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U.S. Department
of Transportation
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Pacific Desert Systems Management Office
Western-Pacific Region

9175 Kearny Villa Road
San Diego, CA 92126-7099

JUL 23 2004

Manuel Bettencourt
3732 E. Clovis
Mesa, AZ 85206

Dear Mr. Bettencourt:

This is notice that I propose to suspend you for five (5) days from your position of Airway Transportation Systems Specialist, F-2101-H, \$79,688 per annum, at Sky Harbor Systems Support Unit, Phoenix, AZ, not earlier than 30 days from the date you receive this notice. The reason and specification are listed below:

Reason: Absence from Your Assigned Duty Station Without Authorization or Proper Coordination.

Specification: During Pay Period 13 (May 30 thru June 12), you were assigned the second shift at the Sky Harbor Systems Support Unit. That shift started at 2:00 p.m. and ended at 10:00 p.m. Your regular days off (RDOs) were Sunday and Monday.

- On Tuesday, June 1, you arrived for your shift at 3:00 p.m.
- On Wednesday, June 2, you arrived for your shift at 3:00 p.m. and departed your shift at 9:30 p.m.
- On Thursday, June 3, you departed the watch schedule at 3:00 p.m. and were observed in your POV heading eastbound off the Sky Harbor International Airport. You returned at 4:15 p.m.
- On Friday, June 4, you departed your watch at 5:00 p.m. in your POV and returned at 8:15 p.m.
- On Saturday, June 5, you arrived for your watch at 2:35 p.m.
- On Tuesday, June 8, you departed your watch at 3:00 p.m. in your POV, returning at 3:30 p.m.

You did not notify anyone of your decisions to leave your watch standing position.

On June 25, 2004, George Burgos, your supervisor, scheduled a meeting with you to discuss your absences from the watch and advised that you had a right to have a PASS rep present at the meeting. Allison Sweeney, your PASS rep, was present. During that June 25 meeting, you could not provide a legitimate explanation for your absences from your assigned watch.

On July 2, you provided a written statement to Mr. Burgos, which in short, stated you could not recollect being late or leaving early or departing the facility during your watch for the shifts in question. You did respond in writing that on June 3, at the time in question, you were performing duties at the TDWR.

In choosing this proposed penalty, I have taken into account the following factors:

1. On July 29, 2002, you were suspended one (1) day for Absence from FAA Premises During Duty Hours Without Permission. Incidents outlined in this letter represent a second offense.
2. As an Airway Transportation Systems Specialist, you are placed in a unique and demanding position with immense responsibility for the lives and property of others. Your absence without permission could have had a negative impact on the safety of the National Airspace Systems (NAS).
3. Because of the response requirements for your position, you are required to be on duty at all times during your shift, thus, your lunch hour is included as part of your assigned shift.
4. Federal employees are expected to uphold with integrity the public trust involved in the position to which assigned.
5. As a federal employee, you must report to work on time and render full and industrious service. You must observe all laws, rules, regulations and other authoritative policies and guidance.
6. Although you stated that you were performing duties at the Phoenix Sky Harbor TDWR on June 3, you were observed heading east at the time in question. The TDWR is 20 miles west of the Phoenix Sky Harbor facility.
7. On April 22, 2004, Mr. Burgos met with you after he had observed you leave the watch early on April 21 without prior approval. You explained that you made a poor decision and submitted a request for leave after that incident.
8. This proposed disciplinary action is consistent with FAA's Human Resources Operating Instructions (HROI) Table of Penalties.

The material relied on to support this proposed action is available for your review. If you wish to review this material, please contact me, Paul Collander, Manager, at the PDS SMO, (858)-537-5503. You will be granted a reasonable amount of official time, provided you are in a duty status, of up to four (4) hours to prepare and present a reply to this proposed action.

You may reply to this proposal to me in person, in writing, or both, and furnish affidavits and other documentary evidence in support of your answer within fifteen (15) calendar days after you receive this proposal. In making a response, you have the right

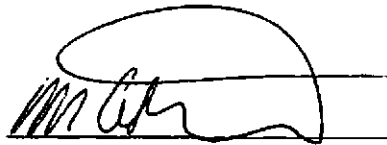
to be represented by an attorney or other representative. Full consideration will be given to any response you submit.

As soon as possible after your reply is received, or after the expiration of the 15-day limit, if you do not reply, I will issue a written decision on this proposed suspension.

Sincerely,



Paul Collander
Manager, PDS SMO



7/28/04

Receipt Acknowledged Date

CC: AWP-16
AWP-412



PROFESSIONAL AIRWAYS SYSTEMS SPECIALISTS

Date: August 3, 2004

To: Paul Collander, Manager, PDS SMO

From: Gene Bettencourt

Subject: Information Request

Mr. Collander,

This letter is in reference to the notice I received of proposed disciplinary action, dated July 23, 2004 and acknowledged by me on July 28, 2004.

In accordance with the CBA Article 2 section 3, I hereby designate Mark Matthiesen, PDS SMO PASS Rep, to act as my union representative during this proposed disciplinary action, and request his presence during any and all meetings pertaining to this issue.

In accordance with the CBA Article 6 section 9, I request a copy of all information relied upon to support this action, including all written correspondence and notes of conversations concerning my whereabouts during the times in question. In accordance with CBA Article 6 section 10, I request that this information and access to my personnel record also be provided to Mark Matthiesen.

Respectfully,

Gene Bettencourt

PHX Sky Harbor SSC PASS Rep

Cc: Joan Matthiesen, PASS Region III Assistant

Cc: Mark Matthiesen, PDS SMO PASS Rep

Cc: Allison Sweeney, PHX Ops Area PASS Rep



PROFESSIONAL AIRWAYS SYSTEMS SPECIALISTS

PASS Request for Information Under Section 7114(b)(4) of the Statute

DATE: August 2, 2004

REQUESTER: Professional Airways Systems Specialists

UNION CONTACT:

Mark Matthiesen
PDS SMO PASS Representative
9175 Kearny Villa Road
San Diego, Ca 92126

AGENCY CONTACT:

Paul Collander
PDS SMO Manager
9175 Kearny Villa Road
San Diego, Ca 92126

INFORMATION REQUESTED:

Records of cases associated with Absence from Assigned Duty Station without Authorization, more specifically;

1. Initial scope is limited to cases within Western Pacific Region (AWP) without regard to bargaining unit or FAA Division, within the last ten (10) years.
2. PASS requests that the information be sanitized of personal information prohibiting release of the information under the Privacy Act. However, enough information must remain to determine the nature of the unauthorized absence, the resulting discipline with justification, and the title, or general position description, of the position of the employee held (e.g. ATSS, WG).
3. PASS will submit an additional request for a larger sampling area if the number of cases within AWP proves to be too small.

Orders, written policies or procedures regarding the use of private vehicles in the course of performing official duty.

Orders, written policies or procedures regarding the coordination required when it is necessary for any PHX TRACON ATSS to depart to a remote site.

AUGUST 2, 2004

PARTICULARIZED NEED:

PASS will use these documents to determine whether management acted arbitrarily and/or capriciously in any manner when determining the discipline of Manuel Bettencourt on July 23, 2004; specifically if just cause was presented and if the penalty is consistent with that imposed on other employees for similar offenses. The Union will use this information to ascertain if Article 6 of the PASS/AF CBA was violated and/or if Title 5 USC, Section 7116 was violated. Furthermore, PASS may use this information to substantiate, and in filing, a grievance or claim of an unfair labor practice.

PRIVACY ACT:

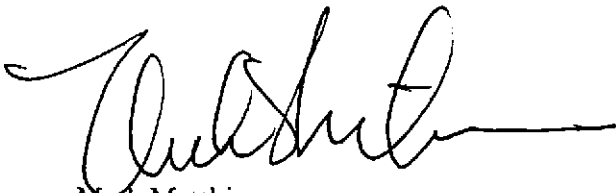
PASS requests that this information be sanitized so that it is releasable under the Privacy Act.

OTHER MATTERS:

PASS requests a reply concerning the availability of this information prior to August 10, 2004, if the information hasn't already been provided. PASS requires the information within this timeframe to respond to management's imposed 15 day deadline for a response.

PASS requests that the parties meet at the earliest possible time to determine if this issue can be settled based on existing facts and without this specific information.

Please contact me if the agency requires further clarification of our request or wants to meet to discuss the request, or a format or means of furnishing this information to the union.



Mark Matthiesen
PDS SMO PASS Representative

Cc: Joan Matthiesen
Cc: Alison Sweeney
Cc: Gene Bettencourt



U.S. Department
of Transportation
Federal Aviation
Administration

AUG 10 2004

Pacific Desert Systems Management Office
Western-Pacific Region

9175 Kearny Villa Road
San Diego, CA 92126-7099

Mark Matthiesen
PDS SMO PASS Representative
9175 Kearny Villa Road
San Diego, CA 92126

Dear Mr. Matthiesen:

I am in receipt of your letter dated August 2, 2004. The information that you are requesting is in the process of being located. Vicki Hendrickson, Labor Management Relations Specialist, AWP-412 and Susan Bickers are working on your request. We would like to extend the date you have requested to receive this information to Friday, August 20, 2004 and understand this will affect your 15 day response period to the employees proposed suspension.

Sincerely,

A handwritten signature in dark ink, appearing to read "Paul Collander".

Paul Collander
Manager, PDS SMO

CC: Gene Bettencourt

File
copy

U.S. Department
of Transportation
Federal Aviation
Administration

AUG 10 2004

Pacific Desert Systems Management Office
Western-Pacific Region

9175 Kearny Villa Road
San Diego, CA 92126-7099

Manuel Bettencourt
3732 E. Clovis
Mesa, AZ 85206

Dear Mr. Bettencourt:

I am in receipt of your letter dated August 3, 2004. I acknowledge your designation of Mark Matthiesen to act as your union representative. Mr. Matthiesen will be welcome to be present at any meetings that are held pertaining to this issue.

In accordance with CBA Article 6, Section 9, and your specific request as identified in subject letter, please find attached copies of all written correspondence and notes of conversations. Also, in accordance with CBA Article 6, Section 10, your local personnel record will be made available to Mark Matthiesen upon his request.

Sincerely,

Paul Collander
Manager, PDS SMO

Attachments: (7)

CC: Mark Matthiesen
Joan Matthiesen (w/o attachments)
Allison Sweeney (w/o attachments)

Jun 29 04 08:06a George Burgos

602 220-9450

P.1

On June 1 and 2, 2004, it was observed that you arrived for your shift at 3:00 PM. On June 2, 2004 it was observed that you proceeded to depart at 9:30 PM. On June 3, 2004, you departed the watch schedule at 3:00 PM in your personal vehicle heading east bound off Sky Harbor International Airport returning at 4:15 PM. You did not notify anyone of your decision to leave your watch standing position. On June 4, 2004 it was again observed that you departed your watch schedule at 5:00 PM in your personal vehicle and arrived back on watch at 8:15 PM; June 5, 2004 you began your watch at 2:35 PM and on June 8, 2004 you departed your watch schedule at 3:00 PM in your personal vehicle, returning at 3:30 PM.

Given to Gene Bettercourt on Friday, June 25.

FROM :PHX OPS

FAX NO. :602-275-7266

Jul. 29 2004 01:35PM P2

Report of Incident

To: George Burgos
Manager, Phoenix Sky Harbor SSC

From: Gerald B. Brown II
AF Facility Manager, PHX

On June 3, 2004 at 3:05 p.m., on my way home I witnessed Mr. Gene Bettencourt travelling eastbound on Sky Harbor Boulevard in his personal vehicle. As I traveled eastbound on Sky Harbor Boulevard, I observed Mr. Bettencourt exit northbound onto 44th Street. Initially I did not give this observation much thought until I realized I had not seen Mr. Bettencourt all day at his duty station, the Phoenix TRACON. I called the SSC Coordinator (the SSC Manager was on travel status), Mr. Roger Gustafson at 3:10 p.m. and asked him if Mr. Bettencourt was working a day shift. His response was no, he was working a swing shift and had arrived for duty at 2:00 p.m. I also inquired if Mr. Bettencourt had contacted him (Roger) about leaving his duty location to run a quick errand. He responded no. In closing the conversation, I asked Mr. Gustafson to monitor Mr. Bettencourt's arrival back to his duty station, he understood and agreed.

The next morning June 4, 2004, the SSC Manager, George Burgos returned from his trip to San Diego and I reported my observation and conversation to him. After a conversation with the SSC Coordinator, Roger Gustafson, Mr. Burgos reported to me that Mr. Bettencourt had been absent from his duty location for approximately one (1) hour and fifteen (15) minutes. This absence was carried out without any knowledge or mention to anyone in the Phoenix Sky Harbor SSC or any member of Management.

Gerald B. Brown II
Gerald B. Brown II

6-7-04

Attachments
to Mark's
copy of file

June 15, 2004

On June 1st Gene Bettencourt arrived for his watch standing at 3:00 PM. On June 4th Gene departed his watch schedule at 5 PM in his personal vehicle. He arrived back on watch at 8:15 PM.

On June 5th Gene showed up for his watch schedule at 2:35 PM.

Russell O'Mara
Russell O'Mara

June 08, 2004

On June 1st and 2nd, 2004 Gene Bellencourt arrived for his watch standing at 3:00 PM. On June 2nd he proceeded to depart at 9:30 PM.

Bob Olte



FROM : PHX OPS

FAX NO. : 602-275-7266

Jul. 29 2004 01:36PM P5

George,

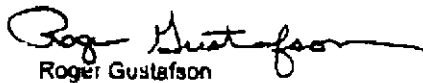
6/08/04

I witnessed Mr. Battencourt returning to the TRACON in his personal vehicle at approx. 3:30 PM

Last time he was seen before that was prior to 3:00 PM.

I estimate his time away from work to be approx. 30 minutes

Other witnesses available.


Roger Gustafson

Coordinator, PHX SSC

FROM : PHX OPS

FAX NO. : 602-275-7266

Jul, 29 2004 01:36PM P6

To: George Burges

From: Gene Bettencourt

In response to the note you provided me with on June 25, 2004, the following information is provided:

Item 1: As far as I can recollect, I was not late for my shift.

Item 2: As far as I can recollect, I did not leave early.

Item 3: I was performing my duties at the TDWR site. I was doing administrative work.

Item 4: I was performing my duties at the Phoenix Tower and Terminal 3 RT2 site with another Technician. Areas of discussion included the RT2 site, PHX Twr, DBRITE, KDVS and union issues.

Item 5: As far as I can recollect I was not late for my shift.

Item 6: I went to the Phoenix Operations Center to obtain information about my security code number.

