70 FLRA No. 95

UNITED STATES
DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF PRISONS
FEDERAL CORRECTIONAL COMPLEX
FORT WORTH, TEXAS
(Agency)

and

AMERICAN FEDERATION
OF GOVERNMENT EMPLOYEES
LOCAL 1287
COUNCIL OF PRISON LOCALS
(Union)

0-AR-5301

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DECISION

April 11, 2018

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Before the Authority: Colleen Duffy Kiko, Chairman, and Ernest DuBester and James T. Abbott, Members
(Member DuBester dissenting)

I. Statement of the Case

In an award dated July 7, 2017, Arbitrator Robert Costello found that the Agency violated the Fair Labor Standards Act (FLSA)[1] and the parties' collective-bargaining agreement by failing to pay certain employees (grievants) for the time that they spent traveling between their regular and overtime shifts. The Arbitrator directed the Agency to compensate the grievants with overtime pay and to reimburse their mileage expenses. We consider one of the Agency's exceptions.

The Agency argues that the award is contrary to a government-wide regulation. Because the award conflicts with 5 C.F.R. § 551.422, an Office of Personnel Management (OPM) regulation implementing the FLSA, we set aside the award.

[1] 29 U.S.C. §§ 201-219.

II. Background and Arbitrator's Award

This case concerns travel time, an hour or less, between the grievants' regular shifts and overtime shifts. The Agency operates a facility that houses inmates suffering medical issues or mental illness. When an inmate requires medical attention beyond what the facility can provide, the Agency transports that inmate to one of two nearby hospitals. When inmates are at these hospitals, the Agency offers to the officers overtime shifts to guard those inmates. Officers "typically volunteer" for those shifts.[2]

The Union filed a grievance on June 2, 2016, alleging that the Agency was violating Article 3 of the parties' agreement and the FLSA when it failed to pay employees for the time spent traveling from their normal shifts to overtime shifts at nearby hospitals as well as mileage for that travel. The parties were unable to resolve the grievance and submitted it to arbitration.

The Arbitrator framed the issue as whether the Agency violated Article 3 of the parties' agreement and the FLSA when it did not compensate employees for travel time and mileage for travel between their regular shifts and overtime shifts.

The Union argued that, under both OPM and Department of Labor (DOL) regulations interpreting the FLSA, the Agency must pay bargaining-unit employees for time spent traveling from their regular shifts to their overtime shifts. Looking to 29 C.F.R. § 790.6(b), a DOL regulation, the Union contended that the travel constituted part of the employees' "continuous workday."[3] This DOL regulation defines "workday" as "the period between the commencement and completion on the same workday of an employee's principal activity or activities."[4]

The Union emphasized that the short time between shifts was part of a continuous workday because the grievants did not have enough time to use the time effectively for their own purposes.

The Agency argued that 5 C.F.R. § 551.422, an OPM regulation, does not allow it to pay employees for travel time between regular shifts and overtime. As relevant here, 5 C.F.R. § 551.422 states that travel time "shall be considered hours of work if . . . [a]n employee is required to travel during regular working hours."[5] The Agency contended that the overtime shifts were not regularly scheduled and, therefore, were not part of an employee's regularly scheduled workweek. The Agency

[2] Award at 26.
[3] *Id.* at 8.
[4] 29 C.F.R. § 790.6(b).
[5] 5 C.F.R. § 551.422(a)(1).

also argued that employees volunteered for the overtime shifts.

While acknowledging the OPM regulations, the Arbitrator focused his analysis on whether the time between shifts "may be used effectively for the officer's personal pursuits, as opposed to the officer having to devote the time predominately for the benefit of the Agency."[6] The Arbitrator found that the hour or less between the grievants' regular shifts and the overtime shifts was not off-duty time and, therefore, was compensable under the FLSA. As for the Agency's argument that employees volunteered for the overtime shifts, the Arbitrator stated that it was "entirely immaterial that the officers typically volunteer" for those shifts, because employees are entitled to payment for work that employers "suffer[] or permit[]" them to do.[7] The Arbitrator concluded that the Agency violated the FLSA and also found that—because Article 3 of the parties' agreement incorporated the FLSA—the Agency also violated the parties' agreement. The Arbitrator awarded backpay as well as liquidated damages. For the same reasons, the Arbitrator awarded mileage.

