

**DECISION**

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

60782

FILE: B-172671

DATE: APR 21 1976

MATTER OF: Mr. Raymond Ratajczak - Nonworkday Travel

099039  
u99039

## DIGEST:

1. NLRB field examiner may not be granted compensatory time for travel time spent on nonworkday in returning from representation election notwithstanding that compensatory time was granted for travel to election, since there was no uncontrollable event necessitating return travel on nonworkday.
2. This Office cannot accept NLRB suggestion that objective of statutory policy encouraging scheduling of official travel during duty hours (5 U. S. C. §6101(b)(2)(1970)) is to reduce costs, since legislative history of 5 U. S. C. §5542(b)(2)(B) (1970), which authorizes overtime pay for travel during nonduty hours in certain situations, indicates that Congress was also concerned with abuse of employee's own time by requiring official travel during nonduty hours.
3. Congress has not provided remedy by way of compensation where employee travels on nonworkday but circumstances of such travel do not fall within purview of 5 U. S. C. §5542(b)(2) (1970).

This matter involves a request from the National Labor Relations Board (NLRB) that we reconsider and modify our decision B-172671, dated November 19, 1974, wherein we held that Mr. Raymond Ratajczak, a field examiner for the NLRB, could be granted compensatory time for time spent during a nonworkday in traveling to a representation election, but not for travel time spent during that nonworkday in returning from such election. We stated the facts in the decision as follows:

"The record shows that on Saturday, January 26, 1974, Mr. Ratajczak, a field examiner in the NLRB's Buffalo, New York, field office, conducted a representation election between 1 p.m. and 1:30 p.m. in Cato, New York. Cato is approximately 150 miles from the regional office in Buffalo and Mr. Ratajczak spent 5 1/2 hours traveling from Buffalo and return. Mr. Ratajczak submitted a claim for compensatory time for 8 hours, 6 1/2 of which covered the time he spent in travel, the rest covering the time allotted for the election, its preparation, and for tallying ballots and other incidental requirements."

B-172671

We based our grant to Mr. Ratajczak of compensatory time for the time spent in traveling from Buffalo to Cato on 5 U. S. C. §5542(b)(2)(B)(iv) (1970), which provides as follows:

"(2) time spent in a 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."

We found that the NLRB had no alternative but to schedule Mr. Ratajczak's travel on a weekend and, citing 50 Comp. Gen. 519 (1971), we stated that "\* \* \* when an employee's travel is not controllable but rather must fit the time schedule set by persons outside his agency, \* \* \* such travel may be compensable at overtime rates if performed outside of normal duty hours."

However, we did not grant compensatory time for the return trip. We stated as follows:

"With respect to Mr. Ratajczak's return travel our decision at 51 Comp. Gen. 727 (1972) stated in pertinent part:

\* \* \* although initial travel may fall within one of the conditions of subparagraph 5542(b)(2)(B) to qualify as hours of employment, the return travel must itself fall within one of those conditions in order to qualify the time involved as hours of employment. 50 Comp. Gen. 519 (1971); 50 *id.* 674 (1971). In light of the policy expressed in 5 U. S. C. 6101(b)(2) that to the maximum extent practicable travel should be scheduled within the regularly scheduled workweek of an employee we have also held that the per diem costs which might be necessary to comply with that policy are not considered unreasonable. B-169078, April 22, 1970. Assuming an uncontrollable event necessitates an employee's travel, notwithstanding that there is sufficient notice to permit scheduling of the travel during his regularly scheduled duty hours where such scheduling would result in the payment of at least 2 days additional per diem, travel may be

B-172671

required during those off duty hours and compensated for at overtime rates. 50 Comp. Gen. 674 (1971).'

Since the record does not show any uncontrollable event necessitating the return of Mr. Ratajczak on Saturday, Mr. Ratajczak is not entitled to overtime compensation for the time spent in return travel from Cato to Buffalo."

The NLRB requests that we modify our decision and grant Mr. Ratajczak compensatory time for his return travel. The NLRB argues that Mr. Ratajczak's work at the Regional Office in Buffalo should be considered an uncontrollable event which necessitated his return travel, since the Government would have lost his services for scheduled business at the Regional Office on Monday morning if he had been required to travel during duty hours; that often a substantial amount in per diem could be saved by granting compensatory time for return travel during nonduty hours; that it would be incongruous to justify compensatory time for the trip to the Saturday election, thereby avoiding a per diem claim, but to deny compensatory time for the return travel, and thereby incur a per diem claim; and that forcing employees to remain away from home for an entire weekend and perform no useful work merely to avoid a claim for overtime or compensatory time would have an adverse impact upon employee morale. The NLRB offers the following alternative:

"It is suggested that the statutory policy which encourages travel during duty hours is premised upon an objective of reducing costs. It is further submitted, that regardless of whether the employee's travel results in a claim of at least 2 days per diem, compensatory time ought to be granted under circumstances where the per diem which would result from a refusal to grant compensatory time would exceed the cost which would result if compensatory time were granted. A rigid application of the test previously enunciated which results in higher costs to the government would therefore frustrate such policy. It is urged that a rule of reasonableness ought to be applied which would result in reduced costs."

