NATIONAL ARBITRATION PANEL

In the Matter of the Arbitration	)	
	)	
between	)	
	)	
UNITED STATES POSTAL SERVICE	)	Case No. Q00C-4Q-C 03061346
	)	
and	)	
	)	
AMERICAN POSTAL WORKERS UNION, AFL-CIO	)	
	)	
and	)	
	)	
NATIONAL POSTAL MAIL HANDLERS UNION, AFL-CIO	)	

BEFORE: Shyam Das

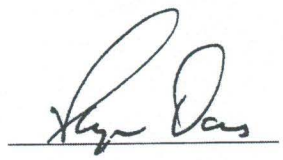
APPEARANCES:

For the Postal Service:	John C. Oldenburg, Esq.
For the APWU:	Melinda K. Holmes, Esq.
For the NPMHU:	Joshua B. Shiffrin, Esq.
Place of Hearing:	Washington, D.C.
Dates of Hearing:	November 12, 2014 November 13, 2014
Award:	June 12, 2015
Relevant Contract Provisions:	Articles 19 and 36.2
Contract Year:	2000-2003
Type of Grievance:	Contract Interpretation

Award Summary:

1. The Postal Service does not violate the National Agreement when it deducts a meal break from the compensation of an employee who is traveling for training when such deduction corresponds with the exclusion of the "normal mealtime" provided for in ELM 438.11(a).

2. As stated in the final paragraph of the above Findings, other related issues are remanded to the parties at Step 4.



Shyam Das, Arbitrator

BACKGROUND Q00C-4Q-C 03061346

This grievance was filed at Step 4 on January 10, 2003. The APWU asserts that the Postal Service has continuously violated Article 19 and Article 36 of the National Agreement by deducting mealtime from employees' pay when they travel to and from postal training. The NPMHU intervened and supports the position of the APWU that the Postal Service may not reduce an employee's compensation by one half-hour for time the employee has spent traveling for job-related training under the rationale that such reduction constitutes a permissible deduction for mealtime. The Postal Service argues that it does not compensate any of its employees for their mealtimes and that Section 438 of the ELM and Handbook F-21 Section 260 allow the Postal Service to deduct 30 minutes for mealtime from an employee's travel time for purposes of compensation.

Many postal employees, particularly maintenance craft employees, are required to travel overnight to attend postal training for their jobs. Much of the training is conducted at the Postal Service's National Center for Employee Development (NCED) in Norman, Oklahoma, and can last from two to twenty-two weeks. All of the witnesses testified that travel to NCED typically takes ten or more hours.

Article 36.2.C of the applicable 2000-2003 APWU National Agreement states that:

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

Article 19.1 provides in relevant part:

> Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that....

Section 438 of the ELM, as in effect when this dispute arose and continuing to the present, includes the following provisions:

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.

* * *

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 (see Exhibit 438.13). The three situations that may involve compensable travel time are described below.

* * *

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. For instance, an eligible employee with normal workhours of 7:00

p.m. to 3:30 a.m. Saturday through Wednesday is scheduled for training at another location from 8:00 a.m. to 4:30 p.m., Monday through Friday. If the employee travels from 6:00 p.m. to 8:00 p.m. on any day of the week, 1.0 travel hour is compensable. If the same employee travels from 5:00 p.m. to 7:00 p.m. on any day of the week, no travel hour is compensable. Compensable travel time includes the time spent in going to and from an airport, bus terminal, or railroad station.

* * *

Essentially similar provisions have been in effect since at least 1980. Handbook F-21 (Time and Attendance) includes parallel provisions and includes an Exhibit 262.23 showing how travel time is to be authorized (Form 7020) and recorded (Form 1230-C Time Card).

Other provisions of the ELM cited by the parties include:

432.33 Mealtime

Except in emergency situations or where service conditions preclude compliance, no employee may be required to work more than 6 continuous hours without a meal or rest period of at least 1/2 hour.

* * *

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).

DOL regulations -- in effect at all relevant times -- address compensated travel time under the Fair Labor Standards Act (FLSA). Title 29 C.F.R. Sections 735.37, addressing home-to-work travel in another city on a special one-day assignment, and 735.39, addressing overnight travel away from home, both state that regular or usual mealtime is deductible or not counted. 29 C.F.R. 735.39 also states: "As an enforcement policy the Divisions will not consider as worktime that time spent in travel away from home outside of regular working hours as a passenger on an airplane, train, boat, bus, or automobile."

