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In the Matter of the Arbitration between

**Bureau of Prisons, Federal Transfer  
Center, Oklahoma City, Oklahoma**

and

**Council of Prison Locals, American  
Federation of Government Employees**

Jason Dillard  
Grievance

**Opinion  
and  
Award**

FMCS 181006-00227

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The hearing in this case was held on August 29, 2019, at the Federal Transfer Center's training center, Oklahoma City, Oklahoma, before Donald J. Petersen, serving as sole arbitrator. The arbitrator was mutually selected by the parties and appointed by the Federal Mediation & Conciliation Service [FMCS]. Presentation for the Union was made by John-Ed L. Bishop, attorney, Whitehead Law Firm. The Agency's presentation was made by Jennifer Miller, Labor Relations Specialist, U.S. Department of Justice, Federal Bureau of Prisons.

At the hearing the parties were permitted to present such evidence and argument as they desired including examination and cross-examination of witnesses. Witnesses were:

**Agency:**

William Barlow  
John Fox

**Union:**

Darren Jones  
Justin Dillard  
Gary Willis  
Jeremy Lyon  
Kurt Gunckel  
Jarrod Grigsby  
Kendall Dowty  
Frank Sade

A full transcript of the hearing was made and both parties elected to file post hearing briefs.

**The Issues:**

The arbitrator finds the issues to be: (1) "Was the grievance filed in a timely manner in accordance with Article 31, Section d of the Master Agreement?" and if so: (2) "Was the grievant, Justin Dillard, denied the opportunity to work overtime after he was reassigned from July 19, 2017, through August 26, 2017? If he was, what is the remedy?"

**Relevant Contract Provisions:**

Article 5, Section 2.b. "Nothing in this section shall affect the authority of any Management official of the Agency...to assign work, to make determinations with respect to contracting out, and to determine the personnel by which Agency operations shall be conducted."

Article 6, Section b.2. "Such right includes the right to be treated fairly and equitably in all aspect of personnel management."

Article 6, Section f. "Unit employees, including probationary employees, have the right to a Union representative during any examination by, or prior to submission of any written report to, a representative of the Employer in connection with an investigation if:

1. The employee reasonably believes that the examination may result in disciplinary action against the employee; and
2. The Employee requests representation."

Article 18, Section p. "Specific procedures regarding overtime assignment may be negotiated locally.

1. When Management determines that it is necessary to pay overtime for positions/assignments normally filled by bargaining unit employees, qualified employees in the bargaining unit will receive first consideration for these overtime assignments, which will be distributed and rotated equitably among bargaining unit employees; and
2. Overtime records, including sign-up lists, offers made by the Employer for overtime, and overtime assignments, will be monitored by the Employer and the Union to determine the effectiveness of the overtime assignment system and ensure equitable distribution of overtime assignments to members of the unit. Records will be retained by the Employer for two (2) years from the date of said record."

Article 30, Section a. "The provisions of this article apply to disciplinary and adverse

action which will be taken only for just and sufficient cause and to promote the efficiency of the service, and nexus will apply.”

Article 30, Section b. “Disciplinary actions are defined as written reprimands or suspensions of fourteen (14) days or less.”

Article 30, Section g. “The Employer retains the right to respond to an alleged offense by an employee which may adversely affect the Employer’s confidence in the employee or the security or orderly operation of the institution. The Employer may elect to reassign the employee to another job within the institution or remove the employee from the institution pending investigation and resolution of the matter, in accordance with applicable laws, rules and regulations.”

Article 31, Section d [in part only]. “Grievances must be filed within forty (40) calendar days of the date of the alleged grievable occurrence. If needed, both parties will devote up to ten (10) days of the forty (40) to the informal resolution process...”

Article 31, Section e. “If a grievance is filed after the applicable deadline, the arbitrator will decide timeliness if raised as a threshold issue.”

Article 32, Section d. “The arbitrator’s fees and all expenses of the arbitration, except as noted below, shall be borne equally by the Employer and the Union.”

