

1
2

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

3 Marvin E. Green
4 2160 Freetown Pl
5 Dulles VA 20189-2160
6 +232 76 66 1869
7 greenme@state.gov
8 marvin.e.green@gmail.com
9 Pro Se In Forma Pauperis

10 v. CIVIL ACTION NO. _____

11 Josh Hromatka
12 2160 Freetown Pl
13 Dulles VA 20189-2160
14 +232 76 61 6617
15 hromatkajj@state.gov

16 **COMPLAINT**

17 MEMORANDUM OF POINTS AND AUTHORITIES TO COMPEL
18 AUTHORIZATION OF COMPENSATORY HOURS

19 I. INTRODUCTION

20 Plaintiff, (Information Management Specialist (IMS)), Marvin Green,
21 submits this memorandum to compel Defendant (Information Management
22 Officer (IMO)), Josh Hromatka, to signature authorize the crediting of 562.75
23 overtime compensatory hours worked by Plaintiff – said overtime hours
24 worked quid pro quo securing a tenure recommendation from Defendant.

25

II. STATEMENT OF FACTS

26

On January 20, 2008 Plaintiff transferred from a tenured GS-12 position with the Army to an untenured career candidate FS-5 position with the State Dept.

28

29

Between January 20, 2008 and September 1, 2008, Plaintiff was in training and was taught that failure to achieve tenure with the State Dept. would result in dismissal. During training, Plaintiff and other trainees were instructed on a weekly (and sometimes daily) basis—being given different examples of employees that had failed to make tenure and why. Approximately one half of the examples involved COMmunications SECurity (COMSEC) violations. Plaintiff submits the above tenure related framing statement as to Plaintiff's state of mind upon arriving at post—prepared for a fastidious COMSEC environment rather than being challenged on the basis of competence or basic work ethic.

38

39

(Exhibit 01), On or about September 2, 2008 plaintiff arrived at

40

American Embassy, Freetown to start work as a new hire IMS. On

41

September 22, 2008 plaintiff was issued a standard Work Requirement's DS-

42

1829, which included the following final statement:

43

44

45

46

47

48

- “Sierra Leone is ranked last among all nations of the world on the United Nation’s Development Index. As a result, Sierra Leone presents an exceptionally difficult working environment [emphasis added] when it comes to management functions and quality of life issues. Simple logistical tasks are frustrated by the country’s abysmal infrastructure. Efforts at improving services run up against the severe constraints of an extremely poor country coming out of a horrendously brutal civil war. Because of these factors, Freetown is a 30 percent hardship differential post.”

____--____ GREEN v. HROMATKA
compel authorization of compensatory hours

49 The above statement by Defendant is included to buttress plaintiff's
50 contention that necessary Defendant required work was performed by
51 Plaintiff.

52 (Exhibit 02), On September 23, 2008 plaintiff received a DS-1974,
53 Counseling Certification:

- 54 • "The rated officer was advised and encouraged to become as familiar with as much as possible about
55 Freetown IRM operations as quickly as possible [emphasis added] in order to become an integral part
56 of the team and to help balance the work load [emphasis added]."
- 57 • "...a minimum of two discussions must occur in each rating cycle, and at least one of them must be
58 documented on this form..."
- 59 • "...The rated officer began work in Freetown on September 2, 2008 and is learning to perform basic
60 skills [emphasis added] related to his new position..."
- 61 • "As a new-hire IMS, you really need to concentrate on the job and integrate yourself as quickly as
62 possible[emphasis added] ..."
- 63 • "...hands-on involvement with each and every facet of Freetown IRM operations."
- 64 • "...This is a lot of information and will take time and effort on your part to complete[emphasis added],
65 especially when we are forced to multitask in order to get things done [emphasis added] ...Our job is
66 demanding[emphasis added] and new challenges and problems come up all the time.
- 67 • "The goal of a favorable EER and recommendation for tenure [emphasis added] involves working
68 efficiently and effectively and getting the job done properly

69 (The above statements were originally selected (save the last) because
70 Plaintiff was initially unaware that unpaid overtime quid pro quo for tenure
71 was a valid legal assertion and was initially attempting an age
72 discrimination complaint based on the assertion that Defendant's work
73 requirements exceeded the capacity of a 57 year old trainee and hence
74 overtime was the only means available to redress age related diminished
75 work and learning speed. The statements work for either argument.)

