
B-236327.2, November 13, 1990

Civilian Personnel

Compensation

■ Overtime

■ ■ Eligibility

■ ■ ■ Travel time

The claims of four employees for compensatory time for travel are allowed where the employ traveled to or returned from meetings or hearings which could not be scheduled or controlled ministratively within the meaning of 5 U.S.C. § 5542(b)(2)(B)(iv) (1988).

**Matter of: Department of Housing and Urban Development—
Compensatory Time for Travel During Nonduty Hours**

² As an additional ground, Raytheon protests the agency's failure to request cost and pricing data from the awardee. Except for the contingency in its option prices which the agency considered minor, Raytheon submitted a technically acceptable offer that was competitively priced. The agency thus received at least two proposals, and based on the record before us, we cannot find that the contracting officer was unreasonable in making the determination not to request cost and pricing data. See FAR § 15.804-3(a)(1) (FAC 84-35).

This action is in response to a joint request from the Department of Housing and Urban Development (HUD) and the American Federation of Government Employees, Local 476, for a decision as to whether certain HUD employees are entitled to overtime or compensatory time for travel outside normal work hours.¹ For the reasons set forth below, we hold that the employees are entitled to overtime or compensatory time for such travel.

Background

The agency has presented four fact patterns for which claims have been submitted. In the first, Employee A, a senior trial attorney stationed in Washington, D.C., was to appear at a previously scheduled court hearing at 8:30 a.m. Monday, December 12, 1988, in Dallas, Texas. The employee is claiming 5 hours of compensatory time for outbound travel to Dallas during nonduty hours Sunday, December 11. This travel was performed on Sunday because the court denied counsel for the parties any opportunity to request an alternate date for the hearing and because the employee was extremely busy with advance preparation for the hearing, which had to be done in Washington.

In the second situation, Employee B, a trial attorney stationed in Washington, D.C., was required to attend site visits of public housing projects in the Beaumont, Texas area. The site visits were scheduled by a court-appointed Special Master for Wednesday, December 7 through Friday, December 9, 1988. This employee completed outbound travel during regular duty hours but claims that there was no control over the time required to complete the site inspections. Consequently, the employee did not depart from Beaumont until 6 p.m. Friday evening and is claiming 6 hours of compensatory time for time spent traveling after the close of the regular workday on Friday.

In the third situation, Employee C, stationed in Washington, D.C., was required to attend a court-scheduled hearing in Chicago on Wednesday, December 7, 1988, at 9:30 a.m., and was unsuccessful in having the hearing postponed. According to the submission, the employee completed outbound travel during regular duty hours but missed the return flight due to the time required for the hearing and traffic congestion and returned to Washington, D.C., after regular duty hours. The submission states that the employee's work on another project necessitated an immediate return to Washington following the conclusion of the Chicago hearing and that travel outside the regular workday was more advantageous than having the employee remain in Chicago overnight and return the next day during regular duty hours.

In the last situation, Employee D, a senior trial attorney stationed in Washington, D.C., was required to attend a 9 a.m. meeting with a court-appointed Special Master on Friday, September 22, 1989, in Dallas, Texas, as well as a settlement conference at 1:30 p.m. in Dallas. The settlement conference concluded

¹ The request was submitted by Harold I. Morrison, Director, Evaluation and Systems Division, Office of the Assistant Secretary for Administration, and Barbara Davidson, President, AFGE Local 476.

approximately 3:30 p.m. on Friday, September 22, and the employee claimed 3-3/4 hours of compensatory time for time spent traveling outside of the regularly scheduled workday on Friday, September 22.

Opinion

Section 5542 of title 5, United States Code (1988), provides in pertinent part:

(b) For the purpose of this subchapter—

* * * * *

(2) time spent in travel status away from the official-duty station of an employee is not hours of employment unless

* * * * *

(B) the travel . . . (iv) results from an event which could not be scheduled or controlled administratively, including travel by an employee to such an event and the return of such employee from the event to his or her official-duty station.