Prior to 1993, under ELM 438.134, employees traveling away from home overnight only were compensated for travel that occurred during their regularly scheduled work hours whether on a scheduled or nonscheduled day. In a National Arbitration award issued in 1993, U.S. Postal Service and APWU, Case Nos. H7T-3W-C 12454 et al., Arbitrator Richard Mittenthal determined that while extra-schedule hours of travel were not compensable *per se* under ELM 438.134, those hours had to be counted for overtime compensation purposes under other provisions of the ELM. Thereafter, such travel -- designated "Code 83" in contrast to "Code 82" applicable to travel compensable as regular work hours -- was compensated at a rate roughly 50% of the rate of compensation received by employees for hours traveled within their regularly scheduled hours.

In 1994 contract negotiations and subsequent interest arbitration proceedings in 1995, the APWU unsuccessfully sought to amend Article 36 of the National Agreement in order to provide that "employees be adequately compensated for all time spent traveling." The Union did so again in 1998 bargaining.

During 2000 negotiations, the APWU proposed to amend the National Agreement to provide that "employees be fully compensated for all time spent traveling." Subsequently, the APWU proposed creation of an Article 36.2.C stating: "All travel for training will be considered compensable work hours." The parties then entered into interest arbitration before a panel chaired by Arbitrator Stephen Goldberg. In a December 18, 2001 decision (Goldberg Award) the panel addressed this matter 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 received 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 this 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.

Subsequently, an identical provision to Article 36.2.C of the APWU National Agreement was included in the NPMHU National Agreement.

After issuance of the Goldberg Award, a Postal Service Compensation Specialist issued an update regarding the Award indicating that all travel time for job-related training would be entered as regular work hours. The update also stated that all other travel pay regulations, as described in Section 438 of the ELM, still applied. On January 28, 2002, Manager of Contract Administration Peter Sgro issued an internal memorandum to managers in the field regarding the new Article 36.2.C that indicated "portal to portal" in-transit time was compensable. The Sgro memorandum did not refer to mealtime deductions during training travel.

Steve Raymer, National Director of the APWU Maintenance Craft, testified for the APWU and recounted that he previously traveled to the NCED in Norman, Oklahoma for training many times before becoming a full-time Union official in 1994. Raymer described the general process for traveling for training: an employee's supervisor approves the employee's participation in training and absence from work; the employee makes his or her own travel arrangements or goes through the Postal Service, and while traveling keeps a record of time and reports it back to the regular supervisor. When an employee decides to drive, travel time is the lesser of the time it would take to fly or drive. Raymer also has responsibility for Article 36 for the APWU. Raymer testified that he has never had pay deducted for a meal break during his travel to the NCED, nor has he received complaints from other APWU members regarding a meal break deduction during such travel. He also testified to discussions he had with Sgro after Sgro issued his directions to the field.

Postal Service managers William Bartlett and Sal Saieva testified on behalf of the Postal Service. They stated that at their home installations -- Louisville, Kentucky and Brooklyn, New York, respectively -- managers made meal break deductions pursuant to ELM 438.11

before and after the issuance of the Goldberg Award. Bartlett and Saieva also explained that when they were in the bargaining unit -- which was prior to the Goldberg Award -- they each had meal breaks deducted from their travel pay when they were required to travel for training. According to Saieva, supervisors in his installation currently instruct employees to take a 30-minute break, as he was instructed when he went to the NCED in the past.

The Postal Service states the issue in this case as being whether the deduction from travel time of a normal mealtime occurring during the period of travel violates the National Agreements of both the APWU and the NPMHU. The APWU and NMPHU state the issue as whether the Postal Service violates the National Agreement when it deducts a meal break from the compensation of an employee who is traveling for training.

APWU POSITION

The APWU argues that all time a bargaining unit employee spends traveling for training is compensable pursuant to the unambiguous language of Article 36.2.C. The National Agreement requires that the Postal Service compensate employees traveling for training for all their time, portal-to-portal, and with no deduction for meal breaks under any circumstances. The AWPU insists that the ELM, outdated or not, cannot overrule the National Agreement. Indeed, Article 19 prevents the Postal Service from interpreting or applying the ELM in a way that conflicts with the National Agreement. According to the APWU, it is improper for the Arbitrator to permit ELM language written before the parties' reached a new understanding in the National Agreement to have a prospective quality that negates the authority of the more current collective bargaining agreement. The APWU also asserts that the Postal Service was unable to state consistently a policy for implementing the ELM's reference to meal breaks either in writing or verbally, admitting that such deductions are the product and purview of individual managers.