76 (Exhibit 03), On November 12, 2008 Defendant departed Freetown for
77 the United States on his first Home Leave in 10 years:

- 78 • "I will be away on home leave in the USA from November 12 until December 16. Please contact IMS
79 Marvin E. Green if you need assistance before that time"

____--_____ GREEN v. HROMATKA
compel authorization of compensatory hours

80 For just over 4 weeks, between November 12, 2008 and December 16,
81 2008 plaintiff performed the combined duties of an IMO and an IMS and
82 plaintiff's execution of those duties was rated as "excellent" by Defendant's
83 supervisor, Management Officer, (hereafter referred to as MO), Ola Criss.

84 (Exhibit 04), Between Plaintiff's arrival at post on September 2, 2008
85 and December 14, 2009 [date defendant informed plaintiff of the existence of
86 "irregular or occasional" overtime], plaintiff attempted to secure a tenure
87 recommendation [per defendants exhortations in Exhibit 02] by working both
88 Regularly Scheduled and Irregular or Occasional overtime without complete
89 claims or excessive complaint (other than the unsuccessful protest to MO in
90 Feb. 2009 and the psychiatric arbitration counseling of Sep. 2009) while
91 following defendant's example as expressed in his often repeated statement
92 that "[he] worked lots of overtime but claimed only things like the [Regularly
93 Scheduled] courier run[all day diplomatic pouch run to airport]"

94 (Exhibit 05.1), on January 12, 2009, plaintiff began to use the Embassy
95 Entry Log Book [organizing lines drawn in Entry Log Book from January 12,
96 2009 to present are plaintiff's] to record Embassy entrance and exit by
97 plaintiff. (Defendant had shortly prior to January 12 directed plaintiff to use
98 the log book to record all entries into and exits from the Embassy when such
99 entries and exits occurred outside of the Embassy hours of operation.

100 ((Exhibit 5.2) Embassy hours of operation are: Mon-Thu 8:00-17:15, Fri 8:00-

____--_____ GREEN v. HROMATKA
compel authorization of compensatory hours

101 13:15). (At defendant’s directive, defendant and plaintiff work a split shift.

102 Plaintiff’s work hours are: Mon-Thu 07:15-16:30, Fri 07:15-12:15).

103 (Exhibit 06), on January 19, 2009, (exactly one week after plaintiff

104 began recording all hours at work in Embassy Entry Log Book), Defendant

105 rebuked Plaintiff with (Exhibit 06 - e-mail portion):

- 106 • “[...]based on my observations, and after having worked with several other new-hire IMS over the
107 years, I believe that you are not putting forth enough effort[emphasis added, see Exhibit 05.3 for
108 average 13 hrs per week of uncompensated overtime up to this point] to get involved with learning all
109 of the facets of your new job in an efficient manner--and thus not contributing to your fair share of the
110 work load here. I really want you to excel and succeed and believe that you can do this if you want to.
111 The main point is that we really need your undivided assistance and support as IMS to contribute fully
112 to completing the IRM mission. We expect and require your cooperation to make this happen.”

113 Defendant further and again rebuked Plaintiff with, (Exhibit 6 – Counseling

114 Certification portion):

- 115 • “[...]”
- The goal of a favorable EER and recommendation for tenure involves working efficiently and effectively and getting the job done properly, as well as looking for methods and results to improve the mission and provide outstanding customer service and support.