The agency has specifically requested us to clarify what constitutes “an event which could not be scheduled or controlled administratively,” particularly a situation that relates to court hearings which require employees to travel outside of their regularly scheduled duty hours.

The Federal Personnel Manual Supplement provision interpreting this phrase “could not be scheduled or controlled administratively” points to the ability of an executive agency as defined in 5 U.S.C. § 105 (1988) to control the event which necessitates an employee’s travel. Control is assumed if an agency has sole control or if a group of agencies are acting in concert.² Since the regulation specifically refers to control by executive agencies, we conclude that an event scheduled by a federal court would not constitute an event subject to administrative control under subsection 5542(b)(2)(B)(iv).

We have interpreted subsection 5542(b)(2)(B)(iv) to require that in order to be compensated for overtime (1) the travel must result from an event which could not be scheduled or controlled administratively and (2) there must exist an immediate official necessity in connection with the event requiring the travel to be performed outside the employee’s regular duty hours. *Brown and Schacht*, 60 Comp. Gen. 385 (1990); *John B. Schepman, et al.*, 60 Comp. Gen. 681, 684 (1990). However, with respect to the “immediate official necessity” test, we recently noted in *William A. Lewis, et al.*, B-230405, June 29, 1990, 69 Comp. Gen. 5

...this [test] has limited utility in situations like the instant case where an employee must be present at an event that has been scheduled for a particular time without any control on the part of the government. In these situations, the scheduling of the event itself supplies the immediate official necessity, depending on the timing, for travel outside regular duty hours in order to accommodate that schedule. *William A. Lewis, et al.*, B-230405, 69 Comp. Gen. 545, *supra*, at 3 (footnote omitted).

² FPM Supp. 990-2, Book 550, subchapter S1-3b (p. 550-11) (Inst. 68, Mar. 7, 1983).

Therefore, referring to the examples cited above, we note that Employee A traveled on Sunday in order to attend a hearing scheduled by a court for Monday morning. Since the hearing was scheduled by the court and not the agency, the employee would be entitled to overtime or compensatory time in accordance with subsection 5542(b)(2)(B)(iv) for the time spent traveling from his residence to the airport and the time of his airline flight to Dallas.³

The employee would also be entitled to overtime or compensatory time off for return travel from this hearing if performed outside the normal duty hours. See the 1984 amendment made to 5 U.S.C. § 5542(b)(2)(B)(iv) by subsection 101(c) Title I of Pub. L. No. 98-473, 98 Stat. 1837, 1874 (Oct. 12, 1984), which provided for the payment of overtime or compensatory time for return travel from an event which could not be scheduled or controlled administratively. See *ad Daniel L. Hubbel, et al.*, 68 Comp. Gen. 29, at 33 (1988); Federal Personnel Manual Letter 550-77, July 24, 1985. As noted in FPM Letter 550-77, the 1984 amendment necessitated a change in prior Office of Personnel Management guidance and GAO decisions which treated travel to the temporary duty station and return travel as separate and distinct travel situations requiring independent determinations whether such travel was compensable. As we noted *Hubbel, supra*, if the event which necessitated travel could not be scheduled or controlled administratively, then return travel time would be considered hours of employment under subsection 5542(b)(2)(B)(iv) if performed outside normal duty hours.

Employees B, C, and D in the examples set forth above all request overtime or compensatory time off for travel returning to their official duty stations from events which could not be controlled administratively. Since the events which necessitated their travel could not be scheduled or controlled administratively, their return travel time likewise would be considered hours of employment under subsection 5542(b)(2)(B)(iv) if performed outside their normal duty hours. Accordingly, the claims presented to the agency may be paid, if otherwise proper.

³ See FPM Supp. 990-2, Book 550, subchapter S1-3b (Case No. 1) (Inst. 68, Mar. 7, 1983).