

In the Matter of the Arbitration)	
)	
Between)	
)	
NATIONAL FEDERATION OF FEDERAL)	
EMPLOYEES, LOCAL 1998,)	Issue: Desk Adjudication Measurement
IAMAW, AFL-CIO)	on Overtime
and)	
)	
PASSPORT SERVICES,)	OPINION AND AWARD
U. S. DEPARTMENT OF STATE)	

Before: Jerome H. Ross, Arbitrator

Dates of Hearing: August 9 – 10, 2007

Appearances

For the Union:	Colin P. Walle
	Susan Tsui Grundmann, Esq.
	Michael F. Garofino

For the Employer:	Steven J. Polson
	Ken L. Cato

Statement of the Case

In this grievance, dated March 30, 2007, the Union asserts that management is not measuring Passport Specialist performance on overtime in a fair and reasonable manner. As a remedy, the grievance requests that management apply “the one hour of nonproductive time (the 0.8125 factor) to overtime work.” It further requests that the Management Information System (MIS) category of “Overtime Desk – All Applications” be eliminated and that employees select the “Desk – All Applications” or other appropriate category that includes the 0.8125 factor when doing overtime adjudication.

The parties' Agreement, which became effective on July 3, 2001, provides in Article 18, Performance Standards and Evaluation:

2. The performance appraisal system and the parts that make up the system as applied to bargaining unit employees will permit, to the maximum extent feasible, the accurate evaluation of job performance on the basis of objective criteria, and will be fair, reasonable, equitable and job-related...Performance of any duty will only be measured during periods when employees are assigned to those duties, i.e., time used for CFC, EEO, Union representation, leave, etc. will not count against an employee in his/her evaluation.

3. The Employer is responsible for keeping time and attendance records and for measuring the quantity and quality of work performed by the employees using the most accurate methods available and with the goal of being as fair and objective as possible. Those methods are a suitable subject for discussion at Regional Union/Management Council meetings and at the National Union/Management Council meeting.

By way of background, in July 2001 Passport Specialists (or specialists) were assigned to the then 16 offices (also known as agencies) nationwide.¹ Their duties include entering information into the MIS concerning the type of assigned task on which they are working (e.g. desk adjudication) and the number of hours assigned to it. The computer determines the number of applications reviewed from the information entered by the specialist. It also divides the number of applications by the number of measurable hours (6.5 hours in a regular eight-hour day), as explained below.

Passport adjudication involves determining an applicant's identity, U.S. citizenship/nationality and entitlement to a U.S. passport in accordance with law and regulation. Specialists, also known as adjudicators or examiners, are responsible for adjudicating passport applications to determine whether a passport should be issued. They also perform other functions. The performance plan for specialists contains the

¹The office locations were: Boston, Chicago, Charleston (South Carolina), Colorado, Connecticut, Honolulu, Houston, Los Angeles, Miami, New Orleans, New York, Philadelphia, Portsmouth (New Hampshire), San Francisco, Seattle and Washington, D.C.

following Critical Job Elements (CJE): CJE 1, Knowledge of Adjudication; CJE 2, Production and Technical Skill; CJE 3, Customer Service; CJE 4, Fraud Awareness; and CJE 5, Security Awareness. CJE 2 states:

Legibly records citizenship and identification documents. Ensures appropriate fees are submitted and recorded. Administers oath to customers, reviews customers' travel plans and determines the priority of service. Adjudicates an average of 24 applications per hour at the desk with a notational error rate not to exceed 1%. Verifies data-entered information in TDIS-PD with a data error rate not to exceed 1%. Accepts and adjudicates an average of 7 applications per hour at the public counter with a notational error rate not to exceed 1%.

To be rated Fully Successful, a GS-9 or 11 Passport Specialist must adjudicate at a minimum an average of 24 passport applications per hour, i.e. an average of 156 passport applications in an eight-hour regular workday. This standard is calculated by dividing the number of applications during the rating year by the number of measurable hours performing this task. As stated, specialists performing desk adjudication are measured for 6.5 hours of adjudication in an eight-hour regular workday; there are two 15-minute breaks, and one hour is allocated for "nonproductive" time. In effect, the ratio of nonproductive time to productive time is 11 minutes per hour. The 6.5-hour measurement may vary depending on other assigned tasks or leave.