You have made some progress with learning the duties and responsibilities of your IMS position. I see that you are capable of doing quality work. However, I have observed the following performance issues that you really need to improve upon in your work here:

 - You need to put forth more effort, display more initiative, accept more responsibility and get more involved in all facets of IRM operations--and not just the few projects that may interest you. Therefore, you need to work at a faster pace, prioritize work and not procrastinate. We are swamped with IRM projects and expect your cooperation and involvement to help carry the heavy work load.
 - You need to work more closely as a team member with your colleagues and not expect to perform all tasks on your own or without coordinating with others on the team--especially if you don't know how to do something. Ask questions and look for ways to resolve problems efficiently and effectively. You need to take more interest, be more pro-active and get more directly involved with our LES teams on a daily basis so that you know what they are working on and to provide them with useful guidance, assistance and support.
- 116 ”
- 117 ”

118 Restatement: “The goal of a favorable EER and recommendation for

119 tenure involves [...] putting forth more effort [...] work at a faster pace,

120 prioritize and not procrastinate [...] to carry the heavy work load.” –

121 Defendant’s words.

122 (Exhibit 07) On Wednesday February 11, 2009, Plaintiff sought relief

123 from the MO. On Friday the 13th, after a 2 hour meeting with MO, MO

124 ordered Defendant to seek MO approval for ALL overtime to be worked by

125 anyone under Defendant's supervision. Defendant has yet, (as of April 14,
126 2010), failed to even once seek advance approval for Regularly Scheduled
127 overtime work (see Exhibit 4) for Plaintiff.

128 (Exhibit 08) On March 1, 2009 Plaintiff, (on R&R in Calif.), received
129 from Defendant a draft EER where the Tenure box was not checked:

130

| V. EVALUATION OF POTENTIAL (Completed by Rater) | |
|---|--|
| A. For Career Candidates only: Assessment of career potential as a Foreign Service Officer or Foreign Service Specialist: | |
| <input type="checkbox"/> Unable to assess potential from observations to date | |
| <input type="checkbox"/> Candidate is unlikely to serve effectively even with additional experience | |
| <input type="checkbox"/> Candidate is likely to serve effectively but judgment is contingent on additional evaluated experience | |
| <input type="checkbox"/> Candidate is recommended for tenure and can be expected to serve successfully across a normal career span (see Instructions) | |
| <i>(Support your choice by discussing below the candidate's potential for successful service across a normal career span, citing examples which illustrate strengths and weaknesses in each of the competencies cited below.)</i> | |

131 On April 1, 2009 Plaintiff returned to work.

132 (Exhibit 09) On June 1, 2009, Plaintiff received from Defendant the final
133 EER where the "recommended for tenure" box is not checked.

134

| V. EVALUATION OF POTENTIAL (Completed by Rater) | |
|---|--|
| A. For Career Candidates only: Assessment of career potential as a Foreign Service Officer or Foreign Service Specialist: | |
| <input type="checkbox"/> Unable to assess potential from observations to date | |
| <input type="checkbox"/> Candidate is unlikely to serve effectively even with additional experience | |
| <input checked="" type="checkbox"/> Candidate is likely to serve effectively but judgment is contingent on additional evaluated experience | |
| <input type="checkbox"/> Candidate is recommended for tenure and can be expected to serve successfully across a normal career span (see Instructions) | |
| <i>(Support your choice by discussing below the candidate's potential for successful service across a normal career span, citing examples which illustrate strengths and weaknesses in each of the competencies cited below.)</i> | |

135 (Exhibit 10) During July/August 2009, Defendant reminds Plaintiff
136 three times of untenured status.

137 (Exhibit 11) Before August 18, 2009 Plaintiff confronted Defendant in
138 the IPC, (Information Programs Center, (Defendant and Plaintiff's work
139 space)), and asked directly: "Are you planning to recommend me for tenure?"
140 No answer... then: "What will I have to do to be recommended" [for tenure]?"
141 On August 18, 2009 Plaintiff documented The Question and its Answer:

- 142 • "After our last meeting, I confronted Josh and asked him if he intended to recommend me for tenure.
143 He would not answer.

____--_____ GREEN v. HROMATKA
compel authorization of compensatory hours

144 • When I asked him what I would have to do to be recommended, he said I would have to demonstrate
145 greater commitment by working whenever needed and for as long as needed. When I pointed out that
146 overtime was not authorized, he stated: ‘That’s not my problem’ ”

147 (Exhibit 12) On September 9, 2009 Plaintiff attempted resolution of the
148 matter by requesting State Dept. Regional Medical Officer – Psychiatry, Dr.
149 Howard Gershenfeld, to arbitrate the matter between Plaintiff and
150 Defendant in the IPC. Defendant labeled “clock watchers” as “lazy”.