The APWU points out that the Postal Service has acknowledged that travel time should be measured portal-to-portal, and that all the time an employee spends traveling for training should be paid as if the employee was working. This understanding was expressed just

after negotiations in Sgro's directions to the field and confirmed in the parties' Joint Contract Interpretation Manual (JCIM) which includes the following definition:

> Portal to portal compensable in-transit time:
>
> - Begins with departure from the employee's residence or home installation and ends with arrival at the temporary place of lodging or work location; or
> - Begins with departure from one temporary place of lodging or work location and ends with the arrival at another temporary place of lodging or work location; or
> - Begins with the departure from the temporary place of lodging or work location and ends with the arrival at the employee's residence or home installation.

It was only after Sgro asked Raymer whether meal break deductions were appropriate and seemed to agree with Raymer's position that such a deduction would be inappropriate that the Postal Service took its present position.

The APWU urges a conventional application of the contract—one that supports an interpretation of the meal break as part of the work of traveling that must be paid for by the Postal Service. The APWU argues that the parties have always read and applied Article 36.2.C broadly to encompass all kinds of activities so long as they happen between "portals" while an employee is traveling for training. In the JCIM, "[t]ravel time" under Article 36.2 "is the time spent by an employee moving from one location to another during which no productive work is performed." The APWU stresses that every minute of that time should be compensable from "portal to portal" which starts when an employee leaves his or her home and ends at his or her hotel or training location. Furthermore, according to the APWU, the Postal Service failed to produce any empirical evidence of any sort of a practice of taking a meal break deduction, and in the absence of the best evidence of pay records to corroborate the testimony of the Postal Service's witnesses, there is only hearsay evidence from the Postal Service that such a deduction existed, was justifiable and was believed to have survived Article 36.2.C. The terms of the National Agreement, both as written and as interpreted and applied by the Postal Service,

say that every minute an employee is traveling should be compensated. The APWU claims that this has to include time taking a meal break, and certainly time mechanically attributed to a meal break.

The APWU also faults the Postal Service's heavy reliance on its reading of ELM 438.11(a). In the event the Postal Service's reading of the ELM is correct, the language of the ELM cannot control because it is not the superior authority the Postal Service claims it is, regardless of how it is interpreted. Article 36.2.C is controlling, as indicated in Article 19.1.

The APWU argues that the superiority of Article 36.2.C can also be seen in how it has negated other outdated language in the ELM. For example, the language in ELM Section 438.134, still excludes from the compensation of other postal employees their training travel time that does not overlap with their regular work hours. Prior to Article 36.2.C, this rule had changed for APWU bargaining unit members following the Mittenthal Award. With the inclusion of Article 36.2.C, the rule was entirely eliminated, even though the language of the ELM continues to the present day.

The APWU offered its own interpretation of the ELM stating that it had always understood the ELM's definition of travel time in Section 438.11(a) to be all the time an employee is traveling but excluding the normal meal break which is uncompensated. In other words, the ELM defines travel time in reference to compensation -- moving from one location to another is compensable, normal mealtimes are not, and travel time is the compensable time without the non-compensable mealtime. If the Arbitrator accepts this interpretation, then the APWU posits that the ELM does not conflict with the National Agreement and never did. Therefore, it would have no relevance to interpreting Article 36.2.C, except to show that the Postal Service has no legitimate defense based on the ELM.

In the event that the Arbitrator rejects the APWU's interpretation, it is still clear that the Union genuinely believed prior to this dispute that meal breaks were not deducted from employees' travel pay. In fact, the APWU believes that the Postal Service did not start taking the deduction until after Article 36.2.C, and relied on an interpretation of the ELM that it thought

would justify it taking meal breaks out of employees' pay to save money. The APWU contends there is no evidence that the Union knew to take a position on the deductions prior to Article 36.2.C being added to the National Agreement.