The FAA Travel Policy (FAATP) permits the use of a POV for official travel, including local travel. See FAATP Chap. 301 - 10.300.

My duties include maintenance and administrative functions at the Phoenix Tower and TDWR sites, as well as other sites, which requires me to work away from the Phoenix Tracon. My watch does not end when I leave the Tracon to perform these duties. Since POV travel is authorized, use of my POV does not mean that I am no longer "standing watch".

Additionally, if it is local management's policy that employees notify them each time a Technician departs the Tracon facility during any and all watches, I request this policy be clearly communicated in writing to the bargaining unit.

Sincerely,



Gene Bettencourt



U.S. Department
of Transportation
Federal Aviation
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Pacific Desert Systems Management Office
Western Pacific Region

9175 Kearny Villa Road
San Diego, CA 92126-7099

AUG 20 2004

Mark Matthiesen
PDS SMO PASS Rep
9175 Kearny Villa Road
San Diego, CA 92126

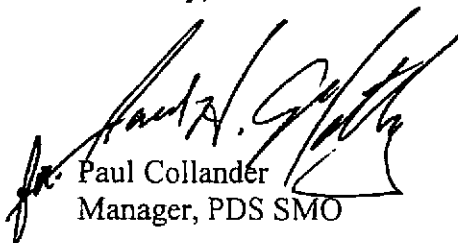
Dear Mr. Matthiesen:

Attached are the records of the cases associated with Absence from Assigned Duty Station Without Authorization. The scope of this response is limited to the ATS organization's actions for the previous five years.

There are no local written policies and procedures regarding the use of private vehicles in the course of performing official duty. Order 4670.2B, Motor Vehicle Management, is used as guidance for the use of a government owned vehicle (GOV). In addition, it is standard policy that GOVs are available for the technician's use in accomplishing the Agency's mission in the development, installation, maintenance and overall support of the National Airspace System (NAS).

If you have any further questions, please contact me at (858) 537-5503.

Sincerely,



Paul Collander
Manager, PDS SMO

Enclosures

U.S. Department
of Transportation

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Administration

Mr. [REDACTED]

This is notice that you are officially reprimanded for unauthorized absence from the work site during duty hours and falsifying government records.

Specifications:

On July 12, 2003, you were assigned a 1400L to 2200L shift at [REDACTED]. You signed on [REDACTED] Form 7230-4 at 1405L. At approximately 2055L, one hour and ten minutes prior to the end of your assigned shift, [REDACTED] the Assistant Air Traffic Manager (AATM) of [REDACTED] observed you leaving the work site. A subsequent review of the Form 7230-4 showed that you signed off duty at 2205L, the end of your scheduled shift.

On Tuesday, July 22, 2003, Mr. [REDACTED] conducted an interview with you and your representative, [REDACTED]. He asked you if you had worked a 1405L to 2205L shift on July 12, 2003, as shown on [REDACTED] Form 7230-4. You replied you had worked a 1405L to 2205L shift. He then asked if you left the facility prior to the end of your assigned shift and you said yes, I probably did. He asked you how long before the end of your shift did you leave the work site and you answered, "I don't know how long, but before the end of my shift." Mr. [REDACTED] asked you if had any further comments on the fact that you left the work site early and you said that you did not. You then stated to Mr. [REDACTED] that "yes I did leave the facility early."

You are advised that I propose to have this official reprimand filed in your personnel folder for two (2) years. Any future occurrences may result in more severe disciplinary measures.

You may call upon me for assistance, which you may need to help you overcome this deficiency and avoid future recurrence of the deficiency.

You may reply to this reprimand personally or in writing, or both, and you may submit reasons why this reprimand should not be affected. You will be allowed fifteen (15) calendar days from the date you receive this letter to submit your reply.

You are assured that your reply will be given consideration. If I determine that the reprimand is sustained, you will be so informed and your reply will be filed in your official personnel folder, together with the reprimand. In the event I decide that this reprimand should not be issued, you will be informed and this letter and the documents related to the particular matter will not be filed in your official personnel folder.

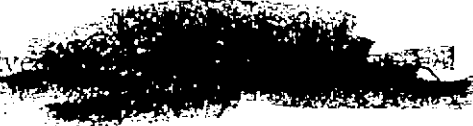
If you do not reply to this letter within fifteen (15) calendar days from the day of receipt, it shall be placed in your official personnel folder without further consideration.

If I decide to sustain this reprimand, and if you contend that it violates Article 10 of the NATCA/FAA agreement, you may file a grievance under Article 9, Section 8 of the agreement. The written grievance will be processed beginning with Step 2 of the grievance procedure.

Or, in the alternative, if you wish to raise a claim of statutorily prohibited discrimination with regard to the reprimand, you must contact an EEO counselor within 45 days of receipt of the reprimand.

Sincerely,


Operations Supervisor

Received 

Date: 8/25/03



U.S. Department
of Transportation

Federal Aviation
Administration

Memorandum

Subject: Letter of Reprimand

Date: October 15, 2002

From: First Level Supervisor

Reply to
Att: ul:

To: Air Traffic Control Specialist [REDACTED]

This is notice that you are officially reprimanded for unauthorized absence from the work site during duty hours and insubordination.

On Wednesday, September 4, 2002, you were working pre-scheduled and approved Credit Hours and were assigned a "D" shift from 0645-1545L. At approximately 0730L, you advised me during a telephone conversation that you were leaving at 1015L because you had to "get your horse to [REDACTED] by noon." I then asked who had approved your absence beginning at 1015L and you stated "no one" had.

I advised you at that time that I would not be able to approve your departure at 1015L and that you may not be able to leave until noon or later. You stated that it was your "day off" and you were entitled to leave as soon as another CPC arrived. I responded that you were not on your day off and that departing early from your shift was subject to the same approval process as a leave request or early relief from an overtime shift. I reiterated that I would not be able to approve your leaving at 1015L and that you should consider making other arrangements for your horse. You then replied that you would "have to take sick leave then," or words to that effect. I closed our conversation by advising you that I would be arriving at [REDACTED] in less than an hour and we would discuss it further at that time.

Shortly after my arrival in the tower, I advised you again that I would not be able to approve your departure at 1015L. You stated that was "unacceptable." I advised you that I was willing to postpone a pre-scheduled meeting at 1200L, make an effort to get you out of the facility as soon as possible, and afford you 15-20 minutes to make a phone call to make other arrangements for transporting your horse. You subsequently advised me that "wouldn't work" because your "husband did not know how to handle a horse trailer," that your horse had to be in [REDACTED] by noon, and again stated that it was your "day off" and you had the right to leave.

I again reiterated that you were not on your day off, that you were on a Day shift and expected to work from 0645-1545L unless approved otherwise, and that I could not approve your early absence from duty. You demanded to "call the Hub." You also stated that I should come in on my day off and holidays to get my duties completed, and finally stated that you were going to have to "take sick leave then, I guess." I inquired if you were telling me that you had suddenly become incapacitated for duty to which you responded, "no, I'm telling you that I have to go home," or words to that effect. I told you that your request to leave early was not approved to which you responded, "fine, then I'm taking sick leave, I'm too sick to work traffic" or words to that effect. I repeated that I could not approve your early release

from your assigned shift. You stated that you would be signing out immediately, did so, and departed the tower cab at approximately 0930L.

In short, you were told no less than five times that your absence from duty was not approved/authorized. You neither requested nor did I approve your leaving at 0930L. However, you did in fact leave the facility at 0930L and did not return.

Your actions clearly created a distraction, were contrary to maintaining a positive tower work environment, and were unacceptable. More importantly, your unauthorized absence from your place of duty resulted in an inability to accomplish the operational requirements set forth for the day, specifically, providing OJT for another CPC undergoing recertification which caused a delay of her planned Recertification Skill Checks.

You are advised that I propose to have this official reprimand filed in your Official Personnel Folder (OPF) for no more than two years. Any future occurrences may result in more severe disciplinary measures.

You may call upon me for any assistance which you may need to help you overcome this deficiency and avoid future recurrence of the deficiency.

You may reply to this reprimand personally, in writing, or both and you may submit reasons why this reprimand should not be effected. You will be allowed 15 calendar days from the date you receive this letter to submit your reply. You are assured that your reply will be given consideration. If it is determined that the reprimand is sustained, you will be so notified in writing and a copy of the reprimand, along with your written reply, will be placed in your OPF. In the event I decide that this reprimand should not be issued, you will be informed and this letter and the documents related to the particular matter will not be filed in your OPF.

If you do not reply to this written reprimand within 15 calendar days of receipt, it shall be placed in your OPF without further consideration.

If I decide to sustain the reprimand, and if you contend that it violates Article 10 of the NATCA/FAA agreement, you may file a grievance under Article 9, Section 8 of the agreement. The written grievance will be processed beginning with Step 2 of the grievance procedure.

Or, in the alternative, if you wish to raise a claim of statutorily prohibited discrimination with regard to this reprimand, you must contact an Equal Employment Opportunity counselor within 45 days of receipt of this notice.

Acknowledgement of Receipt: _____

10 15 02
Date

6

October 29, 2002

Subject: Response to Proposed Letter of Reprimand

From: [REDACTED]

To: First Level Supervisor

This is a letter of response to your proposed Letter of Reprimand dated October 15, 2002. I am totally opposed to any such letter. While I indeed was working prearranged Credit Hours on my Regular Day off, past practice has been as soon as minimum staffing of two facility rated CPC's, one of which being CIC qualified, the individual working on Credit Hours was allowed to leave. Staffing levels exceeded the minimum agreed upon levels. See attached letter from the FACREP addressing this past practice.

In addition, Mr. [REDACTED] actions were completely unprofessional and uncalled for. His actions created at best an uncomfortable work environment bordering on a Hostile Work Environment.

Action desired: This letter or any reference to this letter be removed immediately from my file. Additionally, management cease and desist this form of harassment.

Received by [REDACTED]

Date 10/29/02



U.S. Department
of Transportation

Federal Aviation
Administration

Memorandum

Subject: Decision Regarding Letter of Reprimand dated
October 15, 2002.

Date: November 14, 2002

From: First Level Supervisor

Reply to
Attn of:

To: Air Traffic Control Specialist, [REDACTED]

I am in receipt of your memorandum dated 10/29/02 containing your written reply to the subject proposed Letter of Reprimand. I have considered the information you have provided in your reply and this memorandum is to advise you that my final decision is to sustain your Letter of Reprimand.

In your written reply, you state that it was past practice that an individual earning credit hours "was allowed to leave" as soon as "minimum staffing" requirements were met. You also provided a letter from the [REDACTED] Principal Facility Representative (FACREP) purporting to support your actions. These issues are irrelevant to the specific charges on which the subject disciplinary measures are based (insubordination and absence during working hours without authorization).

Your understanding of what you refer to as "past practice" does not address the fact that you were advised no less than five times over the course of two hours beginning at approximately 0730L that you were NOT authorized to leave early from your assigned Credit Hour "D" shift, that you were insubordinate when advised that you could not leave, and that you eventually left at 0930L without authorization.

Therefore, to reiterate my decision, after consideration of the issues presented in your written reply, I am sustaining the Letter of Reprimand and placing a copy in your Official Personnel Folder.

cc: [REDACTED] ATM

Acknowledgement of Receipt [REDACTED]

11-18-02
Date



U.S. Department
of Transportation
Federal Aviation
Administration

February 10, 2004

Air Traffic Control Specialist

Dear [REDACTED]

This is notice that I propose to suspend you for five (5) consecutive calendar days from your position as an Air Traffic Control Specialist at the [REDACTED] not earlier than 30 days from receipt of this letter, for the following reasons:

Reason No. 1: Unauthorized absence from the work site during duty hours.

Specification: On December 12, 2003, you were assigned a 2210-0610 shift. You began work at 2200, earning 10 minutes of credit time. You were observed leaving the building at 0550 local time and observed going to the Credit Union ATM. At 0553 you were observed walking to your vehicle and driving off the premises of the [REDACTED]. After a review of the Personnel Logs for December 12, 2003, it was noted that you had signed out at 0610 local time. You were charged with 20 minutes of absence without leave.

Reason No. 2: Falsification of a Government Document.

Specification: On December 12, 2003, you left the work site at 0550 local time without preapproval. However, the Personnel Log you signed stated you departed at 0610 local time.

Operations Supervisor [REDACTED] met with you and your union representative on December 17, 2003, concerning this matter. During that meeting you admitted that you had left the facility before the end of your shift. You explained you had an oil leak in your car and had gone to the Credit Union to get some money so you could fix your car. You further explained that you returned to the facility within a few minutes and started working on your car until approximately 6:30, at which time you left. You then drove to another employee's home to use some tools to fix your car.

In proposing this action, I have considered the following factors:

- a. You have been employed with the FAA since August 27, 1986.

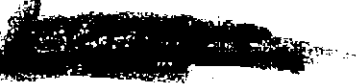
2

- b. All employees are responsible for conducting themselves in a manner which will ensure that their activities do not reflect discredit on the Federal Government and the FAA.
- c. It is the responsibility of all employees to uphold with integrity the public trust involved in the position to which assigned.
- d. The FAA Table of Penalties provides for a 5-10 day suspension for the second offense of unauthorized absence from the work site during duty hours.
- e. Your actions are in violation of the agency's Standards of Conduct, Conduct and Discipline, Human Resources Policy Manual (HRPM), ER-4.1, Paragraph 8.a.
- f. You received a Letter of Reprimand on October 16, 2003, for absence without leave (AWOL) and falsification of a facility personnel log.
- g. Your actions jeopardize your trustworthiness as a Federal Government employee.
- h. It is not acceptable for an employee to leave prior to the end of their shift without prior approval.
- i. Working on your car while in a paid duty status is not appropriate.

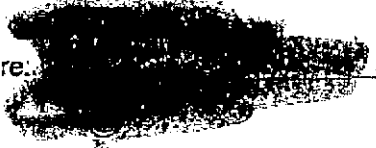
The material relied on is available for review. Provided you are in a duty status, you will be given up to 8 hours of duty time to review this proposal and prepare a reply.

You may reply to this proposal personally, in writing, or both, to me, and furnish affidavits and other documentary evidence in support of your answer. You will be allowed 15 calendar days from the date you receive this letter to submit your reply. Full consideration will be given to any reply you submit. In making this response, you have the right to be represented by a union representative. As soon as possible after your reply is received or after expiration of the 15-day limit if you do not reply, I will issue a written decision.

