

GRIEVANCE

March 3, 2008

NAAE is submitting this National class grievance on behalf of ~~PPQ~~, ~~PPQ~~ GS-11 ~~PPQ~~ and all other similarly situated bargaining unit employees nationwide who have been, or will be before this grievance is finally resolved, adversely affected by an improper and unwarranted personnel action(s), specifically, the denial of proper pay under Title VII overtime and CTT rules for performing overtime work while serving the Agency on temporary duty at foreign sites and engaged in agriculture preclearance inspections, treatments and other cargo procedures, performed at foreign sites and not at U.S. ports of entry, work governed by the Import-Export Act (and the successor Statute) and the rules and regulations intended to implement such statutory provisions. The denial of proper pay violates the Back Pay Act, not only because it is contrary to the governing statutes and rules and regulations of the Agency, but also because it represents a change in and violation of the past practice governing such overtime and CTT pay, a change implemented without notice to the Union and opportunity for the Union to negotiate substance as well as impact and implementation.

This foreign preclearance work (e.g. enforcement of 7 CFR 319.56 and 7 CFR 330, among other foreign quarantines) has always been paid under the rules and regulations provided in:

USDA DPM Chapter 550 Pay Administration (General)
Subchapter 1- Premium Pay 1-11 8/29/00;

APHIS Directive AD 402.3 3/16/84 "Premium Pay for Employees Performing Inspection and Quarantine Services Related to Imports and Exports Into and From the United States"; and

7 CFR 354 "Overtime Services Related to Imports and Exports; and User Fees."

The above rules and regulations provide for Title VII Overtime pay entitlements including but not limited to: Commuted Travel Time pay, Two-hour minimums, Double-time Sunday premium pay, night differential pay, time and a half pay limited to the rate of GS-10 step 1, etc.

Recently, PPQ declined to pay ~~PPQ~~ a bargaining unit member, a Commuted Travel Time entitlement specified under 7 CFR 354.2 while he was serving on a TDY in ~~PPQ~~.

This CTT should have been and was required to be paid under the following applicable 7 CFR 354.2 provision:

Temporary detail: Any inspection point to which an employee may be temporarily detailed

NAAE understands that the Agency currently follows a wide range of disparate procedures for computing premium pay for bargaining unit employees serving temporarily in International Services. NAAE's investigation shows that some bargaining unit employees may not have received callouts, CTT and/or night differential when applicable, and some employees may not have received double-time pay for Sunday overtime work performed. This failure to pay violates the applicable rules and regulations for and the past practice of properly compensating employees under the above listed rules. Moreover, none of the above listed rules has been changed. They are all currently in effect and must be followed.

NAAE and Management attempted to resolve this dispute over proper pay by engaging in a cooperative process to settle the contested pay matters amicably. This process has proven unsuccessful. During the course of these efforts, APHIS Labor Relations agreed to several extensions of time for filing a grievance concerning the disputed pay practices outlined above, agreeing to hold in abeyance the time for initiating a formal grievance. On February 6, 2008, the Agency informed NAAE that the informal efforts to resolve the dispute were concluded and had failed and that it was now time for NAAE to grieve if it wished.

Attached is a bookmarked adobe document demonstrating ~~_____~~ correspondence in attempts to receive proper CTT and premium pay. Additionally, T & A documents covering ~~_____~~ TDY service over four pay periods are attached to demonstrate applicable CTT was not paid for callout work.

Requested Remedies

1. Payment of back pay with interest under the Back Pay Act for pay lost and correction of any other entitlements.
2. Full payment of reasonable legal fees incurred in recovering pay.
3. Any other remedy determined by an FMCS commissioned Arbitrator assigned to hear this case.
4. The Agency shall provide a written declaration to all bargaining unit employees of their overtime pay entitlements at a particular assignment upon intake at any foreign TDY for agricultural preclearance.
5. Agency shall provide foreign TDY supervisors and bargaining unit employees with written guidance as to the proper premium pay rules to follow for bargaining unit

employees who serve on foreign site agriculture preclearance TDYs. This guidance will be jointly prepared by the Union and the Employer. If the parties fail to reach agreement on the final text of the guidance, the document contents shall be negotiated.

6. Upon an employee's written request, the Agency shall provide the employee copies of the employee's T&A documents for the employee's period of foreign TDY service for the years 2003 through the then most current date. Upon further employee written request, the employer shall audit these provided T&A documents and pay the employee for premium and overtime pay deficiencies, if any, subject to number 1 above.

Sincerely,


Michael E. Randall

President NAAE

GS-11 Honolulu, Hawaii