

U.S. Office of Personnel Management  
Office of Merit Systems Oversight and Effectiveness  
Classification Appeals and FLSA Programs

Philadelphia Oversight Division  
600 Arch Street, Room 3400  
Philadelphia, PA 19106-1596

**Fair Labor Standards Act Decision**  
**Under section 4(f) of title 29, United States Code**

**Claimant:** [claimant's names]

**Agency classification:** Airways Transportation Systems  
Specialist, FV-2101-H

**Organization:** Bangor System Service Center  
[name] Snow SMO  
Airways Facility Division  
[name] Region  
Federal Aviation Administration  
[location]

**Claim:** Exemption status  
Willful violation  
Uncompensated overtime

**OPM decision:** Nonexempt. Agency to determine  
compensation due, if any, and pay  
claimants overtime plus interest on  
back pay.

**OPM decision number:** F-2101-H-01

Robert D. Hendler

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Robert D. Hendler  
FLSA Claims Officer

1/16/02

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Date

As provided in section 551.708 of title 5, Code of Federal Regulations (CFR), this decision is binding on all administrative, certifying, payroll, disbursing, and accounting officials of agencies for which Office of Personnel Management administers the Fair Labor Standards Act. The agency should identify all similarly situated current and, to the extent possible, former employees, and ensure that they are treated in a manner consistent with this decision. There is no right of further administrative appeal. This decision is subject to discretionary review only under conditions and time limits specified in 5 CFR 551.708 (address provided in 551.710). The claimants have the right to bring action in the appropriate Federal court if dissatisfied with the decision.

**Decision sent to:**

[claimants' names and addresses]

[name]  
Manager, HRM Division  
Federal Aviation Administration  
[name] Region  
[address]  
[location]

Mr. Chris Early  
Office of Human Resource Management  
Policy Management Division  
Federal Aviation Administration  
AHP-300, Room 523  
800 Independence Avenue, SW.  
Washington, DC 20591

Ms. Glenda M. Tate  
Director of Personnel  
U.S. Department of Transportation  
400 7th Street, SW.  
Washington, DC 20590

## **Introduction**

On March 27, 2001, the Philadelphia Oversight Division of the U.S. Office of Personnel Management (OPM) received a Fair Labor Standards Act (FLSA) claim from Messrs. [name], [name], and [name]. [name] subsequently accepted a settlement from his agency and withdrew from the claim. The claimants occupy Airway Transportation System Specialist, FV-2101-H, positions. [name] stated that his position has been erroneously classified as FLSA exempt since October 1997, and [name] stated that his position has been erroneously classified as FLSA exempt since July 1999. During the claim period, the claimants worked in the [name] System Service Center, [name] Snow SMO, System Management Office, Airways Facility Division, [name] Region, Federal Aviation Administration (FAA), Department of Transportation, [location]. In their letter of July 18, 2001, the claimants clarified that they also sought payment for any uncompensated overtime or standby time worked during the claim period. They did not provide a listing of the hours worked pending a decision on the FLSA coverage status of their position. We have accepted and decided this claim under section 4(f) of the FLSA as amended. We attempted to obtain a complete administrative report from the agency, but we received a partial claim administrative report on January 14, 2002. In reaching our decision, we carefully reviewed all information furnished by the claimants and their agency.

## **Background**

The claimants stated that they notified their immediate supervisor on March 19, 2001, that they intended to file a claim with OPM contesting their exemption status. They said they were not aware of any action to correct the exemption status prior to filing this claim. The claimants stated that they were members of the Professional Airway System Specialists (PASS) bargaining unit during the claim period, and that Article 5, Section 6, of the bargaining unit agreement (BUA) requires them to use the OPM FLSA process to resolve their claim.