Examples of nonproductive time are: unlocking the desk and cabinets at the start of the day; getting out the work tools; picking up batches of applications and removing the staples; logging into the computer; answering phone calls; reading and answering business related e-mails; writing suspense letters; answering supervisors' questions; assisting other specialists; searching for a case; logging off or into the computer during the day; securing and shredding documents; completing the MIS report; and logging off the computer and locking up the cabinets and desk at the end of the day.

Both regular workday and overtime day performance are included in the measurement of the desk adjudication average. If specialists do not meet the numerical standard, they can be placed on a Performance Improvement Plan (PIP) and ultimately could lose eligibility for a within grade increase or career ladder promotion or be subject to downgrade and removal,

Passport Specialists adjudicate an application by ensuring that: the submitted documents are authentic and the applicant meets the legal definition of U.S. citizen/national; is applying in his/her true identity; and has met other requirements. They also ensure consistency between the information on the evidence, the passport application and in the passport issuance computer program. When there are deficiencies, specialists request additional documentation from the applicant or refer the application to the fraud office.

Passport fraud is the attempt to obtain a passport, through means of deceit, that one is not entitled to receive, e.g. submitting false documents or bona fide documents fraudulently obtained. Frauds issued in error can negatively impact a performance appraisal under CJE 4. A Union survey taken in January 2006 and an employee petition dated March 2007 reflect specialists' concern regarding the numerical desk adjudication standard not providing sufficient time to perform their duties, including the detection of passport fraud.

When working overtime, specialists are required to use the category of Overtime Desk – All Applications, which does not factor in nonproductive time as does the Desk - All Applications category. There are three periods of overtime: Saturday/Sunday, before or after the regular schedule, and the regular day off (RDO) for Compressed Work

Schedule (CWS) employees.² The effect of not considering the one hour of nonproductive time for overtime work is that specialists must process more applications per hour to reach the 24 applications per hour standard (i.e. 24 applications multiplied by 6.5 measurable hours equals 156 passports per day); however, on overtime for the same eight hours, the factor is 7.5 hours (i.e. eight hours less two 15-minute breaks), which results in 20.8 applications per hour, or 180 in an eight-hour day (24 applications multiplied by 7.5). Stated differently, MIS applies the 0.8125 factor (6.5 hours divided by eight hours) and automatically calculates the number of hours spent on desk adjudication, as entered by the specialist, to determine the number of measurable hours for the day.

Issue

Whether the Employer violated the Agreement, rule or regulation with regard to the measurement of “desk adjudication production” when work is performed on overtime; and if so, what is the appropriate remedy?

Union Position

The Union argues that specialists’ performance on overtime is not being measured in accordance with Article 18.2 and 3 of the Agreement when the measurement does not account for their nonproductive tasks. It points out that the grievance lists 32 tasks which are included in the concept of nonproductive time and comprise the one hour that is not

²CWS employees work a 5-4-9 schedule, under which they are scheduled for eight nine-hour days and one eight-hour day and one day off (the RDO) every pay period.

measured during a specialist's eight-hour day production day.³ Moreover, it says, there is no dispute that the tasks listed as 1-9, 11-22 and 25-28 are performed on overtime in all offices. It acknowledges that fewer e-mails are sent and received on weekends but points out that specialists still must refer back to weekday e-mails when working on weekends. Also, it notes, overtime is not limited to weekends and is commonly performed during the week, both before and after regular hours and frequently on the CWS RDO, when specialists receive exactly the same number of e-mails as during regular days. The Union also maintains that during overtime, specialists answer and ask questions to each other and supervisors; and supervisors and managers explain policies and procedures. It claims that in most offices, specialists complete worksheets for complex cases and fraud referrals. It observes that calling applicants by phone is performed in some offices but not in others.