The statutory policy encouraging travel during duty hours, which the NLRB suggests is premised upon the objective of

B-172671

reducing costs, is contained at 5 U. S. C. §6101(b)(2) (1970), which provides as follows:

"To the maximum extent practicable, the head of an agency shall schedule the time to be spent by an employee in a travel status away from his official duty station within the regularly scheduled workweek of the employee."

There is nothing in that section concerning the payment of compensation for travel outside an employee's regularly scheduled workweek. 51 Comp. Gen. 727,733 (1972). Further, overtime pay for travel is allowable only in accordance with the provisions of 5 U. S. C. §5542(b)(2) (1970).

The following excerpt from S. Rep. No. 801, 90th Cong., 1st Sess. 30 (1967) on H. R. 7977, which became the Postal Revenue and Federal Salary Act of 1967, section 222 which amended 5 U. S. C. §5542(b)(2)(B), indicates that the overtime travel provisions were adopted partially by way of inducement to agencies to comply with the policy expressed in 5 U. S. C. § 6101(b)(2) (1970), in instances of emergencies or where travel could not be scheduled or controlled administratively:

"The committee has revised the provisions of the House bill in regard to traveltime and overtime pay. The Senate amendment revises present law so that an employee in the classified service, under wage board pay systems, or in the postal field service shall be paid for traveltime outside of his regular work schedule if the travel involves the performance of work while traveling (such as an ambulance attendant taking a patient to a hospital); is incident to travel that involves the performance of work while traveling (such as a postal employee riding in a truck to a destination to pick up another truck and drive it back to his original duty station); is carried out under arduous conditions; or results from an event which could not be scheduled or controlled administratively.

"The committee believes that regulations to implement these provisions should take into account

B-172671

the provisions of section 16 of Public Law 89-301 [5 U. S. C. §6101(b)(1970)], which requires agencies to the maximum extent practicable to schedule travel within the regular work schedule. The committee is convinced that the heads of executive departments and agencies can do much more to prevent the abuse of an employee's own time.

"We are not satisfied with the progress agencies have made to comply with the 1965 act. An employee should not be required to travel on his offday in order to be at work at a temporary duty station early Monday morning to attend a meeting. It is an imposition upon his private life that should not be made. Nevertheless, pay for travel status should not be made so attractive that employees would seek to travel on their offdays in order to receive overtime pay. Proper scheduling and administrative planning is the answer to the problems of travel pay in many cases. When emergencies occur or when events cannot be controlled realistically by those in authority, traveltime must be paid for."

The excerpt clearly illustrates that Congressional concern is with the undesirable imposition upon an employee's private life caused by requiring the performance of official travel during nonduty hours, as well as with reducing travel costs. Thus, since the performance of travel for the lowest cost is not the sole objective indicated by the statutory provisions affecting travel during nonduty hours, we cannot agree with the NLRB's suggestion that a "simple rule of reasonableness ought to be applied which would result in reduced costs." Accordingly, and to reflect all of the intended considerations we have held that per diem cost for up to two additional days to permit the scheduling of travel during duty hours are not unreasonable. B-123174, December 24, 1975, 55 Comp. Gen. \_\_\_.

In regard to the NLRB's argument that Mr. Ratajczak's work at his Regional Office on Monday should be considered an uncontrollable event necessitating his return trip on Saturday, thereby causing such return travel to be compensable at overtime rates, the phrase in

B-172671

5 U. S. C. §5542(b)(2)(E)(iv) (1970) "could not be scheduled or controlled administratively" refers to the ability of an agency to control the event which necessitates an employee's travel. See 51 Comp. Gen. 727, 732 (1972); FPM LTR. No. 550-52, February 5, 1969, which contained implementing instructions. An employee's mere presence on the next workday at the employee's official duty station would not, therefore, be considered an administratively uncontrollable event necessitating nonduty hours travel for which overtime pay or compensatory time is authorized. See 50 Comp. Gen. 674 (1971), and B-170683, November 16, 1970.

Finally, concerning both the NLRB's contention that it would be incongruous to allow compensatory time for the trip to the representation election but not for the return travel time, and the NLRB's concern with the effect of the nonworkday travel and compensation policy on employee morale, Congress simply has not provided a remedy by way of compensation where an employee travels on a nonworkday but the circumstances of such travel do not fall within the purview of 5 U. S. C. §5542(b)(2) (1970). See B-163654, January 21, 1974.

Accordingly, our decision of November 19, 1974, B-172671, denying Mr. Katajczak compensatory time for the travel time spent on Saturday, a nonworkday, in returning from the representation election, is affirmed.

R.F. KELLER

(Deputy) Comptroller General  
of the United States