

TENNESSEE VALLEY AUTHORITY
WBN EMPLOYEE CONCERN INVESTIGATION REPORT

CONCERN NUMBER: ECP-86-WB-198-02

SUBJECT: EMPLOYEE CONCERN REGARDING WORK SCHEDULE ASSIGNMENT AS A FORM OF
INTIMIDATION AND HARASSMENT

DATES OF INVESTIGATION: August 11 through September 5, 1986

INVESTIGATOR :

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I. BACKGROUND

The Watts Bar Nuclear Plant (WBN) Employee Concern Site Representative (ECP-SR) received an employee concern as follows:

"The Concerned Individual (CI) has been required to work 8-1/2 hours per shift while his peers in the same job classification (on shift) performing similar work only work 8 hours per shift. The 8-1/2 hours per shift (he was required to report 1/2 hour early) is to provide him opportunity to interface with his administrative supervisors. He has only interfaced (in person) with his administrative supervisor one time in the last year. The CI's peers receive 8-hours pay for shifts worked. The CI feels that this is unfair and a violation of the Articles of Agreement between TVA and the Salary Policy Employee Panel and the Fair Labor Standards Act. The CI seeks back pay for the additional time worked in addition to 8 hours per shift."

The CI alleges this action was taken against him as Intimidation and Harassment (I&H) for fulfilling his assigned responsibility by refusing to falsify Quality Assurance (QA) records at management's direction. The CI alleged that this is one of several forms of discrimination taken against him as a result of the incident. The other allegations of I&H are contained in ECP Concern Number ECP-86-WB-198-01 and are being investigated by the Office of the Inspector General (OIG).

The CI did not desire confidentiality. The concern was determined to be nuclear safety related and was categorized as an I&H concern.

II. SCOPE

The scope of the investigation was determined from the stated concern to be that of issues specific only to WBN. The investigation was conducted to determine if the management action to assign the CI to an 8-1/2 hour work schedule was a supervisory action to intimidate and harass the employee as a result of refusing to falsify a QA document. In addition, the investigation was to determine if the action was a violation of the Articles of Agreement and the Fair Labor Standards Act.

To accomplish the investigation, interviews were conducted with the CI and involved personnel. A review was completed of the documents indicated in Section VI.

NOTE: The CI's allegation that he was directed to falsify a QA record is currently under investigation by the OIG.

III. FINDINGS

The CI (a materiel clerk) was an Office of Workers' Compensation Program (OWCP) recipient employee. The CI had requested a lighter duty job

III. FINDINGS (CONTINUED)

prior to receiving surgery in mid-1985. In response to his request, when the CI returned to work on June 10, 1985 he was assigned to the Instrumentation Measurement and Test Equipment (M&TE) room on the day shift. This was a lighter duty assignment than the main toolroom where he had previously been assigned. When the Instrument Maintenance Section requested materiel clerk support for the evening shift, the CI was offered and accepted the position.

The Acting Site Director issued a memorandum on December 6, 1985 informing plant managers that the day shift starting time for the plant would be changed from 0800 to 0730 effective January 5, 1986.

Site Services managers responsible for the toolrooms stated that the materiel clerks on the evening and midnight shifts had requested to work a straight 8-hour shift without a scheduled meal period when the plant went to the new shift schedule. Unlike the other toolrooms in the plant, the Instrumentation M&TE room was not under their direct control. It was under the control of the Instrument Maintenance Section. The Site Services manager's function was only to supply the materiel clerks to staff the M&TE room on the day and evening shifts. They assigned one materiel clerk to the day shift working an 8-1/2 hour shift and the CI to the evening shift working an 8-1/2 hour shift. The Instrumentation General Foreman (IGF) that had responsibility for the M&TE room was the functional supervisor over the assigned materiel clerks.

The IGF over the M&TE room stated that when he was informed of the proposed shift schedule change for materiel clerks on evening and midnight shifts he made a request to their administrative supervisor for an exception. He requested that the evening shift materiel clerk (the CI) assigned to the Instrumentation M&TE room continue on an 8-1/2 hour shift schedule which included 30 minutes off for a meal period. The stated reasons for the request were as follows:

- A. Only one materiel clerk works the day shift in the M&TE room providing issue service to about 45 instrument mechanics. The 30-minute overlap with the evening shift clerk provides the day shift clerk assistance with the turn-in of M&TE equipment at the end of the shift.
- B. The 30-minute overlap with day shift provides a time for the IGF to transmit information or provide work direction to the evening shift materiel clerk as required.
- C. The 8-1/2 hour shift schedule for evening shift provides a 30-minute overlap with the day shift and with the midnight shift instrument mechanics therefore providing for shift continuity.

The Site Services supervisor over the materiel clerks honored the requests from the materiel clerks and the IGF. The materiel clerks assigned to the back shifts would work a straight 8-hour shift in the toolrooms with the exception of the Instrumentation M&TE room which would work a 8-1/2 hour shift with a 30-minute meal period.