The Union emphasizes that some offices provide non-measured time for overtime work. It says that the best example is the National Passport Center (NPC), where one hour of nonproductive time out of every eight hours (the 0.8125 factor) is removed from the desk adjudication measurement for both regular time and overtime. It further points

³The tasks are: 1. Unlock cabinets. 2. Unlock desk. 3. Obtain envelopes, pens and other supplies. 4. Obtain batches of applications. 5. Obtain jurat and change dates (also change dates on cancel stamp and other stamps). 6. Log into computer. 7. Log into TDIS. 8. Log into e-mail. 9. Log into Passport Intranet (and other shared file/folder resources). 10. Read (and respond to, as appropriate) work-related e-mails (exact same number if doing OT on a compressed schedule-weekday, somewhat fewer on weekends, though still must reference past e-mails on policies and procedures). 11. Lock computer when leaving workstation (e.g., breaks, lunch, obtaining more batches or supplies, making copies, etc.). 12. Unlock computer when returning to work station. 13. Log back into TDIS, etc. upon return to workstation after breaks, lunch, trips away from workstation, and after "timeouts." 14. Place completed batches on book print cart. 15. Place suspended applications in appropriate box or office. 16. Shred sensitive information as needed. 17. Complete MIS report and submit. 18. Log out of TDIS and other programs. 19. Lock computer. 20. Lock up jurat and lock desk. 21. Lock up batches and cabinets. 22. Ensure all sensitive information (applications, printouts, etc.) is secured and/or shredded. 23. Answer adjudication questions posed by non-Senior Specialists. 24. Ask adjudication questions of supervisor or Senior Specialist. 25. Stretching. 26. Brief personal phone call. 27. Getting drink of water. 28. Other human functions. 29. Adjudicating/researching complex cases. 30. Documenting evidence on worksheets. 31. Completing fraud referral and other referral worksheets. 32. Calling applicants when there is a problem.

to the Honolulu Passport Agency (which is one of two offices without a Union representative), where at least some specialists also are measured the same on overtime and regular time. It also notes that the Charleston Passport Center (CPC) specialists must use an MIS accounting code that does not include the nonproductive factor but are allowed to enter 15 minutes using the "Other" MIS category when they sit somewhere other than their desk or have to walk further than usual to obtain more batches. The Union points to the Washington, D.C. Passport Agency as another example of providing some non-measured time generated by overtime desk adjudication work, where specialists are given nonproductive time on the following regular workday under the "Other" category to take care of work that was removed on overtime. The Union further cites the use of almost 20 MITS categories as another example of measuring employees only when assigned to a duty.

The Union contends that specialists performing desk adjudication are not measured fairly and equitably under the Agreement's requirements. Firstly, it asserts that management violates the Article 18.2 requirement to only measure specialists when assigned to the duties to be measured, because the time spent performing nonproductive tasks on overtime is not considered in the calculation of their performance. For example, it points out, the numerical performance standards in CJE 5 include such tasks as locking and unlocking applications, securing the jurat, and access to the computer; and when specialists are on overtime from 7:00 a.m. to 7:00 p.m. they typically will perform those duties throughout the day as well as for ten to 15 minutes at both the beginning and end of the day. However, it observes, management measures specialists against the CJE 2 production standard during these periods as well as when they are performing the other

nonproductive tasks. Secondly, the Union maintains, management violates the Article 18 requirement to accurately and objectively evaluate specialists' performance when it calculates performance based on a total of 7.5 hours and ignores the fact that nonproductive tasks are performed on overtime. Thirdly, it claims, management does not appraise specialists equitably under the nationwide performance standards which were implemented in January 2004, resulting in specialists in only one or two offices being measured fairly and equitably. In this regard, it notes, even within an office the specialists are not measured fairly and equitably when some working on a regular scheduled day are measured using the 0.8125 factor and others working on their CWS RDO are not. Fourthly, it submits, management does not measure specialists' performance on overtime fairly and reasonably without considering nonproductive time.