Article 32, Section h. “The arbitrator’s award shall be binding on the parties. However, either party, through its headquarters, may file exceptions to an award as allowed by the Statute. The arbitrator shall have no power to add to, subtract from, disregard, alter, or modify any of the terms of:

1. This Agreement; or
2. Published Federal Bureau of Prisons policies and regulations.”

### **Background:**

The Federal Bureau of Prisons, Federal Transfer Center [“FTC” or “Employer” hereinafter] is located in Oklahoma City, Oklahoma. It is the only such federal facility in the country in which 87,000 to 93,000 inmates are moved into and out of the FTC each year ((Tr. 218). It has its own airport on the grounds when two large aircraft take inmates out to other assigned prison facilities in the morning, and in the afternoon, two large aircraft bring inmates into the FTC (Tr. 218). Busses also move inmates to various institutions in the region. Inmates represent all security levels ranging from placement in minimum security camps to death row at the Terre Haute, Indiana facility. In any given day, 15 to 1,600 inmates are housed in the FTC facility (Tr. 219). They may be placed in 12 general population units, special housing units, or work cadre units

(Tr. 43).<sup>1</sup> A few inmates are permanently assigned to the FTC (Tr. 44).

The American Federation of Government Employees, Local 171 ["Union" hereinafter] represents the correctional officers and other members of the bargaining unit. Justin Dillard, the grievant in this case, is employed as a correctional officer at the FTC.<sup>2</sup> He works in the Special Housing Unit [SHU]. In that Unit, there are inmates who have demonstrated violence toward staff, toward other inmates, or have provided information to inmates (Tr. 46). SHU is more restrictive than the normal prison environment (Tr. 46).

Inmates are fed from trays of food, hot and cold, which are carried on carts dispensed from the facility kitchen to the various housing units. Normally, there are extra trays[ i.e., more than the unit's inmate population] (Tr. 173). It is rare when the extra trays come back to the kitchens untouched (Tr. 173). Correctional officers have stated that it is a common practice to give the extra trays to inmate orderlies as an appreciation for their aid in performing additional services around the facility (Tr. 55, 135, 165, 175, 183).<sup>3</sup>

Five leaders of the Irish Mob gang, including Chad Hudson, Richard Coker, Christopher Brown, Richard Potts and David Cagle were incarcerated for a time in the FTC while awaiting trial. Normally, the FTC does not house inmates waiting for their trials. They had been transferred from the Oklahoma State Penitentiary in McAlester, Oklahoma in January of 2017 and were accused of running an extensive drug trafficking organization in Oklahoma City and elsewhere.

It is a common practice at the FTC that inmates will complain regarding correctional officers. Sometimes, the motivation is to secure extra food or privileges. On or about July 12, 2017, inmate Anthony Hall, wrote a note addressed to Mr. Gibson [an

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<sup>1</sup>A work cadre unit consists of about 143 inmates who perform work both inside and outside the FTC facility (Tr. 43).

<sup>2</sup>Dillard has a seniority date of July, 2008.

<sup>3</sup>Several correctional officers acknowledged that the practice was a violation of the Standards of Conduct concerning privileged treatment of inmates (Tr. 116, 135, 167). Two officers believed that the practice was a management tool for rewarding inmates or motivating others to pursue some disagreeable duties for a food reward (Tr. 140, 189). There have been some supervisors who have distributed extra food trays. Even Warden Fox and Assistant Ward Garret have observed one officer engaged in the extra tray distribution practice (Tr. 175). The officer was not disciplined, nor removed from the FTC, nor was he even told to refrain from the practice in the future (Tr. 178-179).

intelligence staff member at the FTC] that he be able to talk to him (Union Ex 7).<sup>4</sup> Mr. Gibson relayed Hall's proffered information to Warden Fox at the FTC. Apparently, Hall reported that the grievant [Dillard] was giving extra food trays to inmate [Irish Mob leader] Coker (Tr. 230).<sup>5</sup> The latter, according to Hall, call him "Javar" which means "brother" in Gaelic (Tr. 229). Dillard also supposedly was supplying information regarding certain inmates at the FTC to Coker.

Under the circumstances, Warden Fox believed that Dillard should not be allowed to provide direct supervision to inmates in the SHU until a thorough investigation of Hall's charges could be accomplished (Tr. 231). Accordingly, he directed Capt. Letter to reassign Dillard. On July 19, 2017, Capt. Letter told Dillard that he had to remove him from the building and place him at the training center (Tr. 88).<sup>6</sup> He [Letter] also said that he could not provide Dillard with any additional information (Tr. 89). Dillard claimed that he asked for Union representation but the Capt. "avoided the question." Capt. Letter, in a statement, contended that Dillard never requested Union representation.<sup>7</sup>

Employees may sign up for overtime two to three weeks in advance (Tr. 78; see also Joint Ex. 6). Dillard testified that he worked overtime at least every other day (Tr. 85). The grievant was bypassed for overtime in July. On July 30<sup>th</sup>, his name was stricken from the overtime system (Tr. 97).<sup>8</sup> Not all overtime is required in the FTC facility

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<sup>4</sup>Hall was a former member of the Irish Mob. He left that group to become a member of the Universal Aryan Brotherhood [UAB], a white supremacist organization (Union Ex. 12). During court proceedings, Hall pled guilty to the sale of methamphetamine from prison, firebombing a car, and participating in the maiming of a former UAB member on orders from the main council.