Sincerely,


Air Traffic Manager, 

Acknowledgement of Receipt:

Signature: 

Date: 2/20/04

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U.S. Department
of Transportation
Federal Aviation
Administration

April 16, 2004

Air Traffic Control Specialist

Dear [REDACTED]:

My letter of January 5, 2004, informed you of a proposal to suspend you for five consecutive calendar days for unauthorized absence from the work site during duty hours and falsification of a government document. I have considered your written response dated February 29, 2004. I find that the reasons and specifications listed in the notice of proposed suspension are fully supported by the facts and warrant your suspension to promote the efficiency of the service. However, it is my decision that the suspension be mitigated to two consecutive calendar days, effective April 20, 2004.

If you contend that the suspension violates Article 10 of the NATCA/FAA Collective Bargaining Agreement, you may file a grievance under Article 9 of the Agreement. In this event, you must submit your written grievance to me within 20 calendar days after the effective date of the suspension. The grievance must be filed in accordance with Article 9, Section 8, of the Agreement. The written grievance will be processed beginning with Step 2 of the grievance procedure.

Or, if you wish to raise a claim of statutorily prohibited discrimination with regard to this decision, you must contact your local Equal Employment Opportunity Counselor no later than 45 calendar days after the effective date of this decision.

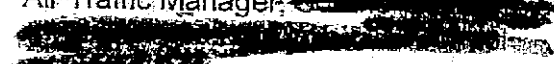
11

2

Upon your request, Glen Rotella, Labor Relations Specialist, AWP-16, 310-725-7808, will give you further information on the negotiated grievance procedure.

Sincerely,



Air Traffic Manager 



Acknowledgement of Receipt:


Signature: 

Date: 4/16/04

12



PROFESSIONAL AIRWAYS SYSTEMS SPECIALISTS

*PDS SMO Representative**9175 Kearny Villa Road
San Diego, CA 92126**Rec'd
Date 8/27/04*

Delivered by Hand Receipt

August 20, 2004

Paul Collander
PDS SMO Manager
9175 Kearny Villa Road
San Diego, CA 92126

Mr. Collander:

This letter is in response to the notice of proposed suspension delivered to Gene Bettencourt on July 28, 2004.

PASS does not believe all factors have been considered in this proposed action nor was a sufficient investigation performed. PASS has investigated this matter and found these items to contradict management's assertions:

1. Letter from Mike Colburn concerning June 1, 2004 (See Attachment (A))
2. Letter from Mike Colburn concerning June 2, 2004 (See Attachment (A))
3. Copy of "Record of Changes" page from TDWR T.I. Manual 6315.6 (See Attachment (B))
Copy of gas station receipt (See Attachment (C))
4. Letter from Allison Sweeney concerning June 4, 2004 (See Attachment (D))
5. Record of Conversation concerning June 5, 2004 (See Attachment (E))
6. Letter from the Security Badging Office concerning June 8, 2004 (See Attachment (F))

PASS is not aware of, and management has been unable to provide, any written policy or procedure for checking out with management or other specialists when departing for remote sites, nor was the potential for disciplinary action communicated to the BUEs for failing to follow such specific policy. Confirming this is a Record of Conversation between Allison Sweeney, PHX OPS Area PASS Rep and George Burgos, PHX Sky Harbor SSC Manager. (See Attachment (G)) This problem could be easily rectified by installing a Checkout Board so that all BUEs can post their whereabouts and by establishing procedures through a Letter of Expectation.

PASS contends that this proposed disciplinary action should never have been viewed as a second offense. Gerald Brown II, PHX OPS Area Manager, in a conversation with Gene Bettencourt some time after a disciplinary action that took place in 2002, proposed that should there not be a reoccurrence within one year, any reference to that disciplinary action would be removed from Gene's personnel folder. Confirming this is a Record of Conversation between Gerald Brown II, PHX OPS Area Manager and Gene Bettencourt, PHX Sky Harbor PASS Rep. (See Attachment

PASS (AFL-CIO)

-2-

AUGUST 26, 2004

(H)) Additionally, Douglas Factors in Depth from www.faa.gov/ahr/ (See Attachment (I)) states that an enhanced penalty for a similar offense would be difficult to justify when "many years", in this case, two, have passed since the original offense.

According to Mr. Bettencourt's latest AFPPP Review, Gerald Brown noted that "Gene has exceeded the outcomes for his position". Over his lengthy 28 year career, Gene has accumulated five Letters of Appreciation, two Monetary Awards, one Time-Off Award and was a participant in the GNAS Sector of the Year Award.

PASS would also like to call attention to the fact that Mr. Robert Otte is not an unbiased witness in this case. Mr. Otte has well-known antagonism towards PASS and its Representatives.

PASS believes the proposed disciplinary action for Mr. Bettencourt is inappropriate. PASS requests to meet with you to discuss this matter in greater depth before a final decision is made. Please contact me to schedule a meeting with myself and Mr. Bettencourt.

Sincerely,



Mark Matthiesen
PDS SMO PASS Representative

Cc:

Ray Baggett, PASS Region III VP
Joan Matthiesen, PASS Regional Assistant
Gene Bettencourt, PHX Sky Harbor SSC Representative

08/07/2004 05:40

480-837-6835

M GENE BETTENCOURT

PAGE 88

Attachment (A)

July 26, 2004

To Whom It May Concern:

Just before 2:00 PM on June 1, 2004 Gene Bettencourt entered my office. He told me that he was having problems with his laptop computer. He had brought the computer with him so we set it up. Once the computer was running, he demonstrated what was happening. I tried several different methods to correct the problem but to no avail. I told Gene that he would have to leave the laptop with me and to return the next day. He left at about 3:00 PM.

About 2:00 PM on June 2, 2004, Gene returned to my office. I told him I believed that his computer's power supply was failing and I would have to get him a replacement. He asked me what could he use in the meantime. I told him that I had an old broken laptop case that we could exchange components with. So, we removed the parts from one unit and installed them in the other. Afterwards, I ran the computer and set it up for him. He left the office a little after 3:00 PM.

Sincerely,


Mike Colburn

08/07/2004 05:40

482-837-6835

M GENE BETTENCOURT

PAGE 03

Attachment (B) 1 of 3

NOTICE**U.S. Department of Transportation
Federal Aviation Administration**

N 6315.31

8/8/2003

Cancellation
Date: 8/8/2004Posted
6/31/04
GB

**INTERIM CHANGES TO STANDARDS AND TOLERANCES, PERIODIC MAINTENANCE,
MAINTENANCE PROCEDURES, AND CERTIFICATION REQUIREMENTS FOR THE TERMINAL
SUBJ: DOPPLER WEATHER RADAR (TDWR).**

1. **PURPOSE.** This notice provides interim changes to standards and tolerances, periodic maintenance, maintenance procedures, and certification requirements for the TDWR pending distribution of a change to the latest revision of Order 6315.2, Maintenance of Terminal Doppler Weather Radar (TDWR) Equipment.

2. **DISTRIBUTION.**

a. This notice is distributed to selected offices and services within Washington headquarters, the William J. Hughes Technical Center, the Mike Monroney Aeronautical Center, regional Airway Facilities divisions, and Airway Facilities field offices having the following facilities/equipment: TDWR.

b. An electronic version and distribution report of this notice are available on an Intranet site located at <http://aos-ext.aao.faa.gov/> under the "Technical Documentation" heading.

3. **CANCELLATION.** None.

4. **ACTION.** Airway transportation system specialist must use the interim changes in the attached appendixes in conjunction with the existing procedures in the latest revision of Order 6315.2 for maintenance and certification of the TDWR. The appendixes to this notice are:

- Appendix 1. Standards and Tolerances
- Appendix 2. Periodic Maintenance
- Appendix 3. Maintenance Procedures
- Appendix 4. Certification Requirements

5. **BACKGROUND.** These interim changes are necessary because of changes to the baseline TDWR software contained in the recently released TDWR software build 14.0. These changes will be included in an upcoming change to the latest revision of Order 6315.2 that is expected to be released in the first quarter of FY-2004.



Richard A. Thoma
Program Director for Operational Support

4 Appendixes

Distribution: Selected Airway Facilities Field
and Regional Offices, ZAF-605

Initiated By: AOS-250

88/07/2024 25:40

462-837-6835

M GENE BETTENCOURT

PAGE 34

Attachment (B) 2 of 3

SYSTEM SUPPORT DIRECTIVE

TDWR

SDR-TDWR-005

6315 I CHG 60 Chap 53

System
Documentation
Release

**UPDATE TO
TI 6315.6
TDWR ANTENNA GROUP**

Post 100
6/3/14
BR

Highlights

- Add Counterweight Crack Repair Procedure
- Changes to Existing Procedures
- General Updates

2/11/2003

- 1. PURPOSE.** This system documentation release (SDR) provides revised pages to update terminology, clarify various procedures, and add counterweight crack repair procedure to the TDWR Technical Instruction Book, TI 6315.6. This implements Configuration Control Decision (CCD) No. N23682, Update TI 6315.6, Terminal Doppler Weather Radar (TDWR) Antenna Group.

2. DISTRIBUTION.

- a. This SDR is distributed to selected offices and services within Washington headquarters, the William J. Hughes Technical Center, the Mike Monroney Aeronautical Center, regional Airway Facilities divisions, and Airway Facilities field offices having the following facilities/equipment TDWR.

- b. An electronic version and distribution report of this SDR are available on an Internet site located at <http://aqs-ext.sma.faa.gov/> under the "Technical Documentation" heading.

- c. To obtain additional hard copies of this publication, contact Printing & Distribution Team, AML-700B, at (405) 954-3771.

3. WITHDRAWALS/CANCELLATIONS: None.

4. **APPLICATION.** The revised pages apply to Technical Instruction Book, TI 6315.5, Terminal Doppler Weather Radar (TDWR) Antenna Group, Types FA-10352, FA-10353, FA-10356, and FA-10358.

SSD PAGE CONTROL CHART

Remove Pages	Dated	Insert Pages	Dated
<u>TI 6315.6</u>			
III and IV	08/31/94	III IV	08/31/94 2/11/2003

DISTRIBUTION: Selected Airway Facilities Field
and Regional Offices, ZAF-805

INITIATED BY: AOS-250

08/07/2004 05:48

488-837-6835

M GENE BETTENCOURT

PAGE 09

Attachment (D)

Allison Sweeney, PHX SSC, ATSS
2800 Sky Harbor Blvd, Suite 218
Phoenix, AZ 85034

August 1, 2004

Gene Bettencourt, PHX SSC, ATSS
2800 Sky Harbor Blvd., Suite 218
Phoenix, AZ 85034

Mr. Bettencourt,

In regards to the events on June 4, 2004, I recall meeting with you around 5:10 P.M. at the PHX SSC, RT2 site to discuss general information regarding RTR sites and other facility issues. This meeting was per my request to speak with you. I recall leaving this site on or about 8:00 P.M.

Sincerely,

Allison Sweeney

Allison Sweeney

Attachment (E)

August 19, 2004

Record of Conversation

On this date, I spoke with Russell O'Mara regarding his letter dated June 15, 2004 containing his assertion about Gene Bettencourt's arrival for watch on June 5, 2004. Mr. O'Mara stated that he arrived for watch at or about 1:50pm and did not see Mr. Bettencourt until 2:35pm. I asked where he first observed Mr. Bettencourt and his reply was "in the equipment room".



Mark Matthiesen
PDS SMO PASS Rep

09/07/2004 05:46

480-837-6835

M GENE BETTENCOURT

PAGE 07

Attachment (F)

August 2, 2004

To: FAA
SSC Manager

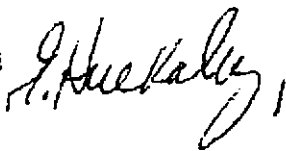
From: Security Badging Office

Subject: PIN Number

This letter is to confirm that Manuel Gene Bettencourt has obtained his PIN Number on June 8, 2004.

Signed,

AUG 04 2004



08/07/2004 05:48

480-837-6835

M GENE BETTENCOURT

PAGE 10

Attachment (5)

Allison Sweeney, PHX SSC, ATSS
2800 Sky Harbor Blvd, Suite 218
Phoenix, AZ 85048

August 5, 2004

George Burgos, Acting Manager PHX SSC
2800 Sky Harbor Blvd, Suite 218
Phoenix, AZ 85034

Record of Conversation:

Mr. Burgos,

On June 16, 2004, you asked that I meet with you and my union representative, Gene Bettencourt. Initially, you would not disclose the nature of the conversation in violation of the PASS contract. Mr. Bettencourt and I met with you anyway. You stated that I was tardy by 15 minutes. I told you that I was not tardy and had reviewed the Air Traffic log and initialed the log at 6:00 A.M., the exact time I was scheduled to arrive. We continued to have this discussion for the next hour concerning the reporting times and location. You stated, emphatically, that I was not required to report to you, to any other individual (bargaining unit member), and that there was no specific location that I should report to since all the technicians did not have a specific location of reporting as long as they were somewhere in or around the facility. You also emphasized that you did not want me to log into the Air Traffic log or any other log.

If there is anything that you would like to add to this, please respond in writing.

Sincerely,

Allison Sweeney

Allison Sweeney, PHX SSC, ATSS

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Attachment (H)

August 6, 2004

Record of Conversation

To Whom It May Concern:

In July 2002 Mr. Gerald Brown, Phoenix AF Facility Manager, came to me while I was working in the back office at the Phoenix Tracon and asked to speak with me. In our conversation, Mr. Brown told me that if I had no further incidents during the next year that he would remove the personnel action against me from my records after the year had expired. I graciously acknowledged his statement to me and thanked him for his consideration.

Sincerely,



M. Gene Bettencourt

Attachment (I)

Douglas Factors In Depth

The Merit Systems Protection Board in its landmark decision, *Douglas vs. Veterans Administration*, 5 MSPR 280, established criteria that supervisors must consider in determining an appropriate penalty to impose for an act of employee misconduct. These twelve factors are commonly referred to as "Douglas Factors" and have been incorporated into the Federal Aviation Administration (FAA) Personnel Management System and various FAA Labor Agreements. The following relevant factors must be considered in determining the severity of the discipline:

- (1) *The nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;*
- (2) *the employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;*
- (3) *the employee's past disciplinary record;*
- (4) *the employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;*
- (5) *the effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in the employee's work ability to perform assigned duties;*
- (6) *consistency of the penalty with those imposed upon other employees for the same or similar offenses;*
- (7) *consistency of the penalty with any applicable agency table of penalties;*
- (8) *the notoriety of the offense or its impact upon the reputation of the agency;*
- (9) *the clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;*
- (10) *the potential for the employee's rehabilitation;*
- (11) *mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and*
- (12) *the adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.*

A supervisor is responsible for ensuring that a disciplinary penalty is fair and reasonable. If a penalty is disproportionate to the alleged violation or is unreasonable, it is subject to being reduced or reversed even if the charges would otherwise be sustained. These factors provide valuable assistance to supervisors in making a penalty determination.

