

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-185022

DATE: JUN 2 1976

MATTER OF: Clara A. Day - Sunday premium pay for hours
worked on unofficial tour of duty

DIGEST:

Veterans Administration telephone operator appealed settlement that disallowed claim for Sunday premium pay for period 1968 to 1973. Employee's official hours were 12 midnight to 8 a.m. Monday but she worked unofficial hours of 11:30 p.m. Sunday to 7:30 a.m. Monday. Because unofficial hours do not satisfy criteria of "regularly scheduled work" required by 5 U.S.C. § 5546(a) governing Sunday premium pay, employee is not entitled to Sunday pay and settlement is sustained.

This action involves an appeal by Ms. Clara A. Day, a telephone operator employed by the Medical Administration Service of the Veterans Administration, Wadsworth Hospital Center, Los Angeles, California, of a settlement certificate dated August 8, 1975, issued by our Claims Division which disallowed her claim in the amount of \$1,615.44 for Sunday premium pay during the period April 7, 1968, to April 11, 1973. The employee claims Sunday premium pay during that period based on performance of an unofficial tour of duty which apparently began at 11:30 p.m. Sunday evening and ended at 7:30 a.m. Monday morning. In support of her claim, Ms. Day has submitted personal records and statements from co-workers as evidence that she did perform the unofficial tour of duty during the period of the claim. However, an agency review of official time and attendance reports for the period reflect that she performed duty from 12 midnight to 8 a.m. Monday with no duty being performed on Sunday. Further, Ms. Day, in a letter to this Office received September 5, 1975, concedes that during the claim period her regular scheduled hours of duty were from 12 midnight to 8 a.m. but contends that she was assigned the unofficial tour of duty.

Entitlement of an employee to Sunday premium pay is governed by 5 U.S.C. § 5546(a) which provides:

"§ 5546. Pay for Sunday and holiday work

"(a) An employee who performs work during a regularly scheduled 8-hour period of service

which is not overtime work as defined by section 5542(a) of this title a part of which is performed on Sunday is entitled to pay for the entire period of service at the rate of his basic pay, plus premium pay at a rate equal to 25 percent of his rate of basic pay." (Emphasis supplied.)

We have construed the term "work during a regularly scheduled 8-hour period of service" as used in the above-quoted statute concerning Sunday premium pay, as work which is duly authorized in advance and scheduled to recur on successive days or after specified intervals. 39 Comp. Gen. 73 (1959), 40 id. 397 (1961), 48 id. 334 (1968), and 52 id. 319 (1972). The official position of the Veterans Administration is that the unofficial tour of duty here involved was established by the employees solely for their own convenience and without the knowledge or approval of station management. In this regard, Mildred H. Leetch, the Telephone Supervisor, made a written statement dated July 11, 1974, concerning the claim which reads as follows:

"1. There was one unofficial tour of duty worked which did not agree with the official authorized tour prior to April, 1973.

"2. All operators knew the hours shown on schedules and the time cards were not the same as worked and at no time, to my knowledge protested.

"3. I have been told it was a shift decided upon by the operators to be more convenient for them to work and was done without the official 12 to 8 AM tour being changed to 11:30 to 7:30 AM, the hours actually worked.

"4. April, 1973 when I became Supervisor the shift was changed to coincide with the time cards. Since the unauthorized tour was worked for their convenience and contrary to time shown and agreeable to all, I do not feel an adjustment in pay is necessary."

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Under provisions of paragraph 5, chapter 610, Part I, MP-5, Veterans Administration Personnel Manual, only Managers and Directors of field stations are authorized to establish basic workweek schedules for their employees. Thus, the Veterans Administration has presented unrefuted evidence that the unofficial tour of duty Ms. Day worked was not authorized by an appropriate official, which in this case was the Director of the Hospital. Further, the evidence presented by the Veterans Administration is supported by the fact that as soon as the new Telephone Supervisor brought the matter of the unofficial tour to the attention of management officials, the official tour hours were changed to those of the unofficial tour. Therefore, we must conclude that the unofficial tour does not satisfy the Sunday premium pay statutory requirement of being "regularly scheduled work," because it was not authorized by the appropriate official. Consequently, Ms. Day is not entitled to Sunday premium pay for work performed on Sundays that was not within the hours of her basic workweek as established by the Director of the Hospital.

Accordingly, we must sustain the settlement certificate issued by our Claims Division on August 8, 1975, disallowing Ms. Day's claim for Sunday premium pay.

R.F.KELLER

Deputy Comptroller General
of the United States