norman and Rock Creek is their duty location.

The employees assigned to undergo training in Norman are given new duty assignments for the time they spend there. They are required to report for training at Rock Creek at an appointed time. How they get there is not dictated or controlled by the Postal Service, although it does provide a complimentary shuttle to transport them between the two locations. The fact that many, or even nearly all of them, avail themselves of the shuttle does not turn that time into worktime under Postal Service regulations or the FLSA.⁵

The Union does not appear to contend that Article 36.2.C, independent of ELM 438.134, requires that employees be paid for the time spent traveling on the shuttle between the hotel and Rock Creek. As the present record amply demonstrates, the purpose of that provision

⁵ Purely as an aside, there is no reason to believe the conditions while traveling on the Rock Creek shuttle bear any resemblance to those endured by the iron ore miners whose travel before and after their principal activity was at issue in Tennessee Coal, Iron & R. Co. See: 321 U.S. 590 at 595-6.

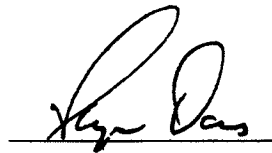
was to undo the disparity in treatment of employees in the application of 438.134 based on variations in the normal workhours of their regular bid jobs and/or travel schedules.

The Union also has not established that provisions of the ELM require that employees who utilize the shuttle for travel between Rock Creek and the hotel during their lunch period be compensated for that travel time. As the Postal Service asserts, the employees are completely relieved of all duties and responsibilities and perform no work during their lunch period. They are not compelled to ride the shuttle, which is provided for their convenience if they choose to partake in the "free lunch" provided by the Postal Service at the hotel.

Accordingly, this grievance is denied.

AWARD

The grievance is denied.

A handwritten signature in black ink, appearing to read "Shyam Das", is written over a horizontal line.

Shyam Das, Arbitrator