

7001
DECISION



M. B. Latch, Com. Br.
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-191045

DATE: July 13, 1978

MATTER OF: James C. Holman - Compensation for Traveltime

DIGEST: Exempt employee who traveled from temporary duty station to permanent duty station on Sunday, a nonworkday, is not entitled to overtime compensation. Employee was scheduled to return on Friday, but a blizzard arose and the return trip was delayed. The record indicates, however, that the return trip on Sunday did not meet any of the conditions set forth in 5 U.S.C. 5542(b)(2)(B) and, therefore, there is no basis for payment.

This action concerns the request of Willis H. Staley, authorized certifying officer, Bureau of Reclamation, Department of the Interior, for a decision on the claim of Mr. James C. Holman for overtime pay for 7-1/2 hours spent traveling from his temporary duty station to his permanent duty station on a nonworkday.

The record shows that Mr. Holman was permanently stationed at Huron, South Dakota, and had been temporarily assigned to Martin, South Dakota. On Friday, March 11, 1977, work had been completed at Martin and Mr. Holman expected to return to Huron on that day. However, because of blizzard conditions his supervisors instructed him to wait until the storm had subsided before attempting the return trip.

By Sunday, March 13, 1977, the roads were sufficiently clear to permit travel and Mr. Holman made the return trip with two other employees as passengers. They left Martin at 8:45 a.m. and arrived in Huron at 4:45 p.m., taking a 30-minute lunch break. On this basis, Mr. Holman and the two passengers submitted a claim for 7-1/2 hours overtime compensation.

In requesting payment, Mr. Holman notes that, were it not for the blizzard, the return trip would have been made on Friday, a regular workday. He also notes that the claims of the two employees who were passengers in his car have been paid, and that the agency would incur no expense in paying his claim because the Rushmore Power Cooperative is required to reimburse the Government for all expenses incurred in connection with the assignment at Martin.

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As a preliminary matter, we note that an employee's entitlement to overtime compensation is not affected by the fact that the Government may be reimbursed for overtime costs. 50 Comp. Gen. 519, 522 (1971). Further, payment of the claims of the two passenger employees is not controlling in Mr. Holman's case since he is exempt from coverage under the Fair Labor Standards Act, while his passengers are nonexempt employees. Under the Fair Labor Standards Act, nonexempt employees who perform authorized travel in connection with an overnight assignment at a temporary duty station are entitled to compensation for travel performed during regular working hours, irrespective of whether that travel was performed on working or nonworking days. See Federal Personnel Manual Letter 557-10 (April 30, 1976). As an exempt employee, Mr. Holman's claim is payable only if authorized by the applicable provisions of title 5 of the United States Code.

The applicable provision is 5 U.S.C. 5542(b)(2) (1976), which provides in pertinent part as follows:

"(b) For the purpose of this subchapter--

* * * * *

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

"(A) the time spent is within the days and hours of the regularly scheduled administrative workweek of the employee, including regularly scheduled overtime hours; or

"(B) the travel (i) involves the performance of work while traveling, (ii) is incident to travel that involves the performance of work while traveling, (iii) is carried out under arduous conditions, or (iv) results from an event which could not be scheduled or controlled administratively."

Thus, under title 5 traveltime performed outside the regular workweek is compensable only if one or more of the conditions set forth

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in subsection 5542(b)(2)(B) have been met. This applies equally to the initial travel and the return trip. In order to qualify as hours worked the return trip must itself fall within one of the conditions listed above. 51 Comp. Gen. 727, 732 (1972).

There is nothing in the record which indicates that the conditions listed in (i) or (ii) apply in this case. The return trip to Huron was not an essential part of Mr. Holman's assigned duties or inseparable from the work for which he was primarily employed. Rather, the trip involved only his personal transportation and the personal transportation of two co-workers. Accordingly, the travel did not involve the performance of work, and was not incident to travel that involved the performance of work while traveling. 51 Comp. Gen. 727 (1972).

With respect to the third condition--travel carried out under arduous conditions--it is undisputed that blizzard conditions prevailed all day Friday and most of Saturday. However, on Sunday, the day the travel in question was performed, the record indicates that the storm had ended and the roads were sufficiently clear to permit travel under conditions which were not arduous, albeit there may have been some delays or inconvenience involved. See, 41 Comp. Gen. 82 (1961).

With respect to the fourth condition--events which cannot be scheduled or controlled administratively--it is obvious that the blizzard on Friday was beyond the agency's control. However, the fact that Mr. Holman's return trip was cancelled by an event beyond the administrative control of the agency is not determinative. To meet the requirements of the statute, the event which required his return trip on a nonworkday must be one which cannot be scheduled or controlled administratively. Nothing in the record indicates that an event beyond the agency's control required Mr. Holman to return on Sunday, rather than Monday, a regular working day. An employee's mere presence on the next workday at the employee's official duty station is not normally considered an administratively uncontrollable event necessitating travel during nonduty hours or nonworking days. Matter of Raymond Ratajczak, B-172671, April 21, 1976.

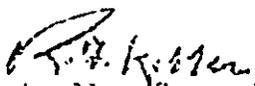
It is apparent from the above that the time Mr. Holman spent traveling on Sunday, a nonworkday, does not meet any of the conditions set forth in subsection 5542(b)(2)(B), and, therefore,

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is not compensable. We recognize that had Mr. Holman returned on Monday, a regular workday, an additional day of per diem expenses would have been incurred. However, it is well established that the conditions set forth in section 5542(b)(2)(B) must be interpreted and applied in a manner consistent with the policies expressed in 5 U.S.C. 6101(b)(2) (1976). The latter section requires agencies to schedule traveltime during the regular workweek whenever practicable. Thus, even though some additional cost may be involved, Congress intended to avoid the undue imposition on the private lives of employees associated with travel outside the regular workweek whenever practicable. Accordingly, insofar as permitted by work requirements, travel may be delayed to permit an employee to travel during his regular duty hours where the additional expenses incurred do not exceed 1-3/4 days' per diem costs. 56 Comp. Gen. 847 (1977). Since the delay in Mr. Holman's case would have involved less than 1-3/4 days' per diem, and because there is no indication that his presence at the permanent duty station was required on Monday, it would appear to be consistent with both subsection 5542(b)(2)(B) and subsection 6101(b)(2) for him to have made the return trip on Monday, a regular workday.

In view of the above, the time spent by Mr. Holman traveling on a nonworkday is not compensable.

Deputy


Comptroller General
of the United States