Some of these twelve factors may not be pertinent in a particular case. Some factors may weigh in the employee's favor while other factors may constitute aggravating circumstances that support a harsher penalty. However, it is critical to balance the relevant factors in each individual case and choose a reasonable penalty.

There is no requirement in law, regulation or in "Douglas" that written agency decisions or proposals contain specific, detailed information demonstrating that an agency has considered all of the pertinent mitigating factors in a given case. However, a penalty determination will be entitled to greater deference if the proposal and especially the decision letter contains an evaluation of any mitigating circumstances. It is always better for the Agency to do its own mitigating analysis than to leave it to a third party. In regards to any aggravating factors which may be relied upon to impose an enhanced penalty, these aggravating factors should be included in the proposal notice. This is especially true for prior disciplinary actions. It is only fair to allow the employee to respond to these aggravating factors before a decision is made. Consideration of aggravating factors not communicated to the employee is dangerous and may result in a procedural error and reversal of the disciplinary action.

Factor 1 – Seriousness of the Offense

Douglas Factors In Depth

Page 2 of 7

The reason why this factor is first is simple - it is the most important. In determining the appropriate penalty, a supervisor should consider primarily the nature and seriousness of the misconduct and its relation to the employee's duties, position, and responsibilities. This Douglas Factor provides some guidance in determining the seriousness of an offense.

In evaluating the seriousness of the misconduct, an offense is more severe if it was intentional rather than inadvertent and if it was frequently repeated rather than being an isolated incident. Misconduct is also considered more severe if it is done maliciously or for personal gain.

The agency's table of penalties provides some distinction regarding the severity of the misconduct. For example, sleeping on duty is a serious offense. However, it is considered more serious as provided in our table of penalties where safety of personnel or property is endangered. Moreover, the seriousness of the offense is increased if the employee is involved in what might be described as "pre-meditated" sleeping on duty. What does that mean? If you discover an employee sleeping away from his/her duty station with the lights off, pillow in hand and blanket over body, this intentional action is much more egregious than an employee who just cannot keep his/her eyes open and falls asleep while on position.

There are other examples in the table of penalties that provide guidance in determining the seriousness of misconduct. Misconduct of a sexual nature is a serious offense. However, the severity is increased when the misconduct involves physical touching or promising benefits in exchange for sexual favors in comparison to telling a sexual joke or making a sexual remark inappropriate to the workplace. Sexual jokes are more serious if made directly to an employee rather than if overheard by an employee. The misconduct is even more grievous if the jokes were repeated after the offender was told that the behavior was offensive.

The relationship of the misconduct to the employee's job duties is another important consideration in determining the seriousness of an offense. Falsification of government documents is a serious offense because it relates to an employee's reliability, veracity, trustworthiness, and ethical conduct. The misconduct is more serious if it relates "to the heart" of an employee's duties and responsibilities. For example, if a Time and Attendance (T&A) Clerk was falsifying his/her time and attendance records and it resulted in more pay or less leave used, this misconduct is very serious. The fact that accurate time and attendance records are a critical element of the employee's position, coupled with the fact that the misconduct resulted in personal gain, increases the gravity of this offense. The misconduct would be considered even more serious if the falsification was not an isolated incident, but reflected falsification over several pay periods.

The supervisor deciding the appropriate penalty is in the best position to determine the seriousness of the offense and how the misconduct relates to the employee's duties, position, and responsibilities. Remember, an offense is more serious if it is intentional, frequently repeated, or committed maliciously, or for personal gain.

Factor 2 - The Employee's Position

This factor recognizes a relationship between the employee's position and the misconduct. Factors considered are the employee's job level and the type of employment which may include a supervisory or fiduciary role, contacts with the public, and prominence of the position.

It is a well-recognized principle that a supervisor occupies a position of trust and responsibility and is held to a higher standard of conduct than non-supervisory employees. The Agency's "Standards of Conduct," ER-4.1 outlines the responsibility for a supervisor to provide positive leadership and serve as a role model for their subordinates by demonstrating a commitment and sense of responsibility to their job and loyalty to the organization. Simply put, the Federal Aviation Administration (FAA) expects a supervisor to serve as a role model and not violate workplace rules. When misconduct occurs by a supervisor it is considered more serious. The Agency's table of penalties recognizes this severity in establishing ranges of penalties

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U.S. Department
of Transportation
Federal Aviation
Administration

Pacific Desert Systems Management Office
Western-Pacific Region

9175 Kearny Villa Road
San Diego, CA 92126-7099

SEP 20 2004

Manuel Bettencourt
15819 E. Sycamore Dr.
Fountain Hills, AZ 85268

Dear Mr. Bettencourt:

My letter of July 23, 2004, informed you of a proposal to suspend you for five (5) consecutive calendar days from your position of Airway Transportation Systems Specialist, FV-2101-H, \$79,688 per annum, at Sky Harbor Systems Support Unit, Phoenix, AZ. I have considered the written response submitted by Mark Matthiesen of August 20, 2004 and your verbal response of September 8, 2004. I find that the reason and specification listed in the notice of proposed suspension are fully supported by the facts and warrants your suspension. However, based on some mitigating factors you raised in your oral response, it is my decision that your suspension be reduced to two (2) consecutive calendar days effective November 1-2, 2004.

You have the right to grieve this action under the PASS/FAA negotiated grievance procedure. If you contend this action violates Article 6 of the PASS/FAA agreement, you must file a grievance under Article 5 of the agreement. The grievance must be submitted in writing to me, Paul J. Collander, Manager, Pacific Desert Systems Management Office, at 9175 Kearny Villa Road, San Diego, CA 92126 no later than twenty-one (21) calendar days after the receipt of this letter. It must be filed in accordance with Article 5, Section 8, of the agreement and submitted on an approved grievance form. The written grievance will be processed beginning with Step 2 of the negotiated grievance procedure. If, on the other hand, you wish to raise a claim of statutorily prohibited discrimination with regard to this decision, you must contact your local Equal Employment Opportunity counselor no later than 45 calendar days after the effective date of this decision.

Upon your request, Gwen Marshall , Labor Relations Specialist, AWP-16 at (310) 725-7824, will give you further information on the negotiated grievance procedures. Please acknowledge receipt of this letter by signing below.

Sincerely,



Paul Collander
Manager, PDS SMO

Receipt Acknowledged	Date
----------------------	------

CC: AWP-16
AWP-412
Mr. Ray Baggett, PASS Regional III VP
Ms. Joan Matthiesen, Regional Assistant, PASS Region III

grievl.doc

GRIEVANCE RECORD		FOR FAA USE ONLY	
		NO (AF) WP-05-004-PDS-016	
AGGRIEVED			
1.A. EMPLOYEE'S NAME Bettencourt, Manuel Gena	1.B. FACILITY PHX Sky Harbor SSC	1.C. LOCATION Phoenix, AZ	
2. ARTICLE/SECTION VIOLATED Article 6, Section 2, 3 and 4	3. INCIDENT DATE November 1 and 2, 2004	4. NAME OF UNION REPRESENTATIVE Mark Matthiesen, PDS SMO Rep	
5. INFORMAL GRIEVANCE OFFICIAL	6. INFORMAL DECISION DATE	7. ORAL REPRESENTATION REQUESTED ☒ YES ☐ NO	
GRIEVANCE			
8. DESCRIPTION This grievance is being filed in accordance with CBA Article 5, Section 8. Discipline imposed by Mr. Collander, PDS SMO Manager, on November 1 and 2, 2004, was without just cause. Discipline in this matter violated CBA Article 6, Section 2, 3 and 4: 1) The discipline imposed was punitive rather than remedial in nature. 2) No just cause existed which was supported by a preponderance of evidence. 3) Had the action been warranted, the discipline imposed relied on past disciplinary records from over two years previously, and clearly should not have been a factor in the current disciplinary action. Since no infractions of any kind have occurred since a successful remedial action over two years ago, remedial action of the lowest level should have been imposed, such as closer supervision or oral reprimand.			
9. CORRECTIVE ACTION DESIRED Make me whole in every way, including but not limited to: 1) Retraction of two consecutive day suspension and removal of any and all records from my Official Personnel Folder relating to this issue. 2) Full back pay and benefits for time lost due to the suspension.			
SUBMISSION		RECEIPT ACKNOWLEDGED	
10. EMPLOYEE'S SIGNATURE <i>Manuel G. Bettencourt</i>	11. DATE 11/11/04	12. MANAGEMENT OFFICIAL'S SIGNATURE <i>Timothy Collander</i>	13. DATE 11/17/04
DISPOSITION			
14. DESCRIPTION			



U.S. Department
of Transportation
**Federal Aviation
Administration**

Pacific Desert Systems Management Office
ATO, Western Service Area (Western Pacific Region)

9175 Kearny Villa Road
San Diego, CA 92126

NOV 18 2004

Mr. Gene Bettencourt
15819 E. Sycamore Dr.
Fountain Hills, AZ 85268

Dear Mr. Bettencourt:

Grievance #: (AF) WP-05-004-PDS-06

This is in response to the above referenced grievance concerning your two (2) day suspension. If you wish to make an oral presentation, you and your representative can do so by phone.

In response to your written grievance, be advised as follows:

- Your 2-day suspension was implemented consistent with the FAA principles of progressive discipline.
- The evidence supports a basis for a two (2) day suspension.
- Your prior suspension was imposed on July 29, 2002. Your recent suspension was proposed on July 23, 2004. This is within the two-year window for consideration.

In closing, I did consider your oral and written responses when I initially proposed a five (5) day suspension. After considering your responses, I reduced the penalty to two (2) days based on what I believed to be your genuinely remorseful attitude.

Unless I hear further from you concerning your request for another oral presentation, I am denying this grievance at this level.

Sincerely,

Paul Collander
Manager, PDS SMO



FOUNDED 1977

PROFESSIONAL AIRWAYS SYSTEMS SPECIALISTS

Region III, 5023 W. 120th Ave. #225, Broomfield, CO 80020-5606
 Telephone: (720) 480-9854 email: RegionIII@passnational.org

VIA FAX AND CERTIFIED MAIL (Article Receipt # 7003 3110 0000 7788 2373)

November 26, 2004

Nina Adams
 Manager, AWP-10
 P.O. Box 92007
 Los Angeles, CA 90009-2007

Dear Ms. Adams:

This letter is in reference to grievance # (AF)WP-05-004-PDS-06.

PASS is not satisfied with the second level response. In accordance with the CBA, Article 5, Section 8, Step 3, I am requesting the Airways Facilities Division Manager, or his designee review this grievance. Due to the recent changes to the management structure, it is our understanding that this review is now performed by the Western Service Area Director, Ed Moy.

I also request to hold this grievance in abeyance until the next scheduled quarterly grievance meeting.

Sincerely,

Joan B. Matthiesen
 for Raymond G. Baggett

cc:
 Joan Matthiesen, PASS Regional Assistant
 Ed Moy, WSA Director
 Vianne Fowler, WSA Technical Services Manager
 Rob Strong, AWP-400
 Mal Coghlan, AWP-412

Post-It® Fax Note	7671	Date	11/26/04	# of pages	1
To	NINA ADAMS	From	J. Matthiesen		
Co./Dept.	AWP-10	Co.	PASS		
Phone #	310-725-7800	Phone #	858-486-1044		
Fax #	-6830	Fax #	Same		



U.S. Department
of Transportation
Federal Aviation
Administration

Western-Pacific Region
Airway Facilities Division

P. O. Box 92007
Los Angeles, CA 90009-2007

NOV 3 0 2004

Mr. Ray Baggett
Vice President, PASS Region III
5023 W. 120th Ave., #225
Broomfield, CO

Dear Mr. Baggett:

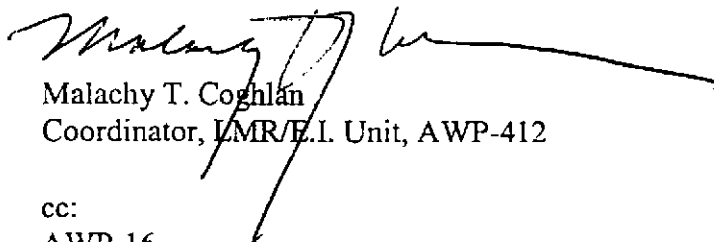
This letter is in response to your letters to Nina Adams, AWP-10, dated November 23 and 26, 2004, in which you requested to hold the following grievances in abeyance:

(AF)WP-05-001-PDS-06
(AF)WP-05-002-PDS-06
(AF)WP-05-003-PDS-06
(AF)WP-05-004-PDS-06

We will be glad to hold these grievances in abeyance until the next quarterly meeting, to allow PASS and the Western Service Area Director the opportunity to review them and explore the possibility of resolution.

Although a date for this meeting has not yet been scheduled, we estimate that it will take place in January, 2005. If you have any questions, please contact me at (310) 725-3404.

Sincerely,



Malachy T. Coghlan
Coordinator, LMR/E.L. Unit, AWP-412

cc:
AWP-16
Paul Collander, PDS SMO
Jerry Brown, PHX SSC
Joan Matthiesen, Regional Assistant, PASS Region III
Sam Hawk, Regional Assistant, PASS Region III



FOUNDED 1977

PROFESSIONAL AIRWAYS SYSTEMS SPECIALISTS

Region III, 5023 W. 120th Ave, #225, Broomfield, CO 80020-5606
Telephone: (720) 480-9854 email: RegionIII@passnational.org

ALN 410

March 9, 2005

Delivered via Fax and Certified Mail: Article Receipt # 7004 1350 0001 0801 0851

Ed Moy
WSA Director
1601 Lind Ave, SW
Renton, WA 98055

Rec'd.

Date:

3/14/05

MS -

[initials]

Mr. Moy:

This letter is in reference to grievance (AF)WP-05-004-PDS-06.

This grievance was held in abeyance on January 20th at the quarterly grievance meeting to allow me the opportunity to travel to Phoenix and examine the charges against Mr. Bettencourt.

After a thorough inquiry, I am convinced that the instances cited by management were absolutely false, and that the charges against Mr. Bettencourt were unjustified. Therefore I do not believe that management had just cause when they imposed discipline on Mr. Bettencourt.

PASS requests that the referenced grievance be removed from abeyance to allow management the opportunity to respond.