As a result of not measuring specialists fairly and reasonably, the Union asserts, they are negatively affected because their production average is lowered, which in turn impacts appraisals, awards, promotions, within-grade increases and retention. It claims that because a faster pace is required on overtime, specialists are more likely to miss fraud and to experience a general decrease in the quality of their work. Additionally, it argues, the faster pace takes a physical toll, hurt morale and retention and causes or exacerbates workplace injuries. It points to the Agreement, Article 32.7, Video Display Terminal, which states that operators will not be expected to work continuously at a terminal in excess of one-hour periods and are encouraged to briefly interrupt their work (e.g. by standing, stretching, etc.) at the end of every hour. Therefore, it asserts, given the fatigue factor experienced on overtime as a result of working more than the normal daily or weekly schedule, the failure to account for this factor experienced during overtime

periods does not satisfy the requirements for fairness and reasonableness under Article 18. In a related area, the Union says, unfair measurement of overtime work caused negative consequences to the mission by harming the integrity of the passport issuance process and efforts to reduce the backlog.

In sum, the Union maintains, there are no significant differences between overtime and regular time for purposes of measuring a specialist's production. It labels as incredible management's claim that specialists on overtime are assigned to straight adjudication. It points out that passport adjudication is performed in a professional office setting where specialists are expected to work diligently on both regular time and overtime. It emphasizes that there are as many limited social interactions on overtime as on regular time (including e.g. notices via e-mail about doughnuts in the break room, which are consumed at times other than established break periods). It also explains that adjudication production depends to a great degree on maintaining a production workflow and rhythm, and although performing some of the individual nonproductive tasks one time may not take much time, their repeated performance throughout the day negatively impacts the rhythm. In this context, it points to an e-mail, sent on September 19, 2006, from a Headquarters management official to the Union, stating that nonproductive time includes getting a drink of water or performing other human functions. The Union also disputes management's claim that on overtime specialists are not called to the public counter like they are on regular time; and, more importantly, the claim is irrelevant because there are different reporting categories for counter adjudication, desk adjudication and other tasks, so time spent at the counter is not included in the time

measured for desk adjudication. It also challenges management's assertion that applicant phone calls are different on overtime than on regular time.

Employer Position

The Employer emphasizes that prior to the development of the standard under CJE 2, the 16 offices had different work processes and methods for counting production, ranging from 18 to 30 applications per hour. It points out that the standard was not a daily quota; rather, it was considered to be a fair and reasonable requirement that specialists should be able to accomplish on a regular basis during the course of a one-year rating period to be rated at least as Fully Successful. It further observes that the new standard is lower or the same as previous requirements in most agencies. Indeed, it explains, after further evaluation and discussion of the originally established one-half hour of nonproductive time, the time was increased to one hour. The Employer further notes that in developing the standard, no mention was made of applying it to overtime; and management purposefully did not spell out the various criteria that could be counted as nonproductive time, because not all days in the passport processing centers are the same. It was simply understood that during the course of a normal workday, various factors could impact production.

The Employer further explains that MIS does not distinguish between the number of applications completed during the normal workday from applications completed on overtime. Instead, it totals up the number of measurable hours and divides that into the number of applications reviewed that particular day/month/year or any defined period. It contends that the same factors that apply to a regular workday do not apply to overtime,

which is to be used to conduct straight desk adjudication, or for whatever overtime activity the specialist signed up for during that period. It asserts that specialists are not subject to the distractions found on regular duty, such as conversing with employees, answering supervisory inquiries, being called away from their desk to perform routine tasks, reading and/or responding to e-mails, working the phones or responding to personal calls. It says that they sign up for a specific period of overtime and specific duty while on that overtime; and they are fully aware of their one and only responsibility during that overtime period. Moreover, it points out, supervisors are directed to not distract them from their straight desk adjudication function. Thus, when not working normal business hours, specialists are not distracted by the many ad hoc actions that could take them away from straight adjudication. It also asserts that while some specialists choose to answer phones, read and respond to e-mails, and converse with colleagues, these duties are not required to be performed on overtime.