The APWU further asserts that it is inequitable to arbitrarily choose to deduct pay from employees for meal breaks they may never have taken. Many employees are never told to take a break, nor do they know that their supervisors make the deductions after they submit their time cards. Under the FLSA, moreover, the Postal Service can only lawfully deduct time for meal breaks when they are *bona fide* meal periods and when they actually occur. The Postal Service defines travel time as work time, and—as Postal Service witnesses admitted—an employee engaged in travel may be doing nothing different during the thirty minute period that management deducts as a meal break than he or she did the rest of the time he or she is traveling. Accordingly, the APWU argues that its interpretation that all time spent traveling is compensable is consistent with DOL regulations as applied to the postal definition of travel time. Moreover, the APWU stresses that the Postal Service's policy is incompatible with the FLSA because it fails to confirm that employees are taking meal breaks before taking the deduction. There is no evidence that employees are completely relieved of duty during a meal period and that the period lasts at least thirty minutes for the purpose of eating a regular meal.

The APWU asks the Arbitrator to read the clear and direct rule of Article 36.2.C as prohibiting the Postal Service from deducting meal breaks from employees' pay while they are traveling for training because the language is unambiguous, the rule is straightforward, and the way in which it has been interpreted and applied by the Postal Service leaves no room for reading into the National Agreement permission to deduct meal breaks. Furthermore, the APWU argues that the ELM, no matter how it is interpreted, is inferior authority to the National Agreement.

According to the APWU, the Postal Service's interpretation of Article 36.2.C does not excuse its violation of the National Agreement. There is no support in the record for the

Postal Service's defense that Article 36.2.C corrected only Code 83.[1] On the contrary, the evidence demonstrates that the interest arbitration panel did not intend such limits on either Article 36.2.C's meaning or application. Code 83 was used illustratively in the interest arbitration and is not evidence that the panel intended such a narrow restrictive rule to arise from such broad contract language. In his award, Arbitrator Goldberg described the Union's proposal as applying to Code 83 and pay inequities in general. The APWU asserts that Article 36.2.C has a farther reach than simply correcting Code 83. Although Code 83 was a serious concern, the Union proposed adding language to Article 36 for the broad purpose of correcting other possible inequities in the pay practices for travel time and compensating employees fully for all time spent traveling.

In its estoppel-type argument, the Postal Service claims that the Union's failure to rely on the meal break deduction as an illustration of the inequities it was looking to correct with Article 36.2.C essentially estops the APWU from applying Article 36 to this dispute. However, the Postal Service failed to demonstrate that the APWU knew that meal break deductions were being taken out of employees' pay prior to the question at issue in this proceeding. The APWU argues that the Postal Service never demonstrated to the Union that it was taking the deduction before the Goldberg Interest Award. The APWU points out that at one point the Postal Service had to ask the Union whether a meal deduction was appropriate. The Union argues that Article 36.2.C trumps any prior inconsistent policies, and even if Article 36.2.A preserved practices, as the Postal Service argues, meal break deductions were hardly a "practice" and were not known to the APWU so that it could have a practice to address in negotiations.

Finally, the APWU asks the Arbitrator to direct the parties to meet to discuss outcomes to his award. The APWU requests that, if it prevails on the merits, the Arbitrator order that the parties meet within two weeks of the merits award to define the issues for their remedy briefs and agree on a brief due date that is not more than one month out from their meeting. The APWU also points out that the Postal Service untimely raised a new ambiguous

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[1] Code 83 corrected some inequity for APWU represented employees and created a new category of time and pay through the 1993 Mittenthal Award which applied until it was abolished -- for training-related travel -- by the 2001 Goldberg Award.

claim at the hearing-- that there are certain circumstances where the Postal Service was prohibited from deducting a meal break from employees' compensation-- that must be rejected by the Arbitrator. In the event that the Postal Service prevails, the APWU asks the Arbitrator to direct the parties to meet immediately to discuss those conditions at Step 4, and return any disputes to the Arbitrator as part of this proceeding.

NPMHU POSITION

The NPMHU, as the intervenor in this proceeding, supports the position of the APWU and fully adopts the APWU arguments set forth in its brief. The NPMHU wrote separately to make some additional points in support of the position that the Postal Service may not reduce an employee's compensation by one half-hour for time the employee has spent traveling for job-related training. The NPMHU argues that Article 36 of the National Agreements for both Unions is unambiguous and has been jointly interpreted in a manner that precludes reductions in travel time compensation. The Postal Service has no written policy regarding mealtime deductions while traveling and employees are not instructed to take or to schedule travel to include a meal break. Furthermore, the NPMHU points out that Article 36.2.C states that: "All travel for job-related training will be considered compensable work hours." (Emphasis added.) According to the NPMHU, this language has only one possible meaning—that an employee is to be compensated for all the time that he or she spends traveling for training.