The Agency filed exceptions to the award on August 7, 2017; the Union filed an opposition to those exceptions on September 6, 2017.

III. Analysis and Conclusion

The Agency argues that the award is contrary to law, specifically OPM regulations 5 C.F.R. §§ 550.112(g) and 551.422(a);[8] we review this exception de novo.[9] As relevant here, these regulations state that time in travel status is compensable when "[i]t is within [an employee's] regularly scheduled administrative workweek, including regular overtime work"[10] and that time spent traveling should be considered hours of work if "[a]n employee is *required* to travel during regular working hours."[11] The Agency argues that the travel between the employees' regular shift and the overtime shift was not during regular working hours.

The parties stipulated that "hospital shifts are typically staffed by correctional workers working overtime shifts outside of their scheduled shifts . . . , on their days off, or while on annual leave."[12] Furthermore, the Arbitrator acknowledged that the overtime was not part of the employees' regular shifts.[13] Given the stipulated evidence and the findings by the Arbitrator that the hospital overtime shifts are not scheduled in advance of the administrative workweek, the hospital shifts are occasional or irregular overtime shifts[14] and not part of the employee's regularly scheduled workweek. Further, the Arbitrator found it "entirely immaterial that the officers typically volunteer" for those shifts,[15] and the Union has not filed a timely exception to the Arbitrator's characterization of the overtime shifts as voluntary. Therefore, the Agency does not "*require[]*" the grievants to engage in this travel.[16] For these reasons,[17] travel time from the location of the employees' regular shifts to the

[6] Award at 23.
[7] *Id.* at 26.
[8] Exceptions Br. at 7.
[9] *E.g.*, *AFGE, Local 342*, 69 FLRA 278, 278 (2016) (*Local 342*) (Member DuBester concurring) *(citing NTEU, Chapter 24*, 50 FLRA 330, 332 (1995)).
[10] 5 C.F.R. § 550.112(g).
[11] *Id.* § 551.422(a) (emphasis added); *see also NTEU, Chapter 41*, 57 FLRA 640, 644 (2001) (*NTEU*).
[12] Opp'n, Joint Ex. 23 at 1.
[13] Award at 5 ("The evidence also suggests that officers are assigned to work the hospital shifts that immediately follow from their regular shifts at the hospital."); *id.* at 5 n.2 ("Officers also escort inmates to hospitals, but the record suggests that they typically do so during their regular shifts at [the Agency].").
[14] 5 C.F.R. § 550.103 (defining "irregular or occasional overtime" as "overtime work that is not part of an employee's regularly scheduled administrative workweek").
[15] Award at 26.
[16] 5 C.F.R. § 551.422(a) (emphasis added).
[17] *NTEU*, 57 FLRA at 644.

location of the irregular overtime shift is not compensable.[18]

The Union argues that we should apply DOL regulations and find that the time spent traveling between a regular shift and an overtime shift is compensable under the concept of a continuous workday.[19] The Union relies on 29 C.F.R. § 785.38, a DOL regulation which states that "[t]ime spent by an employee in travel as part of his principal activity, such as travel from job site to job site *during the workday*, must be counted as hours worked."[20] This regulation is not inconsistent with the requirement in OPM's pertinent FLSA regulation, 5 C.F.R. § 551.422, that "[t]ime spent traveling shall be considered hours of work if . . . [a]n employee is required to travel *during regular working hours*."[21]

For the above reasons, the grievants' travel is not compensable under 5 C.F.R. § 551.422. Therefore, we grant the Agency's contrary-to-law exception and set aside the portion of the award finding a violation of the FLSA and the award of backpay.

Furthermore, in the remaining portions of the award, the Arbitrator found a violation of the parties' agreement and granted a remedy of mileage. As the FLSA violation formed the basis for these remaining portions of the award[22]—and we set aside that violation—we therefore set aside the award in its entirety.

Because we set aside the award, it is unnecessary for us to address[23] the Agency's remaining exceptions.[24]

V. Decision

We set aside the award.