Sincerely,

Raymond G. Baggett

for Raymond G. Baggett

cc:

ViAnne Fowler, WSA Technical Services
Mal Coghlan, WSA Mission Support

AWP-410

410A	
411	
412	☒

ACTION:



U.S. Department
of Transportation
Federal Aviation
Administration

Technical Operations
Western Service Area

P. O. Box 92007
Los Angeles, CA 90009-2007

MAR 18 2005

Mr. Ray Baggett
Vice President, PASS Region III
5023 W. 120th Ave., #225
Broomfield, CO 80020

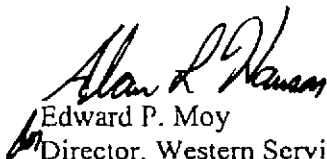
Dear Mr. Baggett:

Grievance # (AF) WP 05-0004-PDS-06

This is in response to your letter dated March 9, 2005, wherein you requested that the above referenced grievance be removed from abeyance, and responded to by me.

I concur with Mr. Collander's decision in this matter, and support denial of the grievance.

Sincerely,



Edward P. Moy
Director, Western Service Area



FOUNDED 1977

PROFESSIONAL AIRWAYS SYSTEMS SPECIALISTS

1150 17th Street, NW, Suite 702, Washington, D.C. 20036
Telephone: (202) 293-PASS Fax: (202) 293-7727

VIA FAX AND CERTIFIED MAIL

April 13, 2005

Mr. Mel Harris, Director
Labor and Employee Relations, AHL-200
Federal Aviation Administration
800 Independence Ave., SW
Washington, DC 20591

*PDS
BETTER COURAGE*

Re: Grievance #: (AF) WP-05-004-PDS-06 2 Day Suspension

Dear Mr. Harris:

Pursuant to Article 5 of the Parties' Airways Facilities Agreement, PASS refers the above-referenced grievances to arbitration. PASS hereby requests that the Agency agree to proceed to arbitration as expeditiously as possible.

PASS has designated Labor Relations Specialist Allyn Dillman as its representative for the arbitration hearings in these matters, under the direct supervision of PASS Counsel Michael Derby. Please have your representative promptly contact Ms. Dillman at (202) 293-7277 to select an arbitrator and make arrangements for the arbitration hearings.

Sincerely,

Thomas Brantley
National President

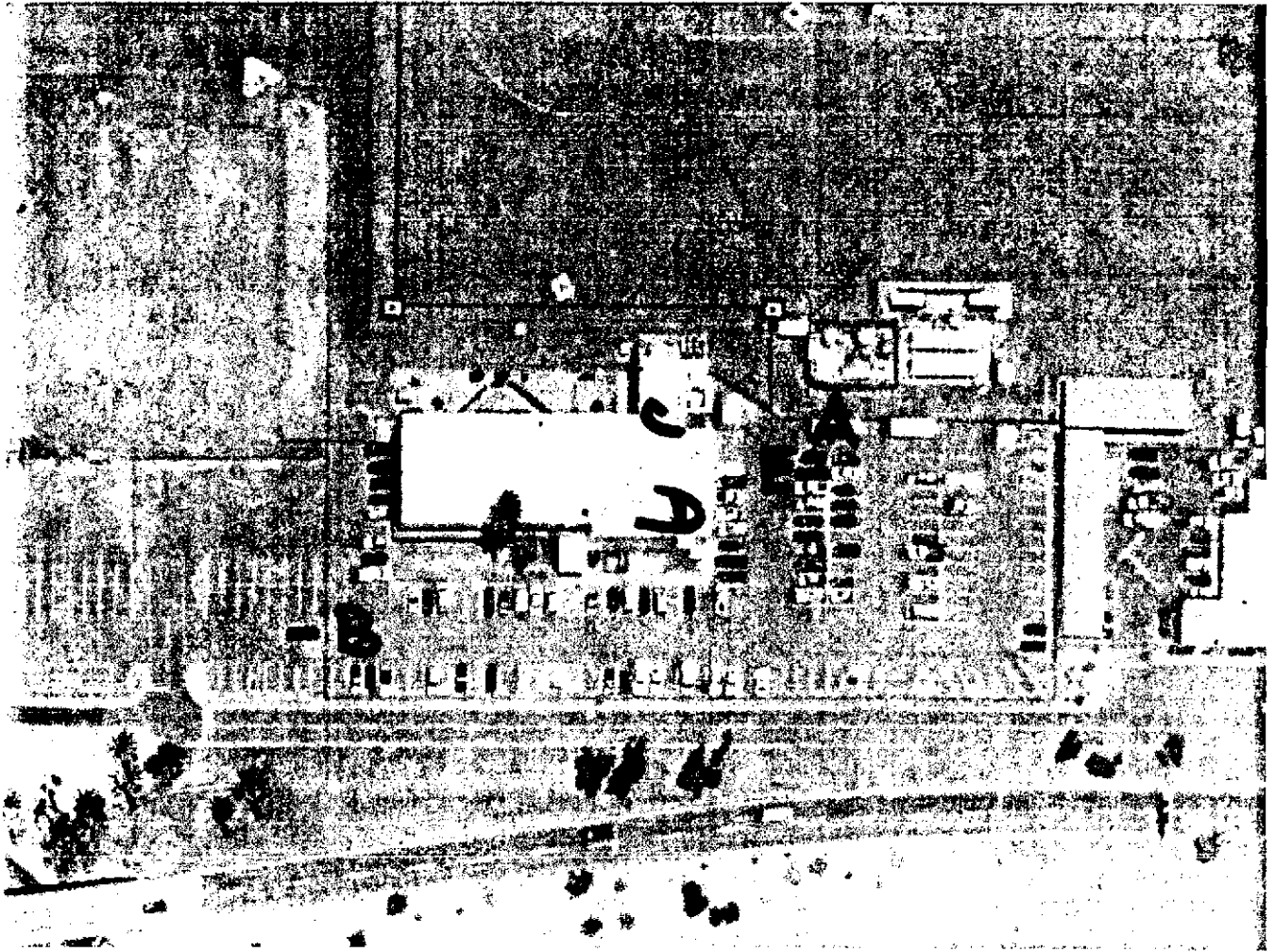
Cc: Allyn Dillman, Labor Relations Specialist
Ray Baggett, PASS Region III Vice President
Joan Matthiesen, PASS Region III Assistant
Sam Hawk, PASS Region III Assistant



Google

Phoenix
Aerial Photo of TRACON grounds

UX-B

A = Mike Colburn's
Office

B = Front Gate

C = Rear Staircase into
TRACON buildingD = Admin area (Reporting
point for ATSS)E = Grievant's usual
parking spot

WX-C

LDR - Daily Time Report

Monday, June 05, 2006

BETTENCOURT, MANUEL

Selected Report Dates: 5/30/2004 - 6/12/2004

REGION CODE	COST CENTER	LOCATION ID	FACILITY TYPE	ATOLDR TASK	DELPHI PROJECT	DELPHI TASK	DATE	REG HOURS	TOS HOURS
					DELPHI PROJECT DESCRIPTION	DELPHI TASK DESCRIPTION			
WP	82RH	PHX	ASR		12XXWPPHXASR PHX ASR	WB5010 PREVENT MAINTENANCE/CERTIFICATION	6/1/2004	4	0
WP	82RH	PHX	TRACO		12XXWPPHXTRACO PHX TRACO	WB5060 PROVIDE WATCH COVERAGE	6/1/2004	2	0
Staff /All Hands /Other					12XXFACORPSV Corporate Services	CP0300 Provide Mission Related Servcs	6/1/2004	1	0
Entering/Approving/Maintaini					12XXFAPATMAT Payroll / Time & Attendance	TA0200 Process Time & Attendance/LDR	6/1/2004	1	0
TOTAL HOURS								8	0
WP	82RH	PHX	BRITE		12XXWPPHXBRITE PHX BRITE	WB5010 PREVENT MAINTENANCE/CERTIFICATION	6/2/2004	2	0
WP	82RH	PHX	TRACO		12XXWPPHXTRACO PHX TRACO	WB5060 PROVIDE WATCH COVERAGE	6/2/2004	2	0
WP	82RH	PHX	VRS		12XXWPPHXVRS PHX VRS	WB5040 MAINTENANCE CONTROL	6/2/2004	2	0
Staff /All Hands /Other					12XXFACORPSV Corporate Services	CP0300 Provide Mission Related Servcs	6/2/2004	1	0

In Mike's office w/ laptop

when are these; who did you coordinate w/ before going out there?

I'm Mike's office

BETTENCOURT, MANUEL

Selected Report Dates: 5/30/2004 - 6/12/2004

REGION CODE	COST CENTER ID	LOCATION	FACILITY TYPE	ATOLDR TASK	DELPHI PROJECT	DELPHI TASK	DATE	REG HOUR	TOS HOUR
					DELPHI PROJECT DESCRIPTION	DELPHI TASK DESCRIPTION			
				Entering/Approving/Maintaini	12XXFAPATMAT	TA0200	6/2/2004	1	0
				Payroll / Time & Attendance		Process Time & Attendance/LDR			
							TOTAL HOURS	8	0
WP	82RH	PHX	MODES		12XXWPPHXMODES	WB5010	6/3/2004	2	0
					PHX MODES	PREVENT MAINTENANCE/CERTIFICATION			
WP	82RH	PHX	TDWR		12XXWPPHXTDWR	WB5010	6/3/2004	2	0
					PHX TDWR	PREVENT MAINTENANCE/CERTIFICATION			
WP	82RH	PHX	TRACO		12XXWPPHXTRACO	WB5070	6/3/2004	2	0
					PHX TRACO	PROGRAM SUPPORT			
				Staff /All Hands /Other	12XXFACORPSV	CP0300	6/3/2004	1	0
					Corporate Services	Provide Mission Related Servcs			
				Entering/Approving/Maintaini	12XXFAPATMAT	TA0200	6/3/2004	1	0
				Payroll / Time & Attendance		Process Time & Attendance/LDR			
							TOTAL HOURS	8	0
WP	82RH	PHX	TRACO		12XXWPPHXTRACO	WB5060	6/4/2004	4	0
					PHX TRACO	PROVIDE WATCH COVERAGE			
				Staff /All Hands /Other	12XXFACORPSV	CP0300	6/4/2004	1	0
					Corporate Services	Provide Mission Related Servcs			

update this; who did you coordinate with before going?

what was the meeting at RT2 site w/ Alison coded under?

BETTENCOURT, MANUEL

Selected Report Dates: 5/30/2004 - 6/12/2004

REGION CODE	COST CENTER ID	LOCATION	FACILITY TYPE	ATOLDR TASK	DELPHI PROJECT	DELPHI TASK	DATE	REG HOURS	TOS HOURS
					DELPHI PROJECT DESCRIPTION	DELPHI TASK DESCRIPTION			
				Perform Union	12XXFALABREL Labor Relations	LR0500 Perform Union Tasks-Employees	6/4/2004	2	0
				Entering/Approving/Maintaini	12XXFAPATMAT Payroll / Time & Attendance	TA0200 Process Time & Attendance/LDR	6/4/2004	1	0
						<i>Not Missing 2.5 hrs gone?</i>	TOTAL HOURS	8	0
WP	82RH	PHX	ASR		12XXWPPHXASR PHX ASR	WB5010 PREVENT MAINTENANCE/CERTIFICATION	6/5/2004	2	0
WP	82RH	PHX	BRITE		12XXWPPHXBRITE PHX BRITE	WB5010 PREVENT MAINTENANCE/CERTIFICATION	6/5/2004	2	0
WP	82RH	PHX	TRACO		12XXWPPHXTRACO PHX TRACO	WB5060 PROVIDE WATCH COVERAGE	6/5/2004	2	0
				Staff /All Hands /Other	12XXFACORPSV Corporate Services	CP0300 Provide Mission Related Servcs	6/5/2004	1	0
				Entering/Approving/Maintaini	12XXFAPATMAT Payroll / Time & Attendance	TA0200 Process Time & Attendance/LDR	6/5/2004	1	0
						<i>Not docked for 1.5 supposedly late?</i>	TOTAL HOURS	8	0
WP	82RH	PHX	BRITE		12XXWPPHXBRITE PHX BRITE	WB5010 PREVENT MAINTENANCE/CERTIFICATION	6/8/2004	2	0

BETTENCOURT, MANUEL

Selected Report Dates: 5/30/2004 - 6/12/2004

REGION CODE	COST CENTER ID	LOCATION	FACILITY TYPE	ATOLDR TASK	DELPHI PROJECT	DELPHI TASK	DATE	REG HOURS	TOS HOURS
					DELPHI PROJECT DESCRIPTION	DELPHI TASK DESCRIPTION			
WP	82RH	PHX	TRACO		12XXWPPHXTRACO PHX TRACO	WB5060 PROVIDE WATCH COVERAGE	6/8/2004	4	0
			Staff /All Hands /Other		12XXFACORPSV Corporate Services	CP0300 Provide Mission Related Servcs	6/8/2004	1	0
			Entering/Approving/Maintaini		12XXFAPATMAT Payroll / Time & Attendance	TA0200 Process Time & Attendance/LDR	6/8/2004	1	0
								TOTAL HOURS	8 0
WP	82RH	PHX	ASR		12XXWPPHXASR PHX ASR	WB5010 PREVENT MAINTENANCE/CERTIFICATION	6/9/2004	4	0
WP	82RH	PHX	TRACO		12XXWPPHXTRACO PHX TRACO	WB5060 PROVIDE WATCH COVERAGE	6/9/2004	1	0
			Staff /All Hands /Other		12XXFACORPSV Corporate Services	CP0300 Provide Mission Related Servcs	6/9/2004	1	0
			Perform Union		12XXFALABREL Labor Relations	LR0600 Perform Union Tasks-Officials	6/9/2004	1	0
			Entering/Approving/Maintaini		12XXFAPATMAT Payroll / Time & Attendance	TA0200 Process Time & Attendance/LDR	6/9/2004	1	0
								TOTAL HOURS	8 0

where is this?