The Employer argues that the Union greatly exaggerates what is required when going through regular start-up and close-down processes. It maintains that unlocking a cabinet, obtaining the necessary jurat stamp and starting up the computer can all be done at the desktop in less than 30 seconds. Obtaining a batch of 30 applications is done in the same work area and takes less than a minute. It says that once a computer is running, tapping into the necessary applications is a touch of an icon. Supplies (envelopes, pens, staples, etc.) rarely run dry and can be replaced at any time in one minute when necessary. Locking a computer to take a break is done by simply hitting "ALT and CTRL and Delete" and then the "Lock Computer" key, taking merely seconds; and logging back in typing a password and takes only seconds. Shredding is not required on

a daily basis and is rotated among specialists; often, it is completed by a supervisor and can be recorded as “Other” time if unusually time consuming. Although the MIS report is supposed to be completed within 24 hours, many specialists often put it off for lengthy periods of time. The Employer claims that CJE 5, Security Awareness, only requires a specialist working desk adjudication to “safeguard computer passwords” (zero time), “safeguard and properly secure approval stamps” (seconds) and to be responsible for safeguarding “personal information associated with passport files,” which is associated with locking up cabinets at the end of the day. It observes that most application batches contain 29 if not 30 routine cases requiring straightforward action, and the rare complicated cases requiring more documentation, or potential fraud cases, are dealt with through appropriate worksheet completion by the specialist. For these reasons, the Employer concludes, every opportunity exists to increase production numbers during overtime if the specialist concentrates on straightforward adjudication.

In conclusion, the Employer contends, management made every effort to comply with the terms of the Agreement by developing the standards, “to the maximum extent feasible, [for] the accurate evaluation of job performance on the basis of objective criteria,” and they are “fair, reasonable, equitable and job related.” It further points out that the Agreement holds management responsible for “measuring the quantity and quality of work performed by the employees using the most accurate method available with the goal of being as fair and objective as possible.” It submits that the standards meet that requirement in their application to desk adjudication work on overtime

Discussion and Findings

Development of adjudication standards for Passport Specialists began in early 2002, after Headquarters found inconsistencies in performance measurement between the 18 offices. A memorandum, dated July 28, 2003, to all Regional Directors, provides:

Attached for your immediate review are the final standardized critical elements categories and the “Fully Successful” responsibilities for passport specialists.

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- Complex adjudication cases are not to be factored out of productive workload. Time spent on these cases is to be counted in the hourly desk or counter adjudication workload production calculations. If an employee has an especially time-consuming case (or cases), he/she may let his/her supervisor know, to account for an unusually low production period. However, over time, we expect the distribution of labor-intensive cases to be balanced enough as to not adversely affect anyone’s rating. Additionally, the production standards are to be used to evaluate employee performance over the course of an entire rating period. They are not quotas that have to be met every hour or every day.

In another memorandum from Passport Headquarters, dated July 9, 2004, all Regional Directors were updated on the status of the new standardized performance elements that had been implemented on January 1, 2004. The memorandum announced a “general procedural change in the maximum assignment time for desk or counter adjudication...[in that] the maximum time assigned to desk or counter adjudication for a Passport Specialist who works an 8-hour workday will be lowered from 7 hours to 6.5 hours.” The memorandum further states “that this adjustment takes into account the evolving changes in our processes, systems and procedures that may not have been foreseen during the development of the new standards.”

During November and December 2005, a pilot program for MIS was implemented. In a memorandum dated December 30, 2005, Regional Directors were updated and provided procedural guidance on this MIS program, known as Passport Specialist Daily Data Online Production Tracking System, to be used by specialists for reporting their time, after which supervisors would review the information. MIS was implemented for the calendar year 2006 performance evaluation period.

By a Headquarters memorandum, dated December 4, 2006, the Regional Directors were updated on the responsibilities under CJE 5, Security Awareness. A list of responsibilities “not to be construed as all inclusive” is set forth.⁴ Also included is a guide to determine “how to rate an employee in this element,” which is based upon the number of security infractions charged against a specialist during the rating period.

