

DECISION

By A. J. Tol
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

8161

FILE: B-191512

DATE: October 27, 1978

MATTER OF: Customs Special Agents - Compensation for
Overtime - Regularly Scheduled v. Admin-
istratively Uncontrollable

DIGEST: Surveillance work performed by Customs Special
Agents was authorized and assigned in advance,
scheduled to recur on successive days at
specific 12-hour intervals, was predictable, and
followed a discernable pattern. Accordingly,
the work was "regularly scheduled," not admin-
istratively uncontrollable overtime, and agents
are entitled to overtime compensation at the
time and one-half rate and premium pay for
nightwork. 5 U.S.C. 5545(c)(2).

This action is in response to a request from Ernest J. Elsbery, Jr., authorized certifying officer, U.S. Customs Service, for a decision concerning the claim of three Customs Special Agents for additional compensation for overtime work performed during a surveillance activity while on temporary duty in Miami, Florida. The request for a decision also concerns the entitlement to additional compensation of other agents assigned to the same surveillance activity.

The record indicates that from Tuesday, August 2, 1977, through Tuesday, August 9, 1977, the Miami region of the Customs Service conducted a 24-hour surveillance activity. An informal work roster was prepared in advance by the group supervisor in Miami showing the assignment of each agent for the duration of the surveillance activity. The roster indicates that the agents were assigned to designated locations for 12-hour shifts, with seven to eleven agents on duty during each shift. Three agents, the claimants herein, were brought in from the New York region and were advised in advance that they would work the 12-hour night shift (8 p.m. to 8 a.m.). The claimants also note that they were advised that the assignment would last approximately a week.

All of the agents involved were receiving administratively uncontrollable overtime (AUO) pursuant to 5 U.S.C. 5545(c)(2), and the agency indicates that no additional compensation was considered due. In its view, surveillance work is always uncontrollable since, by its nature, it depends upon the

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actions of the violator. The claimants contend that the overtime performed was regularly scheduled and they are, therefore, entitled to payment for overtime work at the time and one-half rates authorized by 5 U.S.C. 5542 and to premium pay for nightwork as authorized by 5 U.S.C. 5545(a).

Section 5545(c)(2) provides for administratively uncontrollable overtime as follows:

"(2) an employee in a position in which the hours of duty cannot be controlled administratively, and which requires substantial amounts of irregular, unscheduled, overtime duty with the employee generally being responsible for recognizing, without supervision, circumstances which require him to remain on duty, shall receive premium pay for this duty on an annual basis instead of premium pay provided by other provisions of this subchapter, except for regularly scheduled overtime, night, and Sunday duty, and for holiday duty. Premium pay under this paragraph is determined as an appropriate percentage, not less than 10 per centum nor more than 25 per centum, of such part of the rate of basic pay for the position as does not exceed the minimum rate of basic pay for GS-10, by taking into consideration the frequency and duration of irregular unscheduled overtime duty required in the position."
(Emphasis added.)

The question in this case is whether the overtime work described above was "regularly scheduled," or whether it was administratively uncontrollable overtime. If regularly scheduled employees are entitled to premium pay for nightwork and overtime pay at the time and one-half rate, rather than premium pay at the lesser annual percentage rate authorized for AUO.

This Office has held that the term "regularly scheduled" refers to work which is duly authorized in advance and scheduled to recur on successive days or after specific intervals. 48 Comp. Gen. 374 (1968); and 52 id. 319 (1972).

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This is to be distinguished from work which is scheduled on a day-to-day or hour-to-hour basis, where the amount of overtime varies with no discernable pattern. B-168048, August 19, 1970; and B-151168, May 25, 1976.

In this case, the work was authorized and assigned in advance, and scheduled to recur on successive days at specific 12-hour intervals. The amount of overtime was predictable and followed a discernable pattern. Accordingly, we conclude that it was "regularly scheduled" work within the meaning of section 5545(c)(2), and the claimants are entitled to overtime compensation at the time and one-half rate, and premium pay for nightwork.

In view of the above, the claims of the three New York agents may be certified for payment if otherwise proper. Payment may also be made in accordance with the above to other agents similarly assigned to the same surveillance activity. Compensation for AUC previously received for overtime work during the period August 2 through August 9 should be offset against payments made in accordance with this decision.


Deputy Comptroller General
of the United States