*for not shorted?
for .5 absence?*

6/8/04

BETTENCOURT, MANUEL

Selected Report Dates: 5/30/2004 - 6/12/2004

REGION CODE	COST CENTER	LOCATION ID	FACILITY TYPE	ATOLDR TASK	DELPHI PROJECT	DELPHI TASK	DATE	REG HOURS	TOS HOURS
					DELPHI PROJECT DESCRIPTION	DELPHI TASK DESCRIPTION			
WP	82RH	PHX	MODES	<i>Where is this?</i>	12XXWPPHXMODES PHX MODES	WB5010 PREVENT MAINTENANCE/CERTIFICATION	6/10/2004	4	0
WP	82RH	PHX	TRACO		12XXWPPHXTRACO PHX TRACO	WB5060 PROVIDE WATCH COVERAGE	6/10/2004	2	0
			Staff /All Hands /Other		12XXFACORPSV Corporate Services	CP0300 Provide Mission Related Servcs	6/10/2004	1	0
			Entering/Approving/Maintaini		12XXFAPATMAT Payroll / Time & Attendance	TA0200 Process Time & Attendance/LDR	6/10/2004	1	0
TOTAL HOURS								8	0
WP	82RH	PHX	BRITE	<i>Where is this?</i>	12XXWPPHXBRITE PHX BRITE	WB5010 PREVENT MAINTENANCE/CERTIFICATION	6/11/2004	3	0
WP	82RH	PHX	TRACO		12XXWPPHXTRACO PHX TRACO	WB5060 PROVIDE WATCH COVERAGE	6/11/2004	3	0
			Staff /All Hands /Other		12XXFACORPSV Corporate Services	CP0300 Provide Mission Related Servcs	6/11/2004	1	0
			Entering/Approving/Maintaini		12XXFAPATMAT Payroll / Time & Attendance	TA0200 Process Time & Attendance/LDR	6/11/2004	1	0
TOTAL HOURS								8	0

BETTENCOURT, MANUEL

Selected Report Dates: 5/30/2004 - 6/12/2004

REGION CODE	COST CENTER ID	LOCATION	FACILITY TYPE	ATOLDR TASK	DELPHI PROJECT	DELPHI TASK	DATE	REG HOURS	TOS HOURS
				DELPHI PROJECT DESCRIPTION		DELPHI TASK DESCRIPTION			
WP	82RH	PHX	TRACO		12XXWPPHXTRACO PHX TRACO	WB5010 PREVENT MAINTENANCE/CERTIFICATION	6/12/2004	3	0
WP	82RH	PHX	TRACO		12XXWPPHXTRACO PHX TRACO	WB5060 PROVIDE WATCH COVERAGE	6/12/2004	2	0
				Staff /All Hands /Other	12XXFACORPSV Corporate Services	CP0300 Provide Mission Related Servcs	6/12/2004	1	0
				Entering/Approving/Maintaini	12XXFAPATMAT Payroll / Time & Attendance	TA0200 Process Time & Attendance/LDR	6/12/2004	2	0
TOTAL HOURS								8	0
TOTAL PAY PERIOD HOURS :								80	0

VOLUNTARY LABOR ARBITRATION

In The Matter of the Grievance

-Between-

**Professional Airways Systems
Specialists, NMEBA, AFL-CIO**

and

Federal Aviation Administration

Grievance No. WP-05-004-PDS-06
Re: Suspension of Manuel "Gene"
Bettencourt

ARBITRATOR'S OPINION AND AWARD

REPRESENTING THE PARTIES:

For the Union: Allyn L. Dillman
Labor Relations Specialist
Professional Airways Systems Specialists,
NMEBA, AFL-CIO
1150 17th Street NW, Suite 702
Washington, DC 20036

For the Employer: Malachy T. Coughlan
Labor Relations Specialist
Federal Aviation Administration
15000 Aviation Boulevard
Lawndale, California 90261

ARBITRATOR: Jill Klein
Attorney at Law
2470 Lambert Drive
Pasadena, California 91107-2507

Unfiled 11/30/06
Rec'd 12/4/06

INTRODUCTION

The above matter was heard on June 7, 2006, at the Terminal Radar Approach Control facility offices in Phoenix, Arizona. Both parties to the dispute were present and were given the opportunity to present testimonial and documentary evidence, to call witnesses to be examined and cross-examined under oath, and to advance arguments regarding their respective positions.

A record of the proceedings was made by Superior Reporting Services and Transcriptions of Petaluma, California. The parties agreed to submit closing briefs. The brief of the Agency was received on August 18, 2006. The brief of the Union was received on September 6, 2003, at which time the record of these proceedings closed. The parties agreed to waive the requirement set forth at Article 5, Section 9, *infra*, of the Collective Bargaining Agreement that obligated the Arbitrator to submit her decision within thirty days of the close of the record.

ISSUES

The parties stipulated that the issues to be decided by the Arbitrator are as follows:

Under Article 6 of the parties' Collective Bargaining Agreement, did the Agency have just cause to discipline Gene Bettencourt; if not, what shall the remedy be?

DECISION

I find that under Article 6 of the Collective Bargaining Agreement between the parties, *infra*, the Agency did not have just charge to discipline the Grievant. The remedy shall be to rescind the suspension of the Grievant and award him back pay, as set forth in greater detail below.

APPLICABLE PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT

ARTICLE 5: Grievance Procedure

Section 9. Grievance Filed by Union or Employer

....

Step 3. The grievance hearing shall be conducted by the arbitrator as

promptly as practicable on a date and at a site mutually agreeable to the Parties. Each Party shall bear the expense of its own witnesses. The arbitrator shall submit his/her report to the Parties as soon as possible, but in no event later than thirty (30) days following the close of the record before him/her unless the Parties waive the requirement. The decision of the arbitrator is final and binding.

....

Section 11. The arbitrator shall confine himself/herself to the precise issue submitted for arbitration and shall have no authority to determine any other issues not so submitted to him/her. In disciplinary cases, the arbitrator may vary the penalty to conform to his/her decision provided it is consistent with law and the FAA PMS. In accordance with 5 U.S.C. Section 7122(b), the Parties acknowledge that the Arbitrator has the authority to render a remedy in accordance with all of the provisions of 5 U.S.C. 5596.

....

ARTICLE 6: Disciplinary Actions

....

Section 2. Any disciplinary action taken by the Employer shall be progressive, corrective, and remedial in nature so as to address specific conduct. The Employer shall consider whether the problem can be resolved through such corrective action as closer supervision, admonition, or oral reprimand, prior to initiating formal disciplinary action. Disciplinary action taken by the Employer shall not in any case be punitive in nature. Retraining and/or recertification shall not be used as disciplinary actions.

Section 3. Disciplinary actions shall be taken only for just cause and will be fair and equitable as governed by the FAA PMS, applicable FAA directives, and this Agreement. Actions may be taken only for such cause as will promote the efficiency of the Federal service and warranted by just and substantial cause. Actions based on conduct must be supported by a preponderance of evidence. Actions based on performance must be supported by substantial evidence.

Section 4. Supervisors are responsible for determining if corrective disciplinary action is warranted. Whether the action decided upon is formal or informal, the principles set out in this Section should be observed in determining the severity of the discipline. Not all factors apply in every case. Some of the factors may weigh in the employee's favor, while others may not or may even constitute aggravating circumstances. All factors must be considered and a responsible balance reached. These factors do not apply to actions based on performance or non-disciplinary removals.

- a. the nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, and was frequently repeated;
- b. the employee's job level and type of employment, including any supervisory or fiduciary role, contacts with the public, and prominence of the position;
- c. the employee's past disciplinary record;
- d. the employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
- e. the effect of the offense on the employee's ability to perform his duties at a satisfactory level, and its effect upon the supervisor's confidence in the employee's ability to perform assigned duties;
- f. the consistency of the penalty with those imposed upon other employees for the same or similar offenses;
- g. the consistency of the penalty with any applicable agency table of penalties;
- h. the notoriety and/or egregiousness of the offense, or its impact upon the reputation of the agency;
- I. the clarity with which the employee had been put on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;

- j. the potential for the employee's rehabilitation;
- k. the mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice, or provocation on the part of others involved in the matter; and
- l. the adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

....

DISCUSSION

The circumstances giving rise to the Grievance are not in dispute: Grievant Manuel "Gene" Bettencourt is employed by the Respondent Federal Aviation Administration (hereinafter referred to as the Agency) as an Airways Transportation Systems Specialist in the Systems Support Unit at Sky Harbor Airport in Phoenix, Arizona. The Systems Support Unit is physically located in the Terminal Radar Approach Control facility, which commonly is referred to as the TRACON, at Sky Harbor Airport. Systems Support Unit employees are responsible for maintaining, restoring and modifying electronics equipment used by the National Airspace System for navigation, radar communications, visual aids, and environmental systems. The Grievant is a technician whose primary assignment is maintaining the radar at the airport. He stands watch over such equipment, and thus is referred to as a "watch stander." In addition to being accountable for equipment at the airport, the Grievance also is responsible for monitoring equipment at off-site locations in the Phoenix area.

By Notice of Suspension dated September 20, 2004 (Joint Exhibit 8), the Grievant was informed that he was being suspended for two days for reasons set forth in Notice of Proposed Suspension dated July 23, 2004. The Notice of Proposed Suspension (Joint Exhibit 2), alleges that during Pay Period 13, which ran from May 30, 2004, through June 12, 2004, the Grievant worked a 2:00 p.m. to 10:00 p.m. shift, Tuesday through Saturday. It is alleged that during said time period, he was absent from his assigned duty station without authorization or proper coordination on six occasions which are set forth in greater detail below. It further is alleged that on all of said occasions, the Grievant failed to notify anyone of his decision to leave his watch standing position. It is uncontroverted that the Grievant served the suspension on November 1st and 2nd of 2004.

The Agency contends that the Grievant had developed a pattern of arriving at

work late and leaving early, and of doing so without authorization or coordination. The Agency argues that not only management, but also the co-workers of the Grievant, had become tired of him not being where he was supposed to be. The Agency urges that the affirmative offenses of the Grievant lack credibility, because they cannot be substantiated. The Agency asserts that it imposed discipline in order to modify the behavior of the Grievant and that said goal was realized, as evidenced by the fact that after serving the suspension, he did what was expected of him. The Agency thus contends that the disciplinary action promoted the efficiency of the service, as required by Section 3 of Article 6 of the Collective Bargaining Agreement, *supra*.

The Union argues that the Agency does not have an established check-in or check-out procedure for employees; therefore, it cannot prove that the Grievant arrived at work late or left early, or that he was not working off-site during the hours during which it is alleged that he was not at work. The Union contends that the Agency failed to prove that it is more likely than not that the charges are true, and thus also failed to prove that there was just cause for the discipline, as required by Article 6, Section 3 of the Collective Bargain Agreement, *supra*. The Union asserts that the Agency failed to adequately investigate the charges against the Grievant, thereby denying him procedural due process. The Union also maintains that the disciplinary action was an act of retaliation for an unfair labor practice charge that it had filed on April 23, 2004, wherein it was alleged that the Agency had wrongfully excluded various Union representatives, including the Grievant, from various meetings.

1. June 1, 2004

The Agency alleged that on June 1, 2004, the Grievant, without telling anyone of his decision to leave his watch standing position, arrived at 3:00 p.m. for a shift that had started at 2:00 p.m. It was alleged that the Grievant thus was absent from his assigned duty station without authorization or proper coordination.

Service Support Center Supervisor George Burgos is the direct supervisor of the Grievant. He testified that: He was not at work on June 1st, 2nd, or 3rd of 2004. On June 4, 2004, he received unsolicited written statements from bargaining unit member Russell O'Mara and Systems Performance Specialist Robert Otte. Both stated that at certain times on certain dates, they had not known the whereabouts of the Grievant, and had not been able to get hold of him. He identified the statements that they had provided to him as those set forth at Joint Exhibit 5.

Statement by Mr. O'Mara dated June 15, 2004, (Joint Exhibit 5, p. 4), recites,

in pertinent part, that on June 1, 2004, the Grievant arrived for his watch at 3:00 p.m. Statement by Mr. Otte dated June 8, 2004 (Joint Exhibit 5, p. 5), also recites, in pertinent part, that on June 1, 2004, the Grievant arrived for his watch at 3:00 p.m.

Russell O'Mara was not called as a witness. Robert Otte testified that on June 1, 2004, he worked from noon until 10:00 p.m. On that date, the Grievant, whose shift had started at 2:00 p.m., either came in late or left early; he could not recall which. On June 4, 2004, in response to questions from Mr. Burgos, he had explained what had happened, because it had not been the first time that the Grievant either had arrived late or left early, and he and other employees had not been happy about it. Mr. Burgos subsequently had written a statement (Joint Exhibit 5, p. 5) that Mr. Otte had signed. The statement that had been written by Mr. Burgos did not accurately reflect what Mr. Otte had observed.

The Grievant testified that: On June 1, 2004, he had been having problems with his laptop computer. He normally parks at the rear of the TRACON near a trailer where Help Desk Specialist Michael Colburn, who is employed by Advance Management Technology, Inc., and who services the computers of Agency employees, has his office. He had planned on dropping off the computer with Mr. Colburn, and then entering the TRACON; however, Mr. Colburn had stated that he wanted to take a look at the problem before the Grievant left his office. It had taken awhile for the computer to turn on. He and Mr. Colburn had spent approximately a half hour to forty-five minutes trying various solutions, before the Grievant had left the computer and gone into the TRACON, with the intent of returning for it the following day. On prior occasions when he had been having trouble with his computer, he had stopped in to see Mr. Colburn before going into work, and never had been told that he should have gone straight into the TRACON at the beginning of his shift.

On his Labor Distribution Reporting System Daily Time Report (Union Exhibit "C"), the Grievant subsequently reported the time spent with Mr. Colburn as one hour of "mission-related service." The Grievant testified that Mr. Burgos first questioned his whereabouts during Pay Period 13 on June 25, 2004. He also stated that the entry on the Daily Time Report could not have been made later than June 12, 2004; moreover, it could not thereafter have been changed.

Michael Colburn testified that: In June of 2004, the Grievant came into his office with a computer that was not working. They had tried taking spare parts from other computers to try to fix it. Since the Grievant starts work at 2:00 p.m., and Mr. Colburn leaves work at about 3:00 or 3:30 p.m., he was sure that the Grievant had come to see him at the beginning of the Grievant's shift. In response to a request from the Grievant, he subsequently had written a statement dated July 26, 2004.

In pertinent part, the statement (Joint Exhibit 7, p. 3) recites that on June 1, 2004, just before 2:00 p.m., the Grievant had come into the office of Mr. Colburn and had told him that he was having problems with his computer. It goes on to recite that they tried several different methods of correcting the problem before the Grievant ultimately left the laptop with Mr. Colburn at approximately 3:00 p.m.

Mr. Colburn testified that he had identified the date of the incident as being June 1st after he and the Grievant had discussed the situation and had looked at the calendar. Although he was confident that June 1st had, in fact, been the date on which the Grievant had come in to see him, it remained a possibility that the Grievant had not visited him on said date.

The Grievant testified that: There are no formal check-in procedures at the TRACON; however, he was not in the habit of coming and going as he pleased. Up until the time that the subject disciplinary action was issued, he had followed the same procedures for almost twenty years. At the start of his shift, he normally had entered the facility and had gone either to the break room, the equipment room, or to the back office. Because his shift starts after the shifts of most of the other employees, he usually does not see any of his co-workers when he arrives at work. He thus did not necessarily check-in with anyone; he frequently had just gone about his tasks, working alone. The whole facility, including the office of Mr. Colburn, is part of his duty station, where he stands watch. After he had left the office of Mr. Colburn on June 1st, he had gone to the second floor of the TRACON.