<sup>5</sup>That Dillard was giving extra food trays to Coker was confirmed by video.

<sup>6</sup>Capt. Letter was not present to testify at the arbitration hearing. The training center is on FTC grounds, but not in the prison building. Dillard was to monitor inmate phone calls.

<sup>7</sup>The parties' collective bargaining agreement at Article 30, Section g provides that: "The Employer retains the right to respond to any alleged offense by an employee which may adversely affect the Employer's confidence in the employee or the security or orderly operation of the institution. The Employer may elect to reassign the employee to another job within the institution or remove the employee from the institution pending investigation and resolution of the matter in accordance with applicable law, rules, and regulations."

<sup>8</sup>Warden Fox testified that if there is a risk, it is appropriate to restrict overtime opportunities until or unless an investigation is completed (Tr. 238-239). In several cases, Warden Fox did not reassign [or deprive overtime] to bargaining unit employees

proper. Officers may work overtime in town trips when inmates are escorted to doctor's appointments, for x-rays, etc. They can also serve as security for long-term hospital cases, as well as working in medical vans (Tr. 49).

After his reassignment on July 19<sup>th</sup>, 2017, Dillard took a two week leave of absence (Tr. 83). Thereafter, on August 10, 2017, Dillard provided an affidavit of information to Special Investigation Agent, Ronald Warlick.<sup>9</sup> According to Dillard, this was his first notice of charges being brought against him (Tr. 36).

A grievance was filed on September 14, 2017 [Joint Ex. 2], requesting reimbursement for lost overtime during his period of reassignment and attorney's fees and other appropriate remedies.

Warden Fox responded to the grievance on October 2, 2017, stating that the grievance was not timely filed by the terms of the collective bargaining agreement. He noted that Article 31, Section d provides in part that "Grievances must be filed within 40 calendar days of the date of the alleged grievable event." As Dillard was notified on July 19<sup>th</sup> that he was being reassigned, and the grievance was dated September 14<sup>th</sup>, the difference was more than 40 calendar days. Moreover, Warden Fox noted that the parties' collective bargaining agreement allows management to determine the need for overtime as well as it has the right to reassign employees if the institution's security may be at risk (Joint Ex. 3).

#### **Position of the Union:**

1. The Union argues that the Agency violated Article 6, Sections b.2. and b.6. of the Master Agreement when it failed to properly assign overtime to the grievant. Article 6, Section b.2.. provides that all bargaining unit members will be treated fairly and equitably in all aspects of personnel management, while Article 6, Section b. 6. states that the parties agree to have all provisions of the CBA adhered to. There was ample testimony that the practice of giving inmates extra food trays was a common occurrence

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with arguably worse allegations against them compared to Dillard. For example, Michael Brown, a maintenance workers, used his office computer to look up information for inmates (Union Ex. 8). On another occasion, while escorting a group of inmates to a job site, he allowed one inmate to visit his brother in another part of the FTC (Union Ex. 9). Another officer not reassigned was Gabriel Ortiz (Union Ex. 5). Ortiz solicited and accepted monetary payments in exchange for smuggling marijuana, K2 [synthetic marijuana], suboxone and tobacco into the FTC for inmates. Other officers were accused of sexual harassment and driving while intoxicated. Warden Fox considered the Dillard case to be "equally serious" (Tr.244).

<sup>9</sup>Subsequently, on August 26, 2017, Dillard was reassigned back to his former unit and he received a written reprimand for extra tray distribution.

while Dillard was assigned to the SHU. Bargaining unit people were even directed by Lieutenants to engage in such tray distribution. The trays were often a management tool to thank inmate orderlies for their help with various jobs. One officer was observed by the Warden engaging in such a practice without discipline being imposed. As providing extra trays was a common practice, it should not have been used as an excuse to remove the grievant from the prison. Management overreacted to Dillard giving an extra tray and that action was clearly unfair and inequitable.