The NPMHU asserts that the clear meaning of the contractual provision also is supported by the explicit written interpretation of the language that was subsequently agreed to by the Postal Service and the NPMHU in their joint Contract Interpretation Manual (CIM). The jointly prepared CIM states:

> When mail handlers remain overnight on travel for job-related training, their travel time will be considered work hours for compensation purposes. Travel time is the time spent by a mail handler moving from one location to another during which no productive work is performed. It includes time spent traveling between his/her residence, airports, training facilities and hotels

> (portal to portal). Management must provide prior approval for overnight travel.

The NPMHU contends that this joint interpretation describes travel time as being determined on a portal to portal basis, and that term is often understood to mean the entire time between two set points, without any allowable unpaid time deductions unless explicitly specified. This is supported by the definition of portal to portal in the Postal Service and APWU JCIM.

The NPMHU also argues that the definition of travel time in ELM Section 438.11(a) does not justify the Postal Service's position that it may arbitrarily reduce compensation for travel time. First, the NPMHU says that the Postal Service's interpretation that based on the language "excluding the normal mealtime" it is entitled to reduce an employees pay by one half-hour conflicts with the National Agreement and pursuant to Article 19, the National Agreement must control. Additionally, the NPMHU argues that the ELM contains at least one other provision that was not updated after the Goldberg Award and that is in plain conflict with Article 36.2.C. Therefore, it is the NPMHU's position that the ELM is out of step with the National Agreement on the issue of travel pay, and thus cannot be relied on by the Postal Service as a justification for the reduction in travel time compensation, especially in the face of the clear language of Article 36.2.C and the interpretation of that language in the CIM and JCIM.

Second, the NPMHU stresses that designating one half-hour of an employee's time spent traveling as unpaid mealtime is not the same thing as actually providing a traveling employee with a *bona fide* meal break. An employee who happens to eat a meal during travel has not been completely relieved of duty per the FLSA regulations.

Third, the NPMHU contends that even the most generous interpretation of the exclusion language in ELM 438.11(a) cannot justify the Postal Service's position that it is entitled to reduce an employee's compensation for an unpaid meal break if the employee travels for a substantial period of time. ELM 438.11(a) does not say that the Postal Service can deduct mealtime when travel time lasts longer than six hours; rather the ELM says that the Postal

Service can deduct time only when a traveling employee's travel coincides with his normally scheduled meal break. However, the NPMHU points out that the Postal Service's actual practice violates its own understanding of ELM 438.11(a). Postal Service manager Saieva testified that he deducts one half-hour of compensation from a traveling employee's otherwise compensable travel time regardless of whether the employee's travel coincides with the employee's regularly scheduled mealtime.

POSTAL SERVICE POSITION

The Postal Service argues that the definition of "travel time," as set forth in both the ELM and Handbook F-21, unequivocally excludes normal mealtime. The ELM at 438.11 and Handbook F-21 Section 260 define travel time as compensable 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*" (italics and underlining added). The Postal Service contends there is no other way to read these provisions and, therefore, travel time plainly does not include normal mealtime during the period of travel.

The Postal Service asserts that the Unions' interpretation of these provisions offends grammar and defies logic. Under the Unions' interpretation, Management wrote the travel time definition so that mealtime would be included as travel time, rather than excluded, and, accordingly, not deducted from the totality of work time upon which pay for travel would be calculated. However, the Postal Service's understanding of the travel time definition is that the phrase "excluding the normal mealtime" means what it says and should not be contorted into meaning that travel time includes the normal mealtime. The Postal Service explains that the first clause of ELM Section 438.11 -- "time spent by an employee moving from one location to another during which no productive work is performed" -- is of itself without limitation and would facially include even mealtimes. The Postal Service further explains that the second clause -- "excluding normal mealtime..." -- therefore, clearly was meant to supply a limitation upon the preceding clause.

The Postal Service points out that its interpretation comports with the underlying framework supplied by the FLSA regulations permitting an employer either to deduct the usual or regular mealtime from or to not count that mealtime in the calculation of compensable travel time. See, 29 C.F.R. Sections 785.37 and 785.39. Additionally, Handbook F-21 Exhibit 262.23 demonstrates how to capture travel-connected time with Postal Form 7020, used by the supervisor to "authorize the number of hours an employee is to spend in a travel status," and with a Form 1230-C time card used to record compensated hours. For example, the Postal Service states that while the Form 7020 reflects an 8-1/2 hour tour or workday, the timecard shows only 8 hours of actual compensation. Therefore, the Postal Service asserts that these two forms within the Exhibit show the exclusion and thus the deduction of mealtime referred to in the definition of travel time found at the beginning of Section 260 of the F-21 Handbook and the parallel definition contained in ELM 438.11.