151 (Exhibit 13) On February 17, 2010 State Dept. cable 13857 announcing
152 the tenure eligibility of Plaintiff was issued.

153 (Exhibit 14) On March 5, 2010 a favorable EER was submitted
154 recommending Plaintiff for tenure.

155 (Exhibit 13 – first paragraph) On March 24, 2010 the tenure board
156 began its deliberations.

157 On or about the morning of March 25, 2010 Plaintiff was called to a
158 meeting by the Defendant in the MO’s office to resolve the overtime issue.
159 Defendant asserted that Plaintiff was failing to provide descriptive
160 information detailing each instance of overtime so as to enable Defendant to
161 be able to differentiate the management directed overtime from the Plaintiff’s
162 voluntary personal time spent at work. Plaintiff asserted that Defendant was
163 not following MO direction to seek MO approval in writing for all overtime
164 work--in advance of the work to be done.

165 (Exhibit 4 – last paragraph) In the same meeting on or about March 25,
166 2010, the AFSA union representative, James Yorke, was called, (by

____--_____ GREEN v. HROMATKA
compel authorization of compensatory hours

167 Defendant, on speaker phone with Defendant, Plaintiff and MO present), to
168 instruct and/or arbitrate. At approximately 12:30 Plaintiff was dismissed for
169 lunch break.

170 (Exhibit 15) At approximately 2 pm Plaintiff was recalled to the same
171 meeting (above) by Defendant. Telephone attendee Jeffrey D. Miller stated
172 that overtime could only be ordered by management and that disciplinary
173 measures could be taken against employees who continue to claim
174 unauthorized overtime [technically, up until now, Plaintiff has asked for
175 compensatory time off rather than monetary payment]. At this point
176 Defendant leaned into the phone and asserted that Plaintiff was making
177 baseless assertions as to his untenured status and its relationship to his
178 overtime. Jeffrey Miller responded: “Stop right there. I don’t want to hear
179 this. This is matter for the IG. The least that could be done would be to send
180 the supervisor in for re-training.”

181 (Exhibit 16) On March 30, 2010 Defendant outlined his position in an e-
182 mail to AFSAssociation representative James Yorke. Defendant stated: “—
183 Fraudulent claims of overtime is an OIG issue.” Plaintiff concurs with
184 Defendant and Jeffrey Miller in that the matter should be brought to the
185 attention of the OIG prior to filing with this court.

186 (Exhibit 17) On April 14, 2010 Plaintiff presented Defendant with a
187 summarized DS-3060 with “Exhibit 05.3 - DS-3060 Daily Record of OT
188 worked up until 03 05 10” attached. Defendant summoned Plaintiff to MO

189 office and in the presence of the MO refused to authorize the compensatory
190 hours.

191 III. ARGUMENTS

192 Plaintiff respectfully requests a preliminary hearing to present
193 arguments orally. Plaintiff argues that since Plaintiff is a Pro Se litigant with
194 four failures and no successes with this court, added to the fact that
195 professionally researched case law is not an available option for overseas Pro
196 Se litigants, Plaintiff argues that a personal presentation is required to
197 equalize the balance weighing heavily against this Pro Se litigant.

198 IV. CONCLUSION

199 As an alternative to the requested preliminary hearing, Plaintiff
200 respectfully requests summary judgment for the Plaintiff, granting the relief
201 sought by ordering Defendant to sign Exhibit 17 granting Plaintiff 562.75
202 hours of Regular Compensatory Time.

203 Dated: April 15, 2010

204 By //s/ Marvín E Green

205 Marvín E. Green
206 2160 Freetown Pl
207 Dulles VA 20189-2160
208 011-232 76 66 1869
209 marvin.e.green@gmail.com
210 Pro Se In Forma Pauperis

____--____ GREEN v. HROMATKA
compel authorization of compensatory hours