2. In addition, the grievant's sequestration to the training center was not fair and equitable because other employees with more serious charges against them were not similarly removed. Indeed, officer Ortiz was being investigated for smuggling drugs inside the institution. Ortiz continued working in the FTC and even worked six overtime shifts. He was permitted to remain at his post until he was arrested in 2018. This situation was much worse than the grievant's and still the latter was removed from his post and forbidden to work overtime.

Another officer, officer Brown, was charged with the same allegations as Dillard, yet the former had full access to all areas of the prison including his brother who was an inmate. He [Brown] also had access to the prisoner information computer. Also, Brown was found with contraband on him. Even though the charges against Brown were sustained, he was not removed from the prison nor was he denied overtime opportunities.

An even more egregious example was an officer who was arrested for driving a car while intoxicated, while his six and 12 year old children were riding with him. Yet, he was allowed to remain at his post at the FTC.

3. It was pointed out by the Union that the complaint lodged against the grievant was made by an inmate named Hall. Hall had been both a member of the Irish Mob and the Aryan Brotherhood. He often used his knowledge to extort favors. Indeed, the note that he wrote to Mr. Gibson indicated that he would trade information for a cup of coffee.

4. Article 18 of the parties' agreement provides that management fills available overtime positions with bargaining unit employees who are qualified. During the time that the grievant was reassigned to the training center, he was qualified to virtually all of the overtime positions that were available.

As previously noted, other employees accused of much more serious misbehavior than the grievant were allowed to work overtime.

5. Even if the arbitrator would find that the Agency was justified in its decision to reassign Dillard, it was unreasonable to delay his return to work for nine days. According to his testimony, the Warden stated that the determination that the grievant had been cleared of all charges [save the extra tray distribution] was made on August

18, 2017. Yet, the grievant was not returned to work until August 26<sup>th</sup>. There was no reasonable explanation provided for this delay.

6. In order to find liability under the federal Back Pay Act, the arbitrator must find that the aggrieved employee was affected by an unjustified or unwarranted personnel action and that the personnel action resulted in the withdrawal or reduction of an employee's pay, allowances or differentials. Any violation of a rule, policy or statute constitutes an unjustified or unwarranted personnel action. An arbitrator must explicitly identify the law, rule, regulation or contraction provision violated or there may not be a sufficient basis to conclude that the arbitrator made a finding of a violation sufficient enough to establish liability under the Back Pay Act.

Once it has been determined that the Agency committed an unlawful or unwarranted personnel action, the Back Pay Act requires that such actions result in a loss of benefits or pay. The grievant was not afforded his overtime opportunities for 39 days. However, if the arbitrator determines that the Agency committed no breach of the Master Agreement until August 18thg, then the grievant lost the opportunity to work overtime for 9 shifts.

The employee is also entitled to interest which begins on the date when the employee would have received pay if the unjustified or unwarranted personnel action had not occurred.

7. Finally, the Union notes that attorney fees are required by the Back Pay Act. Such fees are mandatory when it is found to be in the "interest of justice." A determination of the "interest of justice" occurs if only one of the five *Allen* factors has been violated.

#### **Position of the Agency:**

1. The Agency argues that the Master Agreement at Article 31, Section d, requires that grievances must be filed within 40 calendar days of the alleged grievance's occurrence or if the grievable event is determined after 40 days, the grievance is due no later than 40 calendar days from when the party filing the grievance could be reasonably expected to become aware of its occurrence.

In the grievance response, the Agency raised timeliness as an issue, claiming that the Union failed to file a grievance within 40 calendar days of the grievance occurrence. It is undisputed that both the grievant and Union were aware of the grievant's reassignment from the FTC to the training center on July 19, 2017, as a result of a disciplinary investigation. From that day forward he was prohibited from working overtime. The grievant had access to view the overtime sign-up list as well as his place on that list. Human resource manager, Barlow, also told him that he would be prohibited from working overtime.

Instead, the grievant/Union failed to file its grievance until September 14, 2017, about



57 calendar days after July 19, 2017. Thus, the grievance should be dismissed as untimely.

2. The Agency points out that the Union bares the burden to prove any contract violation occurred. According to the Union, the Agency violated Article 6, Section f of the Master Agreement by failing to afford the grievant a Union representative on July 19, 2017. When the grievant was escorted out of the institution by Capt. Letter, Article 6, Section f entitles an employee to a Union representation if he believes the examination may result in disciplinary action against him and/or the employee requests representation. There was no evidence that the grievant was being examined in connection with an investigation. In fact, the Captain could not tell the grievant anything or provide any information.