The Postal Service argues that Article 36.2.C does not mandate that normal mealtime must be included in the calculation of travel time for job-related training. The language of Article 36.2.C does not alter the definition of "travel time" found in the ELM and Handbook F-21. The goal of Article 36.2.C was to create a uniform system of compensation no matter when an employee traveled in relationship to their regular (or bid) schedule. The Postal Service contends that there is no mention in the Goldberg Award of any other basis for its action or any other goal to be achieved, and there was no expression of understanding by the Panel that the adopted language would do any more than equalize the APWU travel pay compensation universe.[2] The Postal Service points out that at this hearing, counsel for the APWU admitted that the definition of travel time and the status of any mealtime in connection with that definition were not placed before the Goldberg Arbitration Panel.

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[2] The limited purpose of Article 36.2.C also was discussed in a National Arbitration Award in U.S. Postal Service and APWU, Case No. Q00T-4Q-C 05147379, (Das, 2013): "As the present record amply demonstrates, the purpose of that provision [Article 36.2.C] was to undo the disparity in the 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 Postal Service asserts that the Unions' understanding of Article 36.2.C is ironic because it would mean that an arbitral action undertaken to cure a claimed inherent unfairness of one kind would create a new sort of unfairness. Although Article 36.2.C is limited to travel related to job-training, the postal regulations defining travel time are not restricted to training; they cover travel undertaken for any job-related purpose. The Postal Service states that the Unions' interpretation would result in the different treatment of employees. For example, two maintenance electronic technicians flying on the same planes and essentially otherwise sharing the same travel schedule, one to receive training in Norman and the other to either set up or take down equipment at that facility, would be treated differently with respect to whether their mealtimes were compensated. The employee going to training would receive compensation for every travel minute, including the lunch he ate with his electronic technician traveling companion, while the "non-training" employee would not be entitled to have a paid lunch. The Postal Service argues that there is no reason to think that the Goldberg Panel would knowingly and without notice create a scheme which would yield such randomness of outcome. Therefore, Article 36.2.C does not prevent the Postal Service from applying the meaning and effect of the postal regulations defining travel time in the case of travel for job-related training. The Postal Service asserts that it may properly exclude from travel time a normal mealtime that occurs during the period of travel, even when the travel is for training. [3]

The Postal Service contends that there is no past practice which prevents it from deducting a normal mealtime from travel time. The ELM and Handbook provisions are clear and unambiguous that when a normal mealtime has arisen which also occurs during the period of travel, the mealtime is to be excluded from travel time. Practice cannot alter clear contractual language. Also, Article 36.2.A found in the 1975 National Agreement applicable to both Unions and carried forward in subsequent contracts, provided for the life of the subject

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[3] At the hearing, the Postal Service stressed that in this case it is responding to the "big question" raised by the Union as to whether the normal mealtime can ever be deducted from the compensation of an employee who is traveling for training. The Postal Service acknowledged that in applying the relevant provisions of ELM 438 and the F-21 Handbook there could be particular fact circumstances in which there might be a contested issue as to whether a mealtime deduction was proper, for example, either because travel was less than six hours or an employee's "normal mealtime" did not occur during travel.

contracts that "[t]he Employer will maintain the current travel...program." Finally, the Postal Service asserts that the evidence proffered by the APWU, through Raymer's testimony regarding his experience with mealtime deduction when he traveled to Norman and the lack of complaints about mealtime deductions while he served as a Union official, is insufficient to support the creation of a past practice. Additionally, Raymer's testimony was countered by the unrebutted testimony of Bartlett and Saieva, both of whom recounted that their home facilities, before and after the Goldberg Award, excluded mealtimes from travel time as outlined in the ELM and F-21 Handbook travel time definitions.

FINDINGS

The key provisions to be considered in this case are Article 36.2.C of the National Agreement and ELM 438.11.[4] The Unions certainly are correct that in case of conflict, the terms of the National Agreement are controlling, as is made clear in Article 19.1. Article 36.2.C provides:

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

ELM 438.11 provides:

> 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.
>
> * * *

[4] FLSA requirements are not at issue in this case.

