

CASE DIGEST: *U.S. DOJ, Fed. BOP, Fed. Corr. Inst., Englewood, Colo.*, 71 FLRA 8 (2019)
(Chairman Kiko and Member Abbott concurring)

This case concerned an arbitrator's award of liquidated damages under the Fair Labor Standards Act (FLSA). The grievance alleged that the Agency violated the FLSA by untimely paying grievants overtime. Finding that the Agency violated the FLSA, the Arbitrator awarded liquidated damages. On exception, the Agency argued that the award of liquidated damages is contrary to the FLSA because there was no unpaid overtime. The Authority noted that the Agency did not dispute that it violated the FLSA by failing to pay overtime in a timely manner, nor did it challenge the Arbitrator's conclusion that the Agency failed to meet its substantial burden of demonstrating that liquidated damages were not warranted. Accordingly, the Authority concluded that the Agency failed to demonstrate that the award is contrary to law, and denied the Agency's exception.

Chairman Kiko concurred, noting that a Department of Labor regulation allows delayed overtime compensation when the correct amount of overtime cannot be determined until after the regular pay period. However, the Arbitrator found that regulation inapplicable and the Agency did not provide a basis for reversing that determination.

Member Abbott also concurred, agreeing with Chairman Kiko's concurrence, and noting that the Agency conceded that it committed a technical violation of the FLSA.