Indeed, the grievant was not brought in for questioning until August 10, 2017. To sustain a *Weingarten* violation, there must be an examination of a bargaining unit employee by an Agency representation, the examination must occur in connection with an investigation, the employee must reasonably believe that the examination may result in discipline and the employee must request representation. The grievant at no time, ever requested Union representation.

3. In addition to providing extra food trays to an inmate, the grievant had allegedly shared sensitive information about another inmate with Coker, a leader of the Irish Mob. Coker also referred to the grievant as "Javar" meaning "brother." The work environment in a correctional facility is very different from other places of employment in that there are many different security concerns than in a normal work environment. Therefore, prison administration is entitled to more deference on the issue of internal security.

4. There is no entitlement to overtime. It is a right extended to management to determine not only the need for overtime but the qualifications of employees who might be assigned overtime. When the Warden assigned the grievant to the training center, he was no longer considered qualified.

5. In addition, the basis for making the decision to assign the grievant to the training center was not arbitrary or capricious. The allegations against the grievant involved one of five leaders of the Irish Mob. It was out of the norm for the FTC to have pretrial inmates. The Warden learned that while they were incarcerated in State Penitentiary and county jail, the five Irish Mob inmates were able to compromise staff by obtaining cell phones and calling out 17 "hits" on people in the community. Irish Mob inmates also threatened two assistant U.S. attorneys. Special security procedures were installed including a special attorney/client visiting area for those inmates.

In response to the Union 's attempt to compare other employees accused of misconduct, but not immediately removed from the FTC, the Warden pointed out that the seriousness of those charged did not rise to the same level as the allegations in this case and did not involve a disruptive, violent and manipulative gang—one who put "hits"

on citizens.

**Opinion:**

The initial consideration in this case was whether or not the grievance was timely filed. According to Article 31, Section d of the Master Agreement, grievances must be filed within 40 calendar days of the date of the alleged grievable occurrence. The Agency argued that Dillard's reassignment was made on July 19, 2017. As such, he was aware or should have been aware, that he had a grievance on that date and therefore, the timeliness clock began to tick. However, at that point in time, the grievant was unaware that he was being reassigned for disciplinary reasons.<sup>10</sup> Disciplinary actions are defined in Article 30, Section 1b as "written reprimands" or "suspensions of 14 days or less." Dillard was neither issued a warning nor a suspension on July 19<sup>th</sup>. He first became aware of possible pending disciplinary action against him on August 10, 2017 (Tr. 36). The subsequent grievance dated September 14, 2017, is within the 40 day time limit and thus there is no timeliness bar in this case.

The Union contended that the grievant was deprived of his *Weingarten* rights to Union representation when he was reassigned on July 19<sup>th</sup>. According to Dillard, he made such a request from Capt. Letter on that date, but it was denied (Joint Ex. 2; Tr. 27). Naturally it would have been better had Capt. Letter been present to testify at the arbitration. However, Capt. Letter informed Warden Fox that such a representation request was never made (see Joint Ex. 3). As previously noted, the reason for the reassignment action on July 19<sup>th</sup> was not discussed. Therefore, it is not reasonable that Dillard would believe that the reassignment would lead to disciplinary action.

Moreover, Article 6, Section f of the Master Agreement states that an employee has the right to Union representation : "during any examination by, or prior to the submission of any written report" if the employee reasonably believes the examination may result in disciplinary action against him/her and the employee requests representation. When Capt. Letter escorted Dillard to the training center, it could not even be remotely inferred that an examination was in progress. Capt. Letter told the grievant nothing. There was no examination by Letter or anyone else at that point. Indeed, it was the grievant himself who testified that the first time he learned of any charges against him was on August 10<sup>th</sup>.

Regarding the case on its merits, Article 30, Section g of the parties' agreement states that:

"The Employer retains the right to respond to an alleged offense by an employee

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<sup>10</sup>Capt. Letter avoided the question from the grievant whether the reassignment was disciplinary in nature (Tr. 89). The Capt. gave no information at all to Dillard. Similarly, Lt. Brewer also provided no information to the grievant (Tr. 88).

which may adversely affect the Employer's confidence in the employee or the security or orderly operation of the institution. The employer may elect to reassign the employee to another job within the institution or remove the employee from the institution pending investigation and resolution of the matter, in accordance with applicable laws, rules and regulations."