[18] Simply put, because the officers' regular work shifts have ended, there is no entitlement to overtime compensation for however the officers transported themselves elsewhere. That is the question in this case, namely, when did the officers' regular work hours end. The dissent's reliance on Federal Personnel Manual (FPM) Letter 551-10, issued in 1976, does not change or challenge the finding that the officers' workday ended at the end of their regular working hours. To conclude that the officers could, or should, be paid for time driving to a new shift for which they volunteered makes no more sense than to pay employees to drive from their homes to an overtime shift for which they volunteer. Further, the fact remains that the FPM was sunsetted for good by the end of 1994. As the dissent also notes, the Authority would apply the FPM provisions only if those provisions had been incorporated into the Code of Federal Regulations *without substantive change*, a high standard the dissent in no way demonstrates. Also, our decision is much more in keeping with the guidance of the U.S. Court of Appeals for the Federal Circuit in its decisions of *Adams v. United States.*, 471 F.3d 1321 (2006), and *Bobo v. United States.*, 136 F.3d 1465 (1998), in which that court was unpersuaded by attempts to expand compensation to the drive away from work. Finally, our decision here is well within the guidance of the U.S. Supreme Court decision *Integrity Staffing v. Busk*, 135 S. Ct. 513, 519 (2014). There, Justice Thomas, writing for the full Court, noted that the lower court had erred in its review by focusing on whether an employer "required" a particular activity, in that case, post-shift security screenings. These precedents are more persuasive, and even binding, than an OPM letter from 1976 (predating the Civil Service Reform Act).

Moreover, even if the abolished FPM letter applied, it would not support the dissent's position. That letter stated that time spent traveling outside of regular working hours was compensable *only if* it was "authorized travel." FPM Letter No. 551-10 at 1 (1976). And the letter defined "[a]uthorized travel" as travel that was performed "[u]nder the direction and control of . . . the employing agency." Attachment to FPM Letter No. 551-10 at 1. Here, as noted above, the Union has not filed a timely exception to the Arbitrator's characterization of the travel as voluntary. *See Balestrieri v. Menlo Park Fire Prot. Dist.*, 800 F.3d 1094, 1097-98, 1101 (9th Cir. 2015) (finding that employees who volunteered to work an overtime shift were not entitled to compensation while traveling to it). Thus, there is no basis for finding that the travel was under the direction and control of the Agency, and the travel was not compensable as "authorized travel" under FPM Letter 551-10.

[19] Opp'n at 20 (arguing for the application of 29 C.F.R. § 790.6); *id.* at 26-30 (arguing for the application of 29 C.F.R. § 785.38).

[20] 29 C.F.R. § 785.38 (emphasis added).

[21] 5 C.F.R. § 551.422 (emphasis added).

[22] Award at 21 n.5 ("Neither party disputes that the requirements of the [FLSA], and related implementing regulations, are incorporated into the parties' [a]greement through Article 3."); *id.* at 29 (granting mileage "in circumstances where I have found the time to be compensable").

[23] *See U.S. DOD, Def. Logistics Agency Aviation, Richmond, Va.*, 70 FLRA 206, 207 (2017) (citation omitted).

[24] Exceptions Br. at 13 (alleging that the award is based on a nonfact); *id.* at 14 (alleging that the remedy of mileage is contrary to law).

Member DuBester, dissenting:

The majority's conclusion that the time the prison officers spend traveling between work sites is not compensable is contrary to well-settled legal principles and rests on a misapplication of law. Accordingly, I dissent.

I. Compensability under the continuous-workday rule

The Arbitrator's award, finding that the prison officers must be paid for their work-site-to-work-site travel, comports with the Fair Labor Standards Act (FLSA) implementing regulations,[1] Authority precedent, and judicial caselaw. The Arbitrator relies on widely-accepted legal principles governing the compensability of travel. The continuous-workday rule, which the Authority has long recognized,[2] provides that activities that take place between the first and last principal activities of the day – including those that otherwise would be non-compensable under the FLSA – are compensable because they occur during the continuous workday.[3] Consistent with this principle, 29 C.F.R. § 785.38 includes "travel that is all in the day's work"[4] as a compensable part of the workday. This regulation requires an employer to treat time spent traveling from one work site to another work site, during the same workday, as compensable hours worked.[5]

As the Arbitrator finds,[6] the further question – whether travel time between shifts is compensable under the FLSA—turns on whether the period is "long enough to enable [the employee] to use the time effectively for his [or her] own purposes."[7] Resolving that question "depends upon all the facts and circumstances of the case."[8]