Mr. Burgos testified that: Watch standers work eight- or ten-hour shifts, and are not authorized to take lunch breaks, because they could be needed at any time to restore service at the airport. Watch standers are required to communicate with one another. If an employee who is supposed to be standing watch at the TRACON is going to leave the facility to take care of something elsewhere, he or she is supposed to tell someone in the facility that he or she is leaving. Employees have been told at Unit meetings to communicate their whereabouts to others. Although there have been discussions with the Union about instituting more formal procedures, such as a board on which employees could sign-in or sign-out, or designating a specific telephone for communications, no such procedures have been put in place. If an employee is going to be late for his shift by thirty minutes or an hour, he or she should either leave a voice mail message for the supervisor, or call him on his cell phone.

Mr. Burgos also testified that: He supervises thirteen watch standers. Other than Mr. O'Mara, he does not know which other employees were standing watch with the Grievant on June 1, 2004; he did not ask any of the other employees if they had been on the watch schedule that day. Mr. Colburn is an independent contractor and does not stand watch.

Mr. Burgos reports to Technical Operations Facility Manager Gerald Brown. Mr. Brown testified that: Watch standers work rotating shifts, and report primarily to the TRACON. If there is a problem at the airport, it is expected that a watch stander will respond immediately. The watch standers essentially work together. If one has to leave the premises, he or she is supposed to communicate that to another watch stander; however, it is not unusual for a watch stander to be working alone, especially on the swing shift. If a watch stander is working alone and has to leave, he or she is supposed to let the Air Traffic Watch Supervisor or Coordinator know, using a cell phone with an FM function. A watch stander who leaves the premises also is supposed to remain in touch by cell phone, if case anything comes up during his or her absence. He had asked Mr. Burgos to check with the other watch standers; however, Mr. Burgos had been unable to find anyone who had known the whereabouts of the Grievant on the days in question.

Mr. Brown further testified that: When watch standers arrive for the beginning of their shifts, they are supposed to report to the "ready" room. If no one else is in the room when a watch stander reports for duty, there is no way to verify at what time that occurs; there is no sign-in or sign-out procedure. On June 1st, when the Grievant allegedly had been with Mr. Colburn at the beginning of his shift, no one had known where the Grievant was, including the Coordinator, his supervisor, or any of the other watch standers who were on duty. Mr. Colburn works in a trailer that is directly east of the TRACON, approximately twenty-five paces away.

Pacific Desert System Management Office Manager Paul Collander testified that: Technicians are issued cell phone by the Agency. The phones are to be used to contact technicians when they are off-site.

Mr. Otte testified that: On the day that the Grievant had been late reporting to work, he had not looked to see if his car was in the parking lot. He had tried to call the Grievant on his cell phone. He could not remember if, when he ultimately had seen the Grievant at approximately 3:00 p.m., he had asked the Grievant where he had been. He added that when there are multiple watch standers on duty, it is not necessary to coordinate one's whereabouts with all of them. He normally tells a co-worker and a member of management if he needs to leave. If no one is there to exchange such information with, a watch stander can write his or her whereabouts on a board; however, such practice is not followed religiously.

Radar Technician Augustine Meacham testified that: He has worked at the TRACON since 1992, and is supervised by Mr. Burgos. When arriving at work at the beginning of his shift, it is very possible to not run into a co-worker for awhile. He never has been told that he is supposed to report to a particular room. It is common courtesy to report on time and to let either a manager or a fellow-employee know that

he has arrived. Many times when he arrives at work, his co-workers are gone and may not be seen by him for several hours. In those circumstances, he assumes that the other employees are away working on something.

Airways Transportation Systems Specialist Jaime Jerez testified that: He has worked at the TRACON for fifteen years and is supervised by Mr. Burgos. There is an understanding that the building is not to be left unattended. At the beginning of a shift, watch standers are not required to check-in with any particular person, including their supervisor. Most of the time they get together in the central office and trade information regarding what is occurring at work. The supervisor has told the watch standers that they have to meet in the building, and they have been doing so forever. If he needs to work with someone and that person does not answer his cell phone, he will check the watch schedule, or "bill," to see if that person is working that day; if so, he then will try to locate him or her.

Mr. Jerez also testified that: On one occasion his supervisor had questioned him about whether he had been late for work. Right after he had reported for his shift, he had gone to a remote site to work. He had called co-workers to let them know where he was, so that they would not go looking for him. Later, after he had come back to the TRACON, a co-worker that he had not talked to had mentioned to their supervisor that he had seen Mr. Jerez arrive late for his shift. Mr. Jerez had explained to the supervisor that he had been working in another location, and the matter had been resolved.

Based upon the above testimony I find that: Although Mr. Brown, the second line supervisor of the Grievant, testified that employees are supposed to report to the ready room at the beginning of their shift, the evidence is to the contrary. The testimony of the Grievant, together with that of Mr. Meacham and Mr. Jerez, establishes that such was not the practice. There thus is no formal procedure for watch standers to report for duty. There also is no formal procedure for accounting for one's whereabouts when a watch stander is working outside of the TRACON, either in other parts of the airport or at a more remote site. In general, watch standers are supposed to let a supervisor or co-worker know where they are; however, watch standers often work alone, and their whereabouts thus may not readily be apparent. Watch standers are issued Agency-owned cell phones so that they can be located when their whereabouts are not known.

Based on the testimony of the Grievant, I find that on June 1, 2004, he arrived for his shift at approximately 2:00 p.m., and thus was on time; however, instead of going into the TRACON, he spent approximately an hour in the office of Mr. Colburn, which is located steps from the TRACON. Because the Grievant admitted that he did not enter the TRACON on June 1, 2004, until approximately 3:00 p.m.,

it was not necessary for me to consider the hearsay statement attributed to Mr. O'Mara, or the testimony of Mr. Otte, in making this finding of fact. I find that the testimony of Mr. Colburn supports the testimony of the Grievant with regard to his whereabouts at the time in question.

The Grievant is charged with arriving for his shift at 3:00 p.m., and thus being absent from his assigned duty station without authorization or proper coordination. I find that the office in which the Grievant stopped at the beginning of his shift is situated in a trailer that is part of the compound in which the TRACON is located. I find that said office thus can be considered part of his duty station, as opposed to a work site that is located at a distant part of the airport or off-site. For said reason, I find that the Grievant was not absent from his assigned duty station when he spent the first hour of his shift in the office of Mr. Colburn. I find that he was located at his duty station, attending to Agency-related business. I also find that the evidence does not support the contention of Mr. Brown that Mr. Burgos had not been able to locate anyone who had known the whereabouts of the Grievant. I find that the testimony of Mr. Burgos establishes that he did never undertake such an investigation.

Based upon the foregoing, I find that the assertion the Grievant was late in arriving for work, and that his absence was not authorized or properly coordinate, has not been proved. I therefore find that this charge should not be sustained.

2. June 2, 2004

The Agency alleged that on June 2, 2004, the Grievant arrived for his shift at 3:00 p.m. and left at 9:30 p.m. Mr. Burgos testified that said allegation was based upon the unsolicited written complaint that he had received from Mr. Otte on June 4, 2004 (Joint Exhibit 5, p. 5). In pertinent part, the statement, which is dated June 8, 2004, recites that on June 2, 2004, the Grievant arrived for his watch at 3:00 p.m. and departed at 9:30 p.m.

As set forth above, Robert Otte testified that the statement that he signed had been written by Mr. Burgos and had not been accurate. He further testified that on June 1st and 2nd, the Grievant never came in late and left early on the same day; he had come in late on one day and had left early on the other. As set forth above, he also testified that he could not recall on which day the Grievant had come in late and on which day he had left early.

The Grievant testified that he did not arrive late on June 2, 2004, and did not leave before the end of his shift, at 10:00 p.m.

I find that the only evidence in support of this specification is the testimony of Mr. Otte. Based thereon, I find that he never observed the Grievant come in late

and leave early on the same day. I also find that Mr. Otte does not recall on which date he saw the Grievant come in early, and on which date he saw him leave late. I find that the Grievant denies working anything other than a full shift on June 2, 2004.

Based upon the foregoing, I find that the Agency has failed to prove that on June 2, 2004, the Grievant arrived for his shift at 3:00 p.m. and left at 9:30 p.m. I therefore conclude that this charge also should not be sustained.

3. June 3, 2004

The Agency alleged that on June 3, 2004, the Grievant left work at 3:00 p.m. and returned at 4:15 p.m. It further was alleged that in the interim, he was observed driving his personal vehicle eastbound, off the grounds of the airport.

Gerald Brown testified that: On June 3, 2004, his shift ended at 3:00 p.m. He had left the TRACON, and had been driving through the airport on his way to the freeway, when something had caught his eye. Approximately ten feet away, he had observed the Grievant, whom he believed to be on-duty, driving his personal vehicle. The Grievant had exited at Sky Harbor Boulevard and had headed north on 44th Street. The Agency has no facilities north of the airport that require maintenance. Agency employees are responsible for maintaining a Terminal Doppler Weather Radar facility that is off-site; however, that facility is approximately twenty miles west of the airport.

The testimony of Mr. Brown continued: He had called the Systems Support Center to find out if the Grievant was supposed to be on-duty. He had known that the supervisor of the unit already had gone home; therefore, he had called Systems Support Center Coordinator Roger Gustafson. Mr. Gustafson had told him that the Grievant was supposed to be on-duty. Mr. Brown then had asked Mr. Gustafson to take note if he saw the Grievant again before the shift of Mr. Gustafson ended at 4:30 p.m. It had not occurred to him to ask Mr. Gustafson to call the Grievant on his cell phone in order to ask where he was going. The following morning, Mr. Gustafson had told him that before leaving for the day on June 3rd, he had seen the Grievant in the equipment room at approximately 3:30 p.m. Mr. Brown subsequently had prepared a Report of Incident dated June 7, 2004.

The Report of Incident (Joint Exhibit 5, p. 3) recites that: When Mr. Brown spoke to Mr. Gustafson on June 3rd, he had asked if the Grievant had contacted Mr. Gustafson about leaving his duty station in order to run a brief errand. Mr. Gustafson had responded in the negative. The following morning, Mr. Gustafson had told him that on June 3rd, the Grievant had been absent from his duty station for approximately an hour and fifteen minutes. The Grievant had left his watch without the knowledge

of his fellow-employees or members of management.

Roger Gustafson testified that: He recalled getting a phone call from Mr. Brown during which he had been asked whether the Grievant was supposed to be on-duty, but could not remember the date. He had confirmed that the Grievant was supposed to be on-duty, and had checked to see if he was on the premises, but had not been able to locate him. He did not recall when the Grievant had returned to the TRACON. It was possible that the Grievant had coordinated his absence with someone else.

The Grievant testified that: On June 3, 2004, he drove to the Terminal Doppler Weather Radar facility in order to take care of two or three administrative duties. The facility is approximately fifteen or twenty miles from the TRACON, and it takes approximately a half hour to drive there. Although government vehicles had been available for his use, he had taken his own car, because he had been concerned about the reliability of the government cars. Approximately a week earlier, he had attempted to use a government vehicle and had found one with no gas and another with a flat tire; he ultimately had had to use a third car. He always has had the option of using his own vehicle, and had decided to do so on June 3rd. He had left the TRACON at approximately 3:00 p.m., when freeway traffic was beginning to get heavy; in addition, there is a railroad track that runs along the north side of the airport and that crosses 24th Street, which is a major thoroughfare, and causes traffic to back-up. He therefore had chosen a path to the radar facility that would get him there in a reasonable amount of time and avoid freeway traffic. He had exited the airport at 44th Street, going north. He then had traveled one mile to McDowell and turned west. He had taken McDowell to 52nd Avenue, had made a left to Lower Buckeye Road, and then had turned left to get to the radar facility, which had been an eighth of a mile away. He had purchased gas at a Circle K that is located at 52nd Avenue and Lower Buckeye Road. He never has asked the Agency to pay for mileage when he has used his private vehicle for work-related purposes.

The Grievant produced a gas receipt from 76/Circle K on West Lower Buckeye Road in Phoenix (Joint Exhibit 7, p. 7). Because of the poor quality of the photocopy, the date is partially illegible. Although the month of June and the year of 2004 can be discerned, the day is not clear; it appears to be either the 2nd or 3rd. The receipt documents that gas was purchased from said location, but does not indicate the time.

The Grievant further testified that: The watch schedule is very flexible. In June of 2004, employees had come and gone, and had changed their schedules on an *ad hoc* basis. There had been no procedure of any kind that anyone had been following. Staffing had been light. All of the watch standers had carried cell phones.

If anyone had needed assistance or had needed to get in touch with anyone, a call could have been made. He had gone about his business in his usual manner, and had not called anyone. Once he had arrived at the facility, he had posted a log (Joint Exhibit 7, pp. 4-6), and had re-set the MDT, which has a tendency to lock-up. He had been at the facility for approximately fifteen or twenty minutes, and then had driven back to the TRACON. Including preparation and driving time, the task had taken two hours, which he had recorded on his Daily Time Report.

The Daily Time Report for the date in question (Union Exhibit "C") reflects that on June 3, 2004, the Grievant spent two hours doing preventive maintenance and certification at the Terminal Doppler Weather Radar facility. Log pages from the radar facility (Joint Exhibit 7, pp. 4-6) contain notations that they were posted on June 3, 2004, followed by the initials of the Grievant.

Mr. Brown testified that employees normally should take the most direct route to the radar facility. It is entirely possible that they would take a different route in order to avoid traffic. The route that he had seen the Grievant taking had not been a standard one for driving to that location. Although it is not common practice for employees to use their private vehicles to go to the facility when government vehicles are available, there are times when such occurs. When an employee uses his or her private vehicle, he or she is supposed to request reimbursement for mileage. Employees also should check with their supervisor before using a private vehicle for Agency business; however, there is no written requirement that they do so.

Mr. Burgos testified that: The radar facility is fifteen or twenty miles southwest of the TRACON. Employees going there normally would take a government vehicle. If they want to take their private vehicles, they are supposed to talk to him about it, because the Agency incurs a mileage cost as a result. Employees also have been told that if Mr. Burgos is not there, they should notify Mr. Brown. If employees are using their private vehicles without asking permission, such is a problem.

Mr. Otte testified that his job duties also require that he drive out to the Terminal Doppler Weather Radar facility. When going there, he takes a government vehicle; however, employees are permitted to use their private vehicles if they want to. If he were going to take his private vehicle, he would tell Mr. Burgos.

