

DECISION

C. Romo, 11/11/1

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

7542

FILE: B-180021

DATE: September 5, 1978

MATTER OF: Labor-Management Services Administration -
Annual leave charge while in a constructive
travel status

DIGEST: Employees departed on travel on Sunday, April 16, 1978, to labor-management meeting scheduled to begin on Tuesday, April 18, 1978. Agency questions whether it should charge employees for annual leave on Monday, April 17, 1978, which was designated by agency as day of travel. In cases where employees depart early due to personal convenience for official travel, entitlements should be determined on a constructive basis as if they had performed travel by mode authorized and at proper time. Employees' travel should be constructed as if they traveled on Monday and they should not be charged leave for any time that they constructively would have spent in a travel status.

This action results from the request of Jack A. Warshaw, Deputy Assistant Secretary of Labor, for our decision concerning annual leave charges for employees who performed official travel on a nonworkday in lieu of a workday designated for travel.

Mr. Warshaw reports that a labor-management meeting was scheduled to begin in Washington, D.C., on Tuesday, April 18, 1978, between the Labor-Management Services Administration (LMSA), U.S. Department of Labor, and the National Union of Compliance Officers (NUCO), which has exclusive recognition for LMSA field employees under Executive Order 11491, October 29, 1969, as amended. Certain designated employee union representatives were provided time during regularly scheduled work hours on Monday, April 17, 1978, for travel. Several of the employee representatives traveled on Sunday, April 16, 1978, for personal convenience. These employees have requested that their traveltime on Sunday be reconstructed to Monday, as "official time."

Mr. Warshaw presents LMSA's position as follows:

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"The Agency believes that the appropriate interpretation of travel and leave regulations does not allow for such reconstruction of Sunday travel time as hours of employment on Monday. That is, the LMSA believes that it is required to place the affected employees in a leave status for that time on Monday not spent in actual travel or work status, even though such time had been otherwise allotted for travel. This is so since the employee/s traveled on their 'own time' (Sunday) for personal convenience and thus could have performed Agency work on Monday if not in an actual travel status.

"A specific example may clarify the issue. One employee traveled to Washington from Los Angeles. Approximately eight (8) regularly scheduled work hours on Monday, April 17th, was allotted for travel. The employee indicated that for reasons of personal convenience, he traveled on Sunday, April 16th, and is requesting that it be viewed, for pay purposes, as if it occurred on Monday."

When an employee performs travel other than as authorized by official orders, his entitlement to travel expenses and charges to his leave account are normally determined on a constructive basis. For instance, Federal Travel Regulations (FTR) (FPMR 101-7) para. 1-7.5d (May 1973) provides for computation of an employee's per diem on a constructive basis. Also see FTR para. 1-4.3 regarding the determination of entitlement on a constructive basis when a privately owned conveyance is used in lieu of common carrier transportation. In addition, this Office has determined an employee's rights on a constructive basis when he departs on official travel on other than the authorized date. For instance, where an employee assigned to temporary duty departs prematurely for authorized annual leave which he would not have taken but for the assigned temporary duty this Office has held that he should not be penalized by reason of a subsequent cancellation of the temporary duty assignment. Instead, entitlement is determined on a

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constructive basis as if the employee had traveled from his headquarters to the temporary duty station and returned by the usually traveled direct route. See 52 Comp. Gen. 841 (1973). Also, in accordance with the above rules, when an employee's travel is determined on a constructive basis this Office has in the past required that annual leave charged an employee be restored to the extent that the constructive travel occurred during his normal working hours. See B-181363, August 23, 1974. Therefore, travel entitlements should be determined on a constructive basis, that is, as if the employees traveled on Monday, the designated day of travel, and the employees should not be charged annual leave for any time that they constructively would have spent in a travel status. In this connection, the submission states that one employee traveled from Los Angeles to Washington on Sunday and had been allotted about 8 hours of travel time on Monday. His travel entitlement should be determined on a constructive basis. Thus, there would not appear to be any loss of work time which would require a charge to leave.


Deputy Comptroller General.
of the United States