The regional human resources office advised OPM in their letter of June 6, 2001, that a Memorandum of Agreement (MOA) between PASS and the FAA rendered the claim for payment of uncompensated overtime moot. FAA and PASS executed the MOA, effective May 23, 2001, in response to a bench ruling issued by the United States Court of Federal Claims which held that certain employees in the 2101 and other series were nonexempt from the overtime provisions of the FLSA. See *Davidson v. United States*, No. 98-553C (Ct. Cl. April 14, 2000). Through the MOA, FAA and PASS agreed to reclassify all PASS bargaining unit positions in the 2101 series in the "I" pay band and below, with certain exceptions, as nonexempt from the FLSA effective with the pay period starting on July 1, 2001.

In their letter of January 11, 2002, enclosing the partial claim administrative report, the regional human resources office pointed to language in the MOA that they believe makes the claim for payment of uncompensated overtime moot: "This agreement fully and completely resolves this matter between the parties and the union shall not advance any additional claims on this matter in any forum." The MOA provides that, following the conversion of the affected employees to nonexempt status, FAA and PASS will explore establishing an alternative dispute resolution (ADR) process to resolve back pay issues. In the event the parties are unable to resolve these

issues using the ADR process, resolution may be sought under any applicable statute or regulation (MOA, Section 2).

Under the terms of the BUA, the OPM “complaint and compliance system” must be used for matters relating to overtime pay entitlement under the FLSA. They are excluded from the scope of the negotiated grievance procedures (BUA Article 34, Section 6, and Article 5, Section 6). By entering into the MOA, FAA and PASS have not modified or nullified the terms of the BUA. The BUA, Article 79, Section 2, provides: “Upon implementation of this Agreement, any pertinent provisions of any written local, regional, or national agreements, understandings or like documents which increases or diminishes entitlements as expressly contained within or otherwise conflict with the express provisions of the Agreement are invalid.” Therefore, the terms of the MOA which conflict with or diminish entitlements within the BUA are invalid.

The MOA is not, nor does it purport to be, an amendment of the BUA (BUA, Article 80). OPM retains the authority to review PASS employees’ claims as provided for in the BUA. The language of the MOA supports this conclusion since it directs the parties to resort to an “applicable statute or regulation” to resolve the FLSA overtime back pay issues unresolved by the parties through the ADR process (MOA, Section 2). In this situation, the applicable statute (section 204(f) of title 29, United States Code) and regulation (part 551 of title 5, Code of Federal Regulations) authorize OPM to administer the FLSA for FAA employees. Therefore, the terms of the MOA prohibiting the advancement of additional claims in any forum are invalid, and OPM retains jurisdiction over FLSA overtime pay claims filed by PASS bargaining unit members.

## **Evaluation**

### *FLSA exemption status*

The claimants disagree with the agency's exemption determination made under the professional exemption criteria. However, the agency changed the claimants’ exemption status to comply with *Davidson v. United States*, No. 98-553C (Ct. Cl. April 14, 2000). We will not substitute our judgment for that of the court. Accordingly, we find that the claimants’ work during the claim period was nonexempt.

### *Willful violation*

The claimants requested “full relief under the law.” The statute of limitations is two years or three years for willful violation. We adopt the court finding that FAA did not willfully violate the FLSA. Therefore, the statute of limitations is two years.

### *Uncompensated overtime*

The claimants believe they are entitled to payment for uncompensated overtime pay. They need to submit the hours of claimed uncompensated overtime to their agency. The agency should review the information provided by the claimants to determine their entitlement to compensation,

if any, under the FLSA as well as interest on back pay under title 5, United States Code, section 5596, and 5 CFR 550, subpart H.

### **Decision**

Based on the above analysis, the claimants' position is nonexempt from the overtime provisions of the FLSA. The statute of limitations is two years. The claimants are entitled to compensation for any overtime due under the FLSA, and interest on any back pay.

### **Compliance Instructions**

The claimants are entitled to FLSA compensation for all overtime hours two years prior to March 27, 2001, the date the claimants filed their claim with OPM. The agency should pay the claimants the total amount due them, if any, plus interest. If the claimants believe that the agency has computed the amount incorrectly, they may file a new FLSA claim with OPM.