The evidence further establishes that NPC management permits the use of the Desk – All Applications category on overtime as well as for regular workday hours by examiners. For example, the NPC considers the completion of the MIS worksheet at the end of the workday, which is done on both regular workdays and on Saturday/Sunday overtime, as nonproductive time. Some other offices also use the Desk – All Applications category for overtime work, albeit in a more limited fashion.

⁴The list includes: Safeguard computer passwords and door/cabinet combinations. Ensure that unauthorized individuals are not allowed to enter a controlled area without escort. Properly mark/safeguard/secure classified information. Safeguard/secure classified information and accountable materials such as blank books, rejected passports, printed books, foils and ribbons and visa paper. Properly note loose postage stamps when received. Lock storage drawers in Bookprint before leaving workstation. Safeguard/secure the cash receipts and the DS-233 receipts log. Safeguard and properly secure approved stamps and passport applications with fees attached. Safeguard passport applications and personal information associated with passport files, whether current or archived, at the close of business. Properly destroy (shred) or store defective and/or spoiled books. Lock cash register when unattended. Safeguard funds until the deposit is picked up for transmission to the depository. Immediately place boxes of blank passports in the Agency vault or other approved security repositories.

The conflicting and contradictory testimony adduced by the parties through numerous witnesses as well as written statements which, the parties agreed, would be treated as live testimony for evidentiary purposes, is reflected in the following summaries of the testimony of three witnesses:

Karen Proctor-Adams, a GS-11 Passport Specialist and the Chief Shop Steward at the Washington Passport Agency, testified that ten minutes of preparation are necessary to get ready at the beginning of the day, and shredding takes about ten minutes at the end of the day. On overtime, she puts aside fraud cases and cases requiring research, which she does on a regular day. She does not get credit for the time spent, approximately ten minutes, putting them aside for removal, tagging and securing in a safe place.

Ilona Flynn, the Adjudication Manager in the Washington Passport Center, testified that preparatory tasks at the start of an eight-hour day take five minutes at most to complete. She testified that processing a passport application takes two-to-three minutes if everything is in order. Complex citizenship is not a normal case -- maybe one or two in a batch -- and takes 15 minutes of production time. Not issuing a passport and putting the application in suspense takes about one minute, and the specialist receives credit for the case. She testified that fraud worksheets and hold cases take two-to-three minutes to complete, and the specialist receives credit. Flynn testified that overtime work on desk adjudication differs from a regular workday because there are no interruptions resulting from other duties performed by specialists during a regular workday. On a specialist's overtime day, supervisors or other specialists normally will not interrupt the specialist.

Walle testified that on Saturday and Sunday overtime, specialists read e-mails, which contain instructions on processing applications, received on those days. He also testified that on Saturdays and Sundays specialists read e-mails which contain policy and procedure directives which were sent prior to those days. He further testified that specialists interrupt each other on overtime, e.g. where teams of four or five specialists pull urgent cases, or when others are searching for applications. Additionally, Walle testified, on Saturday overtime specialists complete MIS entries for work done on Friday. Specialists also answer coworkers' questions on overtime. Walle observed that some specialists post "do not disturb" signs on overtime and on regular workdays when they are trying to focus on straight adjudication for 6.5 hours.

This analysis begins from the premise that the one hour of nonproductive time factored into the standard for regular workdays is fair and objective as required under Article 18.3. Accordingly, I find irrelevant Employer's assertion that the standard of 24 applications per hour is not a daily quota and is lower or the same as previous requirements in most agencies. The question raised by this grievance is whether the measurement of a specialist's desk adjudication production on overtime is "as fair and objective as possible," in accordance with Article 18.3, and "permits, to the maximum extent feasible, the accurate evaluation of job performance on the basis of objective criteria, and will be fair, reasonable, equitable and job related," in accordance with Article 18.2. Contrary to the Union's contention, the final sentence of Article 18.2 addresses the subject of time used for tasks other than those directly related to the duties and responsibilities of the Passport Specialist position.

