

**Compensation Claim Decision**  
**Under section 3702 of title 31, United States Code**

**Claimant:** [name]

**Organization:** Federal Aviation Administration  
U.S. Department of the Transportation  
[city & State]

**Claim:** Compensation for Night Pay  
Differential While Attending Training

**Agency decision:** N/A

**OPM decision:** Denied; Lack of Jurisdiction

**OPM file number:** 07-0028

/s/ for

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Robert D. Hendler  
Classification and Pay Claims  
Program Manager  
Center for Merit System Accountability

6/1/2007

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Date

The claimant, currently employed in an Airway Transportation System Specialist, FV-2101-H, position with the Federal Aviation Administration (FAA), U.S. Department of Transportation, in [city & State], requests he be paid for “nightwork between the hours of 1800 and 2400” during the period January 23, 2007, through February 1, 2007, when he attended training in Oklahoma City. He states he was “compensated for only eleven hours of night differential pay, and states he informed his agency he would be filing a claim with the Office of Personnel Management (OPM) for the hours he had not received “night differential pay.” OPM received the claim request on April 18, 2007. For the reasons discussed herein, the claim is denied for lack of jurisdiction.

The claimant states he is an employee covered by the Fair Labor Standards Act (FLSA). We take that to mean he believes the FLSA covers night pay differential under the provisions of the FLSA and his request constitutes an FLSA claim. However, the FLSA covers minimum wage and overtime compensation. Most Federal employees are eligible for nightwork premium pay under the provisions of section 5545 of title 5, United States Code (U.S.C.). However, the Air Traffic Management System Performance Improvement Act of 1996, codified in 49 U.S.C., removed FAA employees from the coverage of 5 U.S.C. § 5545. (See 49 U.S.C. 40122(g)). Any entitlement to night pay the claimant may have would be derived from FAA’s own regulations or policies and would be reviewable under OPM’s authority to adjudicate compensation and leave claims under 31 U.S.C. 3702.

OPM cannot take jurisdiction over the compensation or leave claims of Federal employees that are or were subject to a negotiated grievance procedure (NGP) under a collective bargaining agreement (CBA) between the employee’s agency and labor union for any time during the claim period, unless the matter is or was specifically excluded from the CBA’s NGP. This is because the courts have found Congress intended such a grievance procedure is to be the exclusive administrative remedy for matters not excluded from the grievance process. *Carter v. Gibbs*, 909 F.2d 1452, 1454-55 (Fed. Cir. 1990) (en banc), *cert. denied*, *Carter v. Goldberg*, 498 U.S. 811 (1990); *Mudge v. United States*, 308 F.3d 1220 (Fed. Cir. 2002). Section 7121(a)(1) of title 5 U.S.C. mandates that the grievance procedures in negotiated CBAs be the exclusive administrative procedures for resolving matters covered by the agreements. *Accord, Paul D. Bills, et al.*, B-260475 (June 13, 1995); *Cecil E. Riggs, et al.*, 71 Comp. Gen. 374 (1992).

The claimant states he is a member of a bargaining unit and, thus occupies a bargaining unit position. Section 6 of the NGP in the CBA between the Professional Airways Systems Specialists (PASS) and the Federal Aviation Administration (FAA); i.e., PASS-AF, excludes “matters relating to overtime entitlement under the Fair Labor Standards Act, as amended.” Because other compensation and leave issues are not specifically excluded from the NGP covering the claimant, they must be construed as covered by the NGP the claimant was subject to during the claim period. Therefore, OPM also has no jurisdiction to adjudicate any compensation claim potentially flowing from his request.

This OPM settlement of the claim is final. No further administrative review is available within OPM. Nothing in this settlement limits the employee’s right to bring an action in an appropriate United States court.