

How to File an Effective Out-of-Class Grievance

Introduction

Articles 14.2, 14.2.17 and 14.2.21 of the MOU govern The Out-of-Class grievance process.

Out-of-Class grievances are some of the most difficult grievances to win in Arbitration.

Out-of-Class grievances that are not resolved at the department level are resolved by DPA in some instances, provided there is substantial evidence that an employee is working out of class.

Grievances not resolved at DPA that are approved for Arbitration must have evidence that can be presented to an Arbitrator that proves an employee is performing duties of an existing, higher paid classification more than 50% of the time over 2 consecutive work weeks (MOU Art. 14.2, 14.2.17, 14.2.21) that do not overlap with the worker's existing SPB class specification.

The Out-of-Class Grievance Process

Once an Out-of-Class grievance is filed, the procedural steps outlined in the MOU Article 14, must be followed.

If the Out-of-Class duties cease to be performed for any reason, an Out-of-Class grievance must be filed **within 21 calendar days** (except Unit 21, Out-of-Class grievances must be filed **within 60 days**) of when the worker ceased doing the Out-of-Class work, MOU Article 14.2, 14.2.17 and 14.2.21. Remember, the only remedy an Arbitrator may award is Out-of-Class pay for one year, prior to the filing of the grievance, plus the time it takes to process the grievance. The Arbitrator has no authority to order a re-classification of any kind. Remember to use the correct Out-of-Class grievance process Article: Art. 14.2, Art. 14.2.17 (Unit 17), Art. 14.2.21 (Unit 21).

Before you file a grievance alleging Out-of-Class work, a 'DPA Desk Audit' needs to be completed.

In looking at whether or not Out-of-Class work is being done, the SPB job specifications are the controlling documents (MOU Article 14.2) and only the definition and typical task sections of the SPB job specification are used to measure Out-of-Class work.

Any duties that overlap (are contained in the typical tasks and/or definition sections of both SPB Specifications) may not be used in claiming Out-of-Class work.

Before completing the DPA Desk Audit form, always use the SPB job specifications as described above.

- List the duties that the worker feels are Out-of-Class work
- Look for these duties in the SPB job specifications of the higher paid position.
- Look for those duties in the worker's existing SPB job specifications.
- If the duties are not present in the higher paid position's SPB job specification or if the duties overlap, there is no Out-of-Class claim and a grievance will not be filed.
- If the duties are found exclusively in the higher paid class specification, then determine whether or not those duties are done more than 50% of the time over 2 consecutive work weeks.
- In making a determination of the time spent performing the duties of a higher paid classification, there must be evidence to support such a claim, such as:
 1. Time sheets or other time keeping records.
 2. Written work product(s) reports that show how much time was spent doing the work.
 3. Supervisor and/or co-worker testimony/statements that support the claim for Out-of-Class work.
- Without written evidence of how to prove how the time was recorded, verbal testimony alone will not be enough to prevail in an Out-of-Class claim.
- One exception is when the Supervisor(s) or Manager(s) sign off on the Out-of-Class claim. In these instances, it is easier to get an Out-of-Class claim approved.

Once it is determined that it can be demonstrated that the duties claimed as Out-of-Class are contained exclusively in the higher paid SPB classification (do not overlap), that there is evidence of the duties being performed more than 50% of the time over 2 consecutive work weeks or the Supervisor(s)/Manager(s) in question have signed off on the Out-of-Class work, then proceed with the filing of a grievance.

Remember, for ongoing work: follow all procedural steps of the Out-of-Class grievance process. For Out-of-Class claims where the **worker has ceased performing the work**, the Out-of-Class grievance process must be initiated within 21 days (60 days/Unit 21) of the date that the worker ceased working Out-of-Class regardless of the reason.

Remember to always ask for the pay and experience credit when filing the grievance.