It seems as though Article 30, Section g was written precisely for the instant case because the situation here mirrors the language.

The U.S. Marshall Service requested that Warden Fox hold at the FTC five Irish Mob prisoners for pretrial. FTC is not a pretrial facility. Warden Fox was told by the FBI and the Marshall Service that the inmates in question have the ability to compromise staff and obtain cell phones (Tr. 224). During their stay in the state penitentiary, they called out 17 hits on people in the community. The Irish Mob inmates that were to be taken in had members right in the community (Tr. 225) unlike the majority of inmates who come from all areas of the country. Warden Fox was also informed that the new arrivals were very disruptive (Tr. 225). He was "extremely concerned for the safety of the staff at the FTC (Tr. 225).

Special security measures were instituted. Incoming and some out going mail was photographed at the FBI's request. Any book in the cell was checked for covert messages and general contact with them was not allowed. Even a special area for attorney/client visits with the members of the Irish Mob was constructed.

An inmate [not one of the five Irish Mob inmates] told a Mr. Gibson [on the intel staff] that the grievant had been speaking with inmate Coker [one of the five Irish Mob leaders] and during the course of their discussion had shared sensitive information regarding another inmate in the SHU. During one interaction between the grievant and inmate Coker, the latter referred to him as "Javar" meaning "brother." In addition, Dillard was giving Coker extra food trays.<sup>11</sup>

Warden Fox, concerned with the potential danger to staff and inmates, removed Dillard from the SHU to the training center until a thorough investigation could be conducted. In my opinion, the language of Article 30, Section g, gives great discretion to management in devising security measures to protect the staff and inmates at the FTC, and particularly in the circumstance of having five very dangerous inmates housed there.

The Union, however, believed differently. It argued that in the past, several staff members were involved in more egregious activities than those exhibited by Dillard and were yet allowed to continue to work in the prison and/or not prohibited from working

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<sup>11</sup>A video confirmed this action. Providing extra food trays was a prohibited practice at the FTC, but still occurred at times.

overtime.

In one case, a security guard, allowed inmates to view his Sentry terminal, but the Warden did not consider his action as posing the same degree of threat to the safety and security of the FTC or compromising a particular inmate, as Dillard's actions.

Gabriel Ortiz, a correctional officer, accepted bribes for smuggling suboxone and tobacco into the FTC for inmates. He was later convicted, but permitted to work overtime prior to his conviction while still working at the FTC.

Gary Lewis, another correctional officer, was arrested while driving intoxicated with his six and 12 year old children in the car.

Another supervisor accused of domestic violence was allowed to work in a non-responsive post (Union Ex. 11).

A Lt. was charged with sexual assault and harassment (Tr. 212). These charges were sustained, but he was not removed, but placed in a different department (Tr. 213).

Under ordinary circumstances, some of the examples provided by the Union would certainly rise to the level of disparate treatment compared to Dillard's behavior in this case. However, the language of Article 30, Section g strongly argues in favor of broad discretion on the part of management, particularly in the circumstances faced by the Warden in this case. The security of the staff, inmates and physical plant were definitely at risk with the inclusion of the five Irish Mob inmates.

While the Agency correctly argued that the determination of the need for overtime rests in the hands of management, when an employee signs up for overtime and is qualified, he/she should receive it.

What was not understandable in this case was the delay of nine days in reinstating Dillard to his former position with the overtime ban dropped. It was uncontroverted that the Warden received the investigative report on August 18<sup>th</sup> clearing Dillard of any wrong doing except for the extra tray distribution infraction, yet he was not returned to his former position and location until August 26<sup>th</sup>. I found no compelling reason to have denied his prompt reinstatement.

Therefore, I rule as follows:

**Award:**

1. The grievant was adversely affected by a personnel action on the part of the Agency, namely, it delayed 9 days in reinstating Dillard following an investigation report clearing him of all charges, save the extra food trays. For the latter violation, he properly received a written warning.

2. However, the delay resulted in the loss of overtime which resulted in a loss of extra pay. Under the Back Pay Act, he is entitled to receive the money that he would have earned had he been able to work overtime and for which he was qualified during the 9 day period in question plus interest.

3. The Employer was in violation of one of the *Allen* factors, namely the delay in reinstating Dillard was "wholly unfounded." Therefore, reasonable attorney fees should be paid.

January 3, 2020  
Placitas, New Mexico



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Donald J. Petersen  
Arbitrator