The Union's interpretation of ELM 438.11(a) as defining "travel time" to include the full period of travel (portal to portal) without deduction for mealtime under any circumstances is not a sensible or logical reading of the language and is not supported by other evidence discussed below. Exhibit 262.23 of Handbook F-21, which in Section 261.11 includes a similar definition of "travel time," also cannot be squared with the Union's interpretation.

There is no dispute that the mealtime exclusion provided for in ELM 438.11 was not addressed by the Union (or the Postal Service) in the Goldberg Interest Arbitration proceeding which resulted in Article 36.2.C being added to the APWU National Agreement. The APWU maintains it had no reason to believe this provision actually was being applied to deduct mealtime from the travel time for which employees were being compensated -- albeit unfairly and inadequately -- when they traveled to the NCED for training. In any event, the Union is not estopped from taking the position that Article 36.2.C does not permit a mealtime exclusion. This is not to say that the context in which the Goldberg Panel added Article 36.2.C is not relevant in determining its meaning and application.

The Unions cite their respective JCIM and CIM in support of their position in this case. Both provide that portal to portal in-transit time for training is compensable. Neither makes any mention of a mealtime exclusion or deduction. But both documents post-date the filing of this grievance, its rejection by the Postal Service and its appeal to arbitration. Therefore, it is not reasonable to conclude that they reflect mutual agreement that the exclusion provided for in ELM 438.11 and Handbook F-21 is impermissible in these circumstances.

In terms of historical context leading up to the Goldberg Award, there are two relevant time periods: (1) the pre-1993 Mittenthal Award period; and (2) the period between the Mittenthal Award and the December 2001 Goldberg Interest Arbitration Award. In discussing these two periods below, like the parties, I focus on employees who traveled to the NCED in Norman. Such travel was travel away from home overnight and for present purposes is assumed to have taken at least ten hours to complete (portal to portal).

During the pre-1993 Mittenthal Award period, consistent with ELM 438.134, "travel time" for bargaining unit employees was compensable only if it coincided with the normal workhours for the employee's bid job regardless of the day on which it occurred. If, for example, an employee's normal workhours were 7:00 a.m. to 3:30 p.m. (with a one-half hour unpaid meal break), Monday-Friday, travel between 7:00 a.m. and 3:30 p.m. on any day of the week was compensable travel under the negotiations. The Union's only witness, Steve Raymer, testified that during that period, when he was a maintenance employee, he normally worked on Tour 3, starting at 3:00 p.m. and his normal lunch break was 6:00-6:30 p.m. If he traveled to Norman arriving there at 6:00 or 7:00 p.m., he said, he was paid for the hours that overlapped his normal workhours, that is, from 3:00 to 6:00 or 7:00 p.m., without any deduction for a mealtime. As he acknowledged, however, he was not paid for the hours of travel that preceded his normal shift. In these circumstances, his compensated travel time would have been less than 8 hours. Raymer did not testify that an employee whose travel fully overlapped the employee's normal workhours was paid for the half-hour that corresponded to the employee's normal mealtime. Based on the testimony of the two Postal Service witnesses, which Raymer did not contradict, an employee would not get paid more than 8 hours as travel time.

In sum, as best I can determine, during the pre-1993 Mittenthal Award period, ELM 438.11 was applied to limit an employee's compensated travel time to 8 hours, but it is unclear whether or to what extent a mealtime exclusion was applied in the case of an employee whose in-transit time only partially overlapped the employee's normal workhours

The 1993 Mittenthal Award says nothing about mealtime exclusion. It does not appear that matter was raised in any manner by the parties in that proceeding. Following the 1993 Mittenthal Award, but before the Goldberg Award, travel time was compensated under "Code 82" if it coincided with the employee's normal workhours and under "Code 83" (about 50% of straight time pay) if it did not. Code 83 applied to employees whose travel did not coincide at all with the employee's normal workhours. But it also applied to an employee whose travel partially coincided with all or part of the employee's normal workhours, for which the employee would receive Code 82. Code 83 applied to the additional hours.

There is not much specific evidence as to how the mealtime exclusion was or was not applied in varying circumstances during the period between the 1993 Mittenthal Award and the 2001 Goldberg Award. Raymer's own experience traveling to Norman as a bargaining unit employee was not shown to have extended into this period. According to Postal Service witness William Bartley from Louisville, in the event a mealtime would have fallen during the travel period, the mealtime would have been deducted. Manager Sal Saieva from Brooklyn testified that during this period:

> We never -- we never compensated the mealtimes. It was always taken out. Everything was based on the eight-hour day.
>
> * * *
>
> Eight-and-a-half hours of tour, your full tour, but the pay was for eight hours....