Applying these principles, the Arbitrator finds compensable the period between the end of the officers' prison shifts and the beginning of officers' hospital shifts. The Arbitrator makes a factual finding, based on all of the circumstances here, that the allotted travel time between the prison and the hospital—for some officers no more than thirty minutes—is not long enough for the officers to use effectively for their own purposes.[9] During this travel period, the Arbitrator finds: "[An officer] exits the [prison] through security, perhaps having to wait in line, and walks to his vehicle, all of which may take up to ten minutes. He then travels to the relevant hospital, likely running into heavy traffic, regardless of the time."[10] The officer then exchanges equipment and discusses the inmate's status with the officer he is relieving. This all occurs after the end of the officer's prison shift, and before the start of the officer's hospital relief shift, and typically all while in uniform.[11] Based on these factual findings, and applying well-established law, the Arbitrator concludes that this travel period is part of officers' compensable workday—which starts when officers enter the prison to begin the workday, and continues until the officers leave the hospital to end the workday.[12]

II. Compensability under 5 C.F.R. § 551.442 and related OPM guidance

Bypassing the above legal principles, the majority holds – citing 5 C.F.R. § 551.422(a)(1)[13] – that the officers' work-site-to-work-site travel is non-compensable because it is outside the officers' "regular working hours."[14] But even the majority's

[1] It is well-established that the FLSA applies to the federal sector. *AFGE v. OPM*, 821 F.2d 761, 769-70 (D.C. Cir. 1987). And it is equally well-established that the administration of the FLSA in the federal sector must be consistent with the Secretary of Labor's administration of the FLSA in the private sector. *Id.*; *see also* 5 C.F.R. § 551.101.

[2] *U.S. DOJ, Fed. BOP, Fed. Med. Ctr., Lexington, Ky.*, 68 FLRA 932, 937 (2015); *AFGE, Local 3652*, 68 FLRA 394, 399 (2015); *U.S. BOP, Fed. BOP, Fed. Corr. Inst., Allenwood, Pa.*, 65 FLRA 996, 999 (2011) (citing *IBP, Inc. v. Alvarez*, 546 U.S. 21, 29-30, 37, 40 (2005) (*Alvarez*)).

[3] *Alvarez*, 546 U.S. at 29-30, 37, 40.

[4] 29 C.F.R. § 785.38 ("[t]ime spent by an employee in travel as part of his principal activity, such as travel from job site to job site during the workday, must be counted as hours worked").

[5] *Id.* ("If an employee normally finishes his work on the premises at 5 p.m. and is sent to another job which he finishes at 8 p.m. and is required to return to his employer's premises arriving at 9 p.m., all of the time is working time.").

[6] Award at 21.

[7] 29 C.F.R. § 785.16.

[8] *Id.*

[9] Award at 24-25.

[10] *Id.* at 6; *see id.* at 24-25.

[11] *Id.* at 6; *see id.* at 24-25.

[12] *Id.* at 21; *see also U.S. United Transp. Union Local 1745 v. City of Albuquerque*, 178 F.3d 1109 (10th Cir. 1999) (finding compensable time leaving relief point at beginning of split period or going to relief point at end of that period because drivers not free to engage in personal activity).

[13] The majority also contends that work-site-to-work-site travel is non-compensable, citing § 550.112(g). Majority at 3. The applicability of OPM rules concerning travel hours depends on whether an employee is covered by or exempt from the FLSA. For FLSA-covered employees, travel time is credited if it is qualifying hours of work under ***either*** § 550.112(g), or under OPM's FLSA regulations, as relevant here—5 CFR § *551.422*. https://www.opm.gov/policy-data-oversight/pay-leave/work-schedules/fact-sheets/hours-of-work-for-travel (April 10, 2018). Because I would find that the travel is compensable under § 551.422(a)(1), I do not consider whether it is also compensable under § 550.112(g).

[14] Majority at 3-4.

truncated analysis is incorrect. Section 551.422(a)(1) provides that "[t]ime spent traveling shall be considered hours of work if . . . [a]n employee is required to travel during regular working hours[.]"[15] As discussed below, this regulation, read in conjunction with the Department of Labor's (DOL's) regulations, and Office of Personnel Management (OPM) guidance, supports the travel reimbursement the Arbitrator ordered.