Mr. Gustafson testified that he also drives out to the radar facility. When going there, he usually takes a government vehicle, although he has taken his own car when he stops there at the end of the work day, on his way home. When he has used his private vehicle, he has informed either the Systems Support Center Manager or Coordinator. He could not recall whether the Grievant ever had told him on June 3, 2004, that he was going to the radar facility.

Based upon the testimony of Mr. Brown, I find that at approximately 3:00 p.m. on June 3, 2004, he saw the Grievant driving off the grounds of the airport in his private vehicle. I find that contrary to the assertion contained in the Notice of Proposed Suspension, Mr. Brown observed the Grievant driving in a northbound direction, as opposed to eastbound as alleged by the Agency. Based upon the testimony of the Grievant, I find that he did, indeed, drive out of the airport, and that he returned approximately an hour and fifteen minutes later. Although it is alleged that the foregoing amounted to an absence without authorization or proper coordination, I find that such has not been proved.

Based upon the testimony of the Grievant, I find that he was working off-site, at the Agency's Terminal Doppler Weather Radar facility, during the time in question. Based upon his testimony and the testimony of Mr. Brown, I find that although the radar facility is west of the airport, traffic conditions might dictate taking other than the most direct route. I find that log pages from the radar facility indicate that they were added by the Grievant some time on June 3, 2004, thus tending to substantiate his testimony. I find that the gas receipt does not definitively establish when the Grievant was in the vicinity of the radar facility; however, it does tend to support that the Grievant was there on the day of the incident. For the foregoing reasons, I find that between 3:00 p.m. and 4:15 p.m. on June 3, 2004, the Grievant worked off-site at the radar facility, and was not absent from work.

I find that although employees are encouraged to use Government-owned vehicles when on Agency business, they are not required to do so. I find that an employee is supposed to notify a supervisor if he or she is using a private vehicle and wants to be reimbursed for mileage; however, the uncontroverted testimony of the Grievant establishes that he never requests such reimbursement. I find that under such circumstances, it is understandable that he would not have made it a point to get permission from his supervisor to drive his own vehicle to the radar facility.

Based upon the testimony of Mr. Brown and Mr. Burgos set forth previously, I find that when employees leave the TRACON to work at other locations, the procedure for accounting for their whereabouts is fairly informal. I find that they are not required to sign out, and there is no particular person whom they are required to inform of their absence; instead, they are supposed to tell either a co-worker or a supervisor that they are leaving, and to carry an Agency-provided cell phone so that their superiors and co-workers can get in touch with them, if necessary.

The burden of proof is on the Agency; therefore, the Agency is required to prove by a preponderance of the evidence that the Grievant did not tell anyone that he was leaving the TRACON to go elsewhere on June 3, 2004. Based upon the testimony of Mr. Gustafson, I find that he cannot recall whether the Grievant told him

that he was leaving the premises, and that it is possible the Grievant told someone other than Mr. Gustafson that he would be leaving. I further find that no evidence was presented that none of the other employees who were standing watch that day had been informed that the Grievant was going to the radar facility.

Based upon the foregoing, I find that the Agency has failed to prove that it is more likely than not that the Grievant left without properly coordinating his departure. I therefore conclude that this charge also should not be sustained.

4. June 4, 2004

The Agency alleged that on June 4, 2004, the Grievant departed his watch at 5:00 p.m. in his private vehicle, and returned at 8:15 p.m.

Statement by Mr. O'Mara dated June 15, 2004, (Joint Exhibit 5, p. 4), recites, in pertinent part, that on June 4, 2004, the Grievant left his watch at 5:00 p.m., using his personal vehicle. It goes on to state that the Grievant returned at 8:15 p.m.

The Grievant testified that: During the evening of June 4, 2004, he met with Airways Transportation Systems Specialist Allison Sweeney, who had started working in Phoenix the previous December. Ms. Sweeney worked at the RT-2 radio communication site, which is located at the airport, but in a different building than the TRACON. In addition to meeting at said location, they also had gone to the Phoenix Control Tower. In the past, Mr. Burgos had encouraged him to help Ms. Sweeney whenever she needed assistance, and the Grievant had told her to call him whenever she needed help. On June 4th she had made such a call, and he had gone over to help her. He subsequently had reported the time as two hours of "watch coverage" on his Daily Time Report (Union Exhibit "C"), because the advice that he had provided had related to the interface between the equipment at the radio communication site, the Control Tower, and operations at the TRACON.

Allison Sweeney testified that: In response to a telephone request from her, the Grievant met with her at the RT-2 radio communication site, which is located on Level 6 of the airport's Terminal 3 parking lot. An activity log which she no longer has in her possession had reflected the meeting and at what time it had occurred. Based upon that information, she subsequently had written a letter to the Grievant, in which she had confirmed that the meeting had taken place. The letter, which is dated August 1, 2004 (Joint Exhibit 7, p. 8), recites that the meeting took place on June 4, 2004, and lasted from approximately 5:10 p.m. until 8:00 p.m.

Paul Collander testified that: Mr. Burgos or Mr. Brown had been asked to verify that the Grievant had been at the RT-2 site on the day in question. When a technician shows up at a site, an automated maintenance management system is

supposed to create a log that reflects that the technician was there, what was done, and when he or she left. If an employee goes to a site for administrative purposes, and does not perform any maintenance, the visit still is supposed to be logged; however, such probably does not always occur. It was his belief that Mr. Burgos and Mr. Brown had not been able to verify that the Grievant or Ms. Sweeney had been at the RT-2 site during the time in question, because they could not find an entry to that effect on the maintenance management system.

Mr. Brown testified that: The RT-2 site is approximately eight or ten block east of the TRACON. Technicians do maintenance there on radios, antennas, and transmission lines. They are supposed to log-in when they are there, regardless of whether they are performing maintenance. He had asked Mr. Burgos to determine whether the Grievant had logged-in at that site on the day in question.

Mr. Burgos testified that: He never had attempted to verify the whereabouts of the Grievant. When the Grievant supplied the Agency with information regarding where he had been on the dates in question, Mr. Burgos had provided that information to Mr. Brown, and had not done any type of investigation or follow-up.

Based upon the testimony of the Grievant, I find that on June 4, 2004, he left the TRACON in order to meet with Ms. Sweeney on Agency business. I find that said meeting took place in the airport, at the RT-2 radio communication site and at the Control Tower. Based upon the testimony of Ms. Sweeney, I find that said meeting took place from approximately 5:10 p.m. until 8:00 p.m. Taking into account the time that it takes to drive to another part of the airport from the TRACON, I find that the Grievant most likely was absent from the TRACON from 5:00 until 8:15 p.m., as charged.

I find that the Agency presented no evidence that the Grievant failed to inform anyone that he was gone, or that he could not be reached on his cell phone during the time in question. I find that the testimony of Mr. Collander establishes that the Agency pursued this charge based upon the belief that there was no proof that the Grievant had been where he had claimed to be, because either Mr. Brown or Mr. Burgos had determined that his visit to the radio communication site was not reflected in the log created by the automated maintenance management system. I find that the testimony of Mr. Brown and Mr. Burgos establishes that said log never was checked. Mr. Brown testified that it was Mr. Burgos who had checked the log, while Mr. Burgos testified that he had not undertaken any sort of investigation into the whereabouts of the Grievant. I therefore find that the Agency's justification for pursuing this charge is contradicted by the evidence.

For the foregoing reasons, I find that this charge also should not be sustained.

5. June 5, 2004

The Agency alleged that on June 5, 2004, the Grievant arrived for work at 2:35 p.m.

Statement by Mr. O'Mara dated June 15, 2004 (Joint Exhibit 5, p. 4), recites, in pertinent part, that on June 5, 2004, the Grievant showed up for his scheduled watch at 2:35 p.m.

Airway Transportation Systems Specialist and Union representative Mark Matthiesen testified that: He represented the Grievant in connection with the instant matter, and helped him prepare his response to the proposed discipline. In connection therewith, he investigated the matter, and spoke to Mr. O'Mara. Mr. O'Mara told him that on the day in question, he had seen the Grievant in the equipment room. He subsequently had memorialized their conversation in a memorandum.

Memorandum by Mr. Matthiesen dated August 19, 2004 (Joint Exhibit 7, p. 9) recites that he had spoken with Mr. O'Mara on said date regarding the allegation that the Grievant had been late to work on June 5, 2004. It goes on to recite that Mr. O'Mara had stated that on said date, he had arrived at work at 1:50 p.m., and had not seen the Grievant until 2:35 p.m., when he had observed the Grievant in the equipment room.

I find that the above charge is supported only by the hearsay statement of Mr. O'Mara.¹ The Agency cannot meet its burden of proof by relying only on hearsay evidence, due to its inherent unreliability. For said reason, I find that this charge has not been sustained.

6. June 8, 2004

The Agency alleged that on June 8, 2004, the Grievant departed his watch in his private vehicle at 3:00 p.m., and returned at 3:30 p.m.

Roger Gustafson, testified that: On or about June 8, 2004, he had been on a landing of the stairwell at the TRACON when he had observed the Grievant drive up to the facility in his private car, after the start of his shift. He had written an e-mail concerning the incident, and had sent it to Mr. Burgos. He had done so because, at the time, he had been the newly-appointed Coordinator of the facility, and a lot of

¹. I also find that the information that Mr. Matthiesen obtained from Mr. O'Mara in the course of his investigation on behalf of the Union is double-hearsay, which due to its inherent unreliability, cannot be used *per se* to prove or disprove anything.

other technicians had come to him with questions regarding the whereabouts of the Grievant. When he subsequently had witnessed the Grievant arriving late, he had felt that he had an obligation to come forward. In order to function, the technicians need to know each other's whereabouts, and if anyone has left. The actions of the Applicant had become a problem in his eyes and in the eyes of the other employees.

The letter from Mr. Gustafson is dated June 8, 2004 (Joint Exhibit 5, p. 6). It recites that on said date, he saw the Grievant return to the TRACON in his personal vehicle at approximately 3:30 p.m. It also recites that Mr. Gustafson had last seen the Grievant that day prior to 3:00 p.m. He therefore had estimated that the Grievant had been away from work for approximately thirty minutes.

Mr. Gustafson testified that he did not know for a fact that the Grievant had not been seen after 3:00 p.m. by any of the other employees at the TRACON. He could not recall whether he had asked any of the other employees if the Grievant had told them that he was leaving the premises.

The Grievant testified that: June 8th had been a regular work day. Most of the employees, especially the radar technicians, commonly do a walk around during the later part of their shifts, during which time they check for potential problems. He had made a visit to the Operation Center earlier in the day, in order to obtain a personal identification number for his security badge, so that he would be able to operate a newly-installed gate at the airport. He had gone to the Operation Center in the afternoon, because he had known that it generally was quiet at that time, and had anticipated that he would be able to get his personal identification number quickly. He then had returned to the TRACON. As on other occasions, there had been no formal procedures that he had been required to follow when running such an errand. On his Daily Time Report (Union Exhibit "C" p. 4), he subsequently had listed the time spent at the Operations Center as an hour of "mission-related services."

Memorandum dated August 2, 2004 from the Security Badging Office (Joint Exhibit 7, p. 10) recites that on June 8, 2004, the Grievant obtained a personal identification number. It is signed by an individual who is not identified, next to a date stamp of August 4, 2004. It does not appear to be a record prepared in the regular course of business; rather, it appears to be a document that was prepared for the purpose of these proceedings and given to someone to sign.

Based upon the testimony of Mr. Gustafson and the Grievant, I find that on the afternoon of June 8, 2004, the Grievant was absent from the TRACON, most likely between approximately 3:00 and 3:30 p.m. I find that the testimony of the Grievant establishes that during said time, he was at another location at the airport, obtaining a personal identification number for his security badge. I find that the statement from the unidentified employee at the Security Badging Office is not a

record prepared in the regular course of business, and thus does not meet the requirements for the business record exception to the hearsay rule. I therefore find that the contents of such document amount to the hearsay statement of an unknown individual. Because of its inherent unreliability, I did not give such statement any weight.

Again, the Agency has the burden of proving that the Grievant left the TRACON with out proper authorization or coordination. I find that the testimony of Mr. Gustafson establishes only that the Grievant did not tell him that he was going to the Operation Center. I find that no evidence was presented that none of the other co-workers of the Grievant knew his whereabouts. There also was no evidence presented that anyone at the Agency had attempted to contact the Grievant by phone during the time period in question.

For the foregoing reasons, I find that this charge also should not be sustained.²

REMEDY

Having found that the Agency did not have just cause to discipline the Grievant, because none of the specifications upon which his suspension was based has been proved by a preponderance of the evidence, I find that the penalty of a two-day suspension does not promote the efficiency of the service. I therefore find that said penalty should be rescinded. Pursuant to 5 U.S.C. Section 5596 and Article 5, Section 11 of the Collective Bargaining Agreement, *supra*, the Grievant should receive back pay equal to the amount of pay, allowances, and differentials, where applicable, that he would have earned if he had not been suspended, plus interest. He also should receive any other benefits to which he would have been entitled had he not served the suspension. Any references to wrongdoing by the Grievant in connection with the matters at issue herein shall be expunged from the files of the Agency, including, but not limited to, the official personnel file of the Grievant.³

². Because I have found that none of the charges have been proved, I did not find it necessary to consider whether the instant disciplinary action amounted to a denial of procedural due process or whether it was an act of retaliation, as alleged by the Union.

³. The Union requested that the Arbitrator keep the record open for the purpose of receiving, and making a determination regarding, a petition seeking reimbursement of attorney fees pursuant to 5 U.S.C. Section 5596, commonly known

AWARD

The Grievance is sustained. The suspension shall be rescinded and the Grievant shall receive all back pay, with interest, and other benefits to which he would have been entitled had he not been suspended. All references to wrongdoing by the Grievant in connection with this matter shall be expunged from the files of the Agency.

The Arbitrator shall maintain jurisdiction of this matter for ninety days in order to deal with any disputes that may arise regarding the remedy.

Respectfully submitted,



JILL KLEIN,
Arbitrator

*November 29, 2006
Pasadena, California*

as the Back Pay Act. Such request was made on the basis that although the Union was not represented by an attorney in connection with these proceedings, the representative of the Union was assisted and supervised by legal counsel in connection with her work on this matter.

The Back Pay Act provides that attorney fees shall be awarded in accordance with the standards set forth at 5 U.S.C. Section 7701(g), which states that the payment of such fees may be ordered when an employee is the prevailing party and a determination is made that such payment is in the interest of justice. Because the Union was represented by a non-attorney, I find that the payment of attorney fees would not be in interest of justice, and hereby deny said request.