In the 1995 interest arbitration proceeding before a panel chaired by Arbitrator Jack Clarke -- which occurred during this period -- then Director of the APWU Maintenance Division Jim Lingberg testified:

> Briefly, the way the Fair Labor Standard Act works, if my bid job in the United States Postal Service is from 8:00 a.m. to 4:30 p.m., if my hours of travel coincide between 8:00 and 4:30 p.m., I get paid at the straight time rate. If there's any travel outside of that, I get paid at what is the FSLA rate [Code 83], and by the time you work out the formula, it's some number less than half-pay.

While Lingberg did not speak about a mealtime deduction, he seems to be indicating that for travel coinciding with a normal 8:00 a.m. to 4:30 p.m. schedule an employee would receive straight time pay, that is, eight-hours pay (excluding the normal mealtime), and Code 83 for any hours beyond the employee's normal schedule. It is difficult on this record to draw any other firm conclusions as to whether or how a mealtime deduction was applied to travel paid at Code 83.

In the interest arbitration proceeding before Arbitrator Goldberg which resulted in addition of Article 36.2.C, the APWU focused on the disparity in treatment between employees with different regular schedules, but its proposal, which the Panel adopted, states that: "All travel for job-related training will be considered compensable work hours." This, of course, would include travel of an employee that coincided with the employee's normal workhours, but extended beyond that, so that the additional hours would be compensable workhours and not just paid at the lesser Code 83 rate. This could serve to explain the Panel's reference to the Union seeking to both "cure" the unfairness of the difference in compensation between otherwise similarly situated employees and "to insure that all employees are paid for travel time." The evidence in the present record does not indicate that the Union referred to any other pay inequities in that proceeding. No reference of any sort was made by either party to a mealtime exclusion, and this was not directly or indirectly addressed in the Goldberg Award.

There is no reason to conclude that the APWU in making its Article 36.2.C proposal or the Goldberg Panel in awarding the APWU proposal used the word "travel" as having any other meaning than "travel time" as defined in ELM 438.11. Arbitrator Mittenthal had concluded in 1993 that "actual work" as defined in ELM 444.22 covered all "travel time," whether compensated or not. That was the underlying basis for his determination that the Postal Service was obliged to pay FLSA overtime (Code 83) for "travel time" that did not coincide with an employee's normal workhours. Article 36.2.C goes further and provides that "[a]ll travel for job-related training" is compensable workhours. "Travel time" as defined in ELM 438.11, however, excludes "the normal mealtime if it occurs during the period of travel." I am not persuaded on the present record that the Union sought elimination of that exclusion or that as awarded by the Panel Article 36.2.C eliminates this exclusion.[5] Nor does the evidence establish that this exclusion had fallen into disuse prior to the Goldberg Award, although its

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[5] The Goldberg Award notably relates that the APWU asserted that under the then current practice some employees receive "full compensation for travel time," explaining that if they travel during their "regular shift hours" they are "paid for as if they were normal work hours." In that situation, of course, an employee with, for example, an 8:00 a.m. to 4:30 p.m. regular shift was paid only for 8 hours, with a one-half hour unpaid mealtime.

application in practice may have varied particularly where the employee's travel did not fully coincide with the employee's normal workhours.

This determination, of course, does not mean that the Postal Service necessarily is entitled to deduct a half-hour from the total portal-to-portal in-transit time of every employee who travels to the NCED in Norman or otherwise is covered by Article 36.2.C. It is clear from some colloquy at the hearing in this case that determining whether and how the exclusion in ELM 438.11 is to be applied to any given set of circumstances may present a number of issues which the parties have not addressed during the period this grievance has been pending arbitration. In initiating this Step 4 dispute, the Union broadly stated the issue as: "Is Management violating the Collective Bargaining Agreement Articles 19 (ELM 438) and 36 when one half hour is deducted from compensable travel time[?]" In these circumstances, pursuant to Article 15.5.D.4, I remand those issues to the parties to discuss at Step 4.

AWARD

1. The Postal Service does not violate the National Agreement when it deducts a meal break from the compensation of an employee who is traveling for training when such deduction corresponds with the exclusion of the "normal mealtime" provided for in ELM 438.11(a).

2. As stated in the final paragraph of the above Findings, other related issues are remanded to the parties at Step 4.

Shyam Das, Arbitrator