The regulatory history of § 551.422(a)(1) is irreconcilable with the majority's holding. Title 5, part 551 of the Code of Federal Regulations (CFR) implements the FLSA in the federal sector. Accordingly, this regulatory scheme must be "read in conjunction with" and "must comply with" the FLSA.[16] And while not required to "mirror" the DOL's FLSA regulations, OPM determined that its FLSA regulations "must be consistent with [DOL's] administration of the Act . . . to the extent that this consistency is required to maintain compliance with the terms of the [FLSA]."[17] Moreover, while "compensable travel time must be applied separately under [Title 5 and FLSA], . . . nonexempt employees are to be paid under whichever law provides them the greater overtime pay benefit."[18]

When OPM promulgated its final Part 551 regulations, it directed that the "comprehensive instructions and examples contained in [Federal Personnel Manual (FPM)] letters to the 551 series provide supplemental instructions and continue to remain in effect."[19] Regarding time spent traveling, OPM stated that "the specific rules for compensable travel under the [FLSA] . . . are contained in FPM Letters 551-10 and 11 . . . with examples on how the rules are to be applied under the [FLSA].[20] OPM stated further that [Part 551] rules "are consistent with the rulings, interpretations, and opinions of the [DOL] and the courts in the private sector."[21]

One example in FPM Letter 551-10 addresses precisely the type of travel at issue here—travel "[f]rom job site to job site" that is "outside regular working hours."[22] The FPM letter, incorporating the continuous workday rule, states: Travel "[f]rom job site to job site," that is "outside regular working hours," is compensable "hours of work" if the time spent traveling is "*continuous with and serve[s] to extend the employee's regular tour of duty*."[23] This guidance is dispositive of the issue here. As the Arbitrator found, the officers' travel time was continuous with and served to extend their regular tour of duty.[24] Therefore consistent with OPM's own interpretation of § 551.422(a)(1), the officer's work-site-to-work-site travel time is fully compensable.

The majority—incorrectly—discounts FPM Letter 551-10. Lacking a basis to contradict the letter's direction to compensate officers under the exact facts involved here, the majority claims that the letter is inapplicable because the officers' travel was not "authorized."[25] The FPM letter provides otherwise. The letter defines "Authorized Travel" as travel performed under the agency's "direction or control" and for the agency's "benefit." Under whose authorization—if not the Agency's—do the officers continue their workday by travel to and work at a second work site? Considering these factors, it is clear that the officers' extended workday is "authorized" by the Agency when the Agency

[15] § 551.422(a)(1). Under other relevant OPM regulations, "regular working hours" includes "the regularly scheduled administrative workweek . . . plus the period of regular overtime work." 5 C.F.R. § 551.421(a) (defining—for purposes of the FLSA—"regular working hours" as "the days and hours of an employee's regularly scheduled administrative workweek *established under part 610*); 5 C.F.R. § 610.111(a)(2) (requiring that the "regularly scheduled administrative workweek consist[] of the 40-hour basic workweek . . . plus the period of regular overtime work")).

[16] 5 C.F.R. § 551(b), (c).

[17] *Id.* § 551(c).

[18] 45 Fed. Reg. 85,660 (1980).

[19] *Id.*

[20] *Id.* at 85,661.

[21] *Id.* Contrary to the majority, Majority at 4, n.18, the FPM is not obsolete merely because OPM has discontinued updating this publication. OPM has not revoked FPM Letter 551-10—it remains relevant to demonstrate OPM's intent when promulgating Part 551. Moreover, the Authority has relied on the FPM following its "sunsetting." *See U.S. Dep't of the Air Force, Warner Robins Air Logistics Complex, Robins Air Force Base, Ga.*, 68 FLRA 102, 104 (2014) (relying on an FPM Letter to interpret a government-wide regulation); *U.S. Dep't of the Navy, Naval Undersea Warfare Ctr. Div., Keyport, Wash.*, 55 FLRA 884, 887-88 (1999) (same.); *see Christofferson v.United States*, 64 Fed. Cl. 316, 322 (2005) (relying on an FPM Letter as persuasive authority); *Aamold v.United States*, 39 Fed.Cl.735, 745 n.14 (1997) ("Although FPM letters lack the status of regulations, they serve to interpret the regulation and thus can aid the court."); *see generally Christensen v. Harris County*, 529 U.S. 576, 587 (2000) (stating that agency interpretations in opinion letters may be used as persuasive authority); *Whitsell v. Office of Pers. Mgmt.*, 135 F.3d 777, *4, 1998 WL 30475 (Fed. Cir. 1998) (relying on FPM as persuasive authority); *see also Adams v. U.S.*, 471 F.3d 1321, 1327 (2006), cited by the majority at 4 n.18, (acknowledging applicability of FPM Letter 551-10 post-1994).