III. FINDINGS (CONTINUED)

Memoranda were issued December 31, 1985 by the supervisor of the materiel clerks informing them of the scheduled shift changes. Effective January 6, 1986, day shift was from 0730 to 1600; evening shift was from 1600 to 2400, except for the Instrumentation M&TE room support which was from 1530 to 2400; and midnight shift was from 0000 to 0800. The memorandum issued to the M&TE room materiel clerks informed them that meal periods would be observed in accordance with the craft schedule.

A review of the time records for the toolroom materiel clerks indicated that prior to the schedule shift change in January, 1986, all three shifts were 8-1/2 hours in duration which included 30 minutes off for a meal period. After the scheduled shift change, the CI was the only materiel clerk, on the evening shift, still on an 8-1/2 hour shift which was in accordance with the IGF's request.

A review of the Articles of Agreement between the Tennessee Valley Authority (TVA) and the Salary Policy Employees Panel did not identify a violation of the contract. Discussions with Labor Relations personnel identified that work schedules for multishift operations were at the discretion of management for meeting its needs. Employees that work an 8-1/2 hour shift with a scheduled meal period are not paid for the meal period.

A discussion with the personnel staff officer responsible for interpreting the Fair Labor Standards Act (FLSA), as applied to TVA employees, determined that work in excess of 40 hours in a week will be compensated for those classification schedules covered by the act. Since the CI's work schedule was for 8-hours work and 30 minutes off for a meal period, this situation does not qualify as a violation of the FLSA.

Interviews with the CI's management identified that they did have knowledge of the alleged request by management to have the CI falsify QA records because the CI informed them of the incident. The alleged incident occurred when the toolrooms and the materiel clerks were under the control of the Mechanical Maintenance Section and not the CI's present management.

IV. CONCLUSIONS

The concern was partially substantiated. The CI was assigned a 8-1/2 hour shift and his peers in the same classification on the evening shift were assigned a straight 8-hour shift. The CI was assigned this work schedule at the request of the IGF for shift coverage he deemed necessary. The request was based upon the evening shift materiel clerk providing assistance for the turn-in of the day shift M&TE equipment, being available to receive instruction or direction from the IGF, and for maintaining some continuity between the three shifts. The CI was not assigned this work schedule so he could interface with his administrative supervisors as alleged. The work schedule assignment was based solely on the request made by the IGF. The CI's work schedule was not a violation of the Articles of Agreement or the FLSA. Management has the right to schedule the work to meet the needs of the job. The FLSA basically

IV. CONCLUSIONS (CONTINUED)

states work in excess of 40 hours in a week will be compensated. The CI's shift schedule was 8-hours work and 30 minutes off for a meal period. The scheduled meal period was not considered worktime. Therefore, the CI's weekly work schedule was for 40 hours work and back pay for the additional 1/2-hour of the shift duration was not supported. However, the CI was not assigned a work schedule consistent with his peers on the same shift.

The allegation that the work schedule assignment was one of several forms of discrimination taken against the CI for refusing to falsify QA records was not substantiated. Management assigned the CI to the Instrumentation M&TE room in response to the CI's request for lighter duty. It would be inconsistent that they would honor his request and then assign him to an 8-1/2 hour shift in the form of I&M. The only knowledge the present managers of the CI had pertaining to this issue was what the CI had told them. The supervisors that assigned the CI to the 8-1/2 hour shift were not the same supervisors the QA record falsification allegation was brought against. The CI's assignment to his present work schedule was to provide the shift coverage requested by the IGF.

V. RECOMMENDATION

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Management should consider the following alternatives to ensure the CI is treated consistently with his peers within the work unit.

- A. Assign the toolroom materiel clerks on the back shifts to the same work schedule as the CI (8-1/2 hour shift).
- B. Assign the CI to a straight 8-hour work schedule without a scheduled meal period and compensate the CI for additional work time if he works more than 8 hours in a shift.
- C. Place the materiel clerks assigned to the Instrumentation M&TE room under the full (administrative and technical) supervision of the Instrument Maintenance Section and assign work schedules to meet the needs of the section.

VI. DOCUMENTS REVIEWED

- A. Memorandum from E. R. Ennis to Those listed (Plant Managers) dated December 6, 1985 "Watts Bar Nuclear Plant - Starting Time for Second (Day) Shift."
- B. Memorandum from Ron Borum to John Fischesser dated December 31, 1985 "Watts Bar Nuclear Plant - Scheduled Shift Change."
- C. Memorandum from Ron Borum to Don Kirksey and Concerned Employee dated December 31, 1985 "Watts Bar Nuclear Plant - Scheduled Shift Change."

VI. DOCUMENTS REVIEWED (CONTINUED)

- D. Articles of Agreement between TVA and the Salary Policy Employee Panel, as of January 7, 1985.
- E. Employee Time Records of Material Clerks for Work Schedule Determination, November and December 1985, and January 1986.