

12845 Plm-11
Mr. Agazarian



DECISION

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

FILE: B-195653

DATE: February 13, 1980

MATTER OF: Robert J. Fitzgerald

DIGEST: Upon completion of his duty assignment, an employee's scheduled return to his official duty station was delayed by a snowstorm which interrupted commercial air travel. There is no basis to pay overtime compensation for the time the employee waited in town for air service to resume. Hours of employment under 5 U.S.C. 5542(b)(2)(B) for which overtime is payable does not include all time in travel status but only actual travel time plus the usual waiting time which interrupts the travel.

Protest
Involving

By letter dated July 12, 1979, Mr. Robert J. Fitzgerald, a ^{Mr. Cooder} grade GS-12 Revenue Officer with the Internal Revenue Service, Boston District, has appealed the Claims Division's disallowance of his claim for overtime compensation incident to the delay in his return travel to his official duty station as the result of a snowstorm. Upon review, we uphold the determination that the period for which overtime is claimed is not compensable as hours of work under 5 U.S.C. 5542 (1976).

The record shows that on March 16, 1978, Mr. Fitzgerald traveled by commercial air carrier from Barnstable Municipal Airport Massachusetts, to Nantucket Island, Massachusetts, in connection with a duty assignment in the town area of Nantucket. Mr. Fitzgerald was scheduled to return to Barnstable at 4 p.m. that day, but prior to leaving the town for the airport he was advised that a snowstorm had interrupted scheduled air service. He remained in the town as apparently neither lodgings nor meals were available at the airport. Mr. Fitzgerald states that he remained by the telephone all evening at the lodgings where he was staying as he had arranged for the airlines to call him when commercial air service was about to be resumed. The airlines did not resume service until the next morning, March 17, and Mr. Fitzgerald returned to Barnstable on a commercial flight which departed at 9:20 a.m.

Mr. Fitzgerald has claimed overtime compensation for the 15-1/2 hour period from the end of his scheduled workday on March 16, at 4:45 p.m. to the beginning of his scheduled workday on March 17, at 8:15 a.m.

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The Claims Division denied the claim on the basis that the hours in question were not compensable hours of work under 5 U.S.C. 5542. Mr. Fitzgerald now contends that the time in question is compensable as hours of employment while in travel status under 5 U.S.C. 5542(b).

The applicable provision, 5 U.S.C. 5542(b)(2) (1976) 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."

Under the above provision, traveltime performed outside the regular workweek is compensable where one or more of the conditions set forth in subsection 5542(b)(2)(B) have been met. However, this provision applies only to officially ordered or approved travel and only to actual travel time plus the usual waiting time which interrupts the travel--not to all time in travel status. Nathaniel R. Ragsdale, 57 Comp. Gen. 43, 48 (1977). See 47 Comp. Gen. 607, 610 (1968). Also, Federal Personnel Manual Supplement 990-2, Book 550, subchapter S1-3b(2)(c)(iii) provides in pertinent part as follows:

"In determining the amount of time in a travel status which would be included as hours of employment, an employee is considered to be in a travel status only for those hours actually spent traveling between his official duty station and his point of destination, or between two temporary duty points, and for usual waiting time which interrupts the travel."

B-195653

As Mr. Fitzgerald was waiting to begin his return travel and not actually performing travel during the period for which he claims overtime, there is no basis for the payment of overtime under 5 U.S.C. 5542(b)(2)(B).

Furthermore, Mr. Fitzgerald's waiting time in the town where he performed his assignment is not compensable as hours of work under 5 U.S.C. 5542(a). The mere restriction of an employee to his place of duty, where the employee is neither performing work nor holding himself in readiness to perform work, does not entitle such employee to overtime compensation under 5 U.S.C. 5542 (1976). See Paul E. Laughlin, 57 Comp. Gen. 496 (1978).

Accordingly, the Claims Division's settlement denying Mr. Fitzgerald's claim for overtime compensation is sustained.


Deputy Comptroller General
of the United States