[22] FPM Letter 551-10 (attachment Table 2, n. 3).

[23] *Id.*

[24] Award at 21.

[25] Majority at 4, n.18.

assigns the officers to the hospital shifts for which they successfully volunteer.

Regarding "direction and control," the Agency determines the starting and ending times of officers' travel. The officers are permitted to start traveling only after they have completed their prison shifts, and must complete their travel in time to perform their hospital shifts. And regarding "benefit," as the Arbitrator found, the officers' travel time between work sites is not long enough for officers to use that time effectively for their own purposes. Consequently, that travel time benefits the Agency exclusively.[26] Put differently, the continuous workday, as directed by, and for the benefit of, the Agency includes the time officers travel from work site to work site. [27]

III. That officers "volunteer" is irrelevant

In addition to misreading § 551.422(a)(1), the majority makes the spurious determination that because the officers "volunteer" to work overtime, the Agency did not require the officers to travel—or get paid—during the period between shifts.[28] That conclusion is contrary to the record. Only officers the Agency actually assign to hospital shifts, from among those who volunteer, actually work those shifts. And, the majority ignores that federal employees may not "volunteer" to work. As the Arbitrator finds, employees must be paid for all hours that an agency "suffers or permits"[29] its employees to work, and these hours include overtime.[30] "Volunteering" to work overtime does not waive the officers' right to be paid or make those officers unpaid volunteers. Nor could these employees lawfully volunteer to work for free.

Finally, I would uphold the mileage-reimbursement remedy because the Back Pay Act (BPA)[31] waives sovereign immunity. As I wrote in *AFGE, Local 342*,[32] I find it appropriate to revisit the Authority's existing precedent holding that the BPA's "'pay, allowances, or differentials' do not include the payment of travel expenses."[33] Consistent with BPA's intent to make employees whole after being affected by an unjustified and unwarranted personnel action, I would find the Arbitrator's mileage-reimbursement remedy proper.[34]

[26] Award at 24-25.

[27] The judicial precedent cited by the majority, Majority at 4, n.18, is inapposite. It involves compensation for *home-to-work* travel and travel related to security screenings – neither of which is relevant here. This case concerns only work-site to work-site travel during a continuous workday. Thus, these inapplicable cases are not "more persuasive" than OPM's interpretation of its own regulation. *See also Global Crossing v. Metrophones*, 550 U.S. 45, 48 (When regulatory history "helps to illuminate [a regulation's] proper interpretation and application" the Court begins its analysis "with that history.").

[28] Majority at 4. Similarly, the majority also argues that because the travel was voluntary, it was not "authorized travel" within the meaning of FPM Letter 551-10. For the following reasons, I also find the majority's determination false.

[29] Award at 26; *see* 5 C.F.R. § 551.401(a)(2) (hours of work include "[t]ime during which an employee is suffered or permitted to work"); 5 C.F.R. § 551.104 ("*[S]uffered or permitted work* means any work performed by an employee for the benefit of an agency, whether requested or not, provided the employee's supervisor knows or has reason to believe that the work is being performed and has an opportunity to prevent the work from being performed.").

[30] An "employee" cannot be a volunteer. *See* 5 C.F.R. § 551.104 ("[v]olunteer means a person who does not meet the definition of *employee* in this section").

[31] 5 U.S.C. § 5596.

[32] 69 FLRA 278, 280 (2016) (Member DuBester concurring on mileage-reimbursement issue).

[33] *U.S. Dep't of the Interior, U.S. Geological Survey, Great Lakes Sci. Ctr., Ann Arbor, Mich.*, 68 FLRA 734, 741-42 (2015).

[34] *See* 5 U.S.C. §§ 7101-7135; *see also In re Wilson*, 66 Comp. Gen. 185, 189 (1987) (cited favorably, and applied in, *DOD Dependents Schools*, 54 FLRA 259, 267 (1998)) (employee entitled to relocation-expense reimbursement that he would have received but for his agency's unjustified and unwarranted personnel action).