The analysis is based primarily upon findings of fact rendered after reviewing the testimony and written statements. I also have considered the Employer's memoranda concerning specialists' performance in connection with the CJE's and the Union's replies to those memoranda. This record does not contain a study comparing a specialist's nonproductive time during a regular workday with such time while working overtime. Rather, in addition to the above recounted testimonies of Proctor-Adams, Flynn and Walle, the record contains the testimonies of witnesses and written statements which are based upon assertions ranging from "specialists have no distractions when performing desk adjudication on overtime days" to "the nonproductive tasks are the same on regular and overtime days." The more specific credibility issues center on the amount of time spent performing individual tasks which are considered nonproductive time under CJE 2.

Notwithstanding the Employer's observation that management purposefully did not enumerate the criteria for nonproductive time, I find that at least 25 of the nonproductive tasks cited in the grievance should have been considered under an existing MIS category other than "Overtime Desk – All Applications" in measuring specialists' production on overtime days. However, the evidence suggests that several of the tasks cited in the grievance (Nos. 10, 23, 24, 29, 30, 31 and 32) require reduced amounts of time on overtime days. In large part, this is due to the awareness of specialists and supervisors that desk adjudication work on overtime is devoted primarily to that task.

I further find either overstated or understated the parties' characterizations in connection with the amount of overtime devoted to nonproductive tasks on overtime. It appears that neither party's description of the time necessary to perform these tasks is closer to reality when considering all agencies on a typical overtime day. I have credited

Flynn's testimony to a greater extent than Halle's and Proctor-Adams' with regard to task Nos. 1-9, 11-16, 18-22 and 26-28. I find more credible the testimonies of the latter two witnesses concerning the performance of task Nos. 10, 23-24 and 29-32 on overtime, but not to the extent that these duties are performed for approximately equal amounts of time on overtime and regular workdays. As one example of the conflicting testimony, it appears that the tasks associated with CJE 5, Security Awareness require significant responsibility but minimal time.

The Union's remaining contentions may be summarily addressed. There is no persuasive evidence to support the existence of a "fatigue factor" on overtime, and in any event such a consideration would apply equally to every workday as opposed to only the weekend or CWS RDO. Maintaining a production workflow is less of a factor on overtime days when outside disturbances are less frequent than on a regular workday. Absent any persuasive evidence to the contrary, it appears that applicant phone calls would be less frequent on weekend overtime days, if not on CWS RDOs. My hearing notes do not reflect the testimony (including rebuttal testimony) of any Union witness indicating that specialists on desk adjudication overtime are called to work the public counter.

Based upon the above findings, I find that management's use of the MIS category "Overtime Desk – All Applications" does not meet the Article 18.3 goal of being as fair and objective as possible. Nor does it satisfy the Article 18.2 requirements to permit, to the maximum extent feasible, the accurate evaluation of job performance on the basis of objective criteria and to be fair, reasonable, equitable and job-related. Additionally, I find that the Union has not met its burden of proving that specialists perform

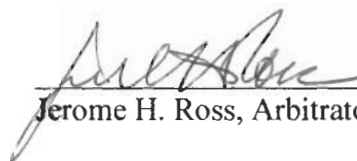
nonproductive tasks with approximately equal frequency on overtime days and regular workdays. After reviewing the record, I find the appropriate remedy to be an Award which equally credits both parties' positions. Accordingly, the following Award remands the grievance to the Employer to fashion a remedy consistent with the above findings, taking into account the Article 18.3 recognition that the methods for measuring the quantity of work performed are a suitable subject for discussion with the Union.

AWARD

The grievance is sustained to the extent that the Employer shall cease and desist from using the MIS category "Overtime Desk – Applications."

The grievance is remanded to the Employer to account for Passport Specialists' nonproductive tasks while performing desk adjudication on overtime through the use of an existing MIS category consistent with the findings set forth hereinabove.

I shall retain jurisdiction of this grievance for the sole purpose of resolving any dispute concerning the appropriateness of the remedy under Article 18.



Jerome H. Ross, Arbitrator

October 23, 2007
McLean, Virginia