

DECISION



19039
**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-202049

DATE: August 5, 1981

MATTER OF: Durwood H. Nolin - Claim for Overtime
Compensation

DIGEST: Employee seeks overtime compensation for time spent traveling in Government bus to and from quarters and actual worksite. Compensation may not be paid since travel was not within the regularly scheduled administrative workweek of the employee. 5 U.S.C. § 5542(b)(2).

This is in response to a request for reconsideration of the denial by our Claims Group of a claim by Durwood H. Nolin for overtime compensation for the hours spent commuting to and from his worksite in a Government bus.

Mr. Nolin contends that between October 26, 1979, and January 5, 1980, he was forced by his employer, the Department of the Army, to lodge in Eilat, Israel, 50 miles from the worksite. He was transported to the worksite and back by Government bus, a trip of approximately 70 minutes each way. Mr. Nolin states that he lodged in Eilat solely for the convenience of his employer; therefore, the bus ride was official travel for which he should be compensated.

Relying on 5 U.S.C. § 5542(b)(2) (1976), as well as a report from the Department of the Army to this Office which said that Mr. Nolin's travel did not satisfy the necessary criteria and thus may not be considered compensable traveltime, our Claims Group denied Mr. Nolin's claim.

Section 5542(b)(2) provides as follows concerning computation of hours of overtime:

"(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

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"(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."

In defense of his position, Mr. Nolin states that the hours of travel were within the regularly scheduled workweek. He refers us to a letter from the Program Manager on working hours at the site which says that the "normal" workweek will be 6 10-hour days. As his day consisted of 2 hours commuting plus 8-1/2 hours at the worksite, Mr. Nolin concludes his commute is part of his 10-hour day. Furthermore, he says the Comptroller General has ruled that no Federal agency may require employees to perform official travel outside normal duty hours.

The general rule is that travel which has no purpose other than to transport an employee to and from the place where he is to perform his duties is not work and is not compensable as overtime unless the conditions in 5 U.S.C. § 5542(b)(2) are met. Barth v. United States, 568 F.2d 1329 (Ct. Cl. 1978); B-194297, August 22, 1979.

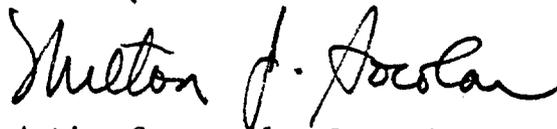
Although the circumstances surrounding Mr. Nolin's duty in Israel are not entirely clear, the issue of whether Mr. Nolin's travel was within regularly scheduled overtime hours was addressed by the Army in a report recommending denial of Mr. Nolin's claim. The Project Manager, Near East Project Office, specifically states that Mr. Nolin's hours of travel were not during the hours of regularly scheduled overtime. The report states that his travel was immediately prior to and following his regularly scheduled hours of duty. Although, as Mr. Nolin points out, there is reference in the record to a "normal" workweek of 6 10-hour days, there is no evidence that such a workweek applied to every worker at the site.

We are aware that Congress has directed the agencies to schedule traveltime so that it occurs within the workshift. 5 U.S.C. § 6101(b)(2) (1976). In part to induce compliance with this provision, Congress added subsection (b)(2)(B)(iv) to 5 U.S.C. § 5542 concerning the payment of overtime for travel resulting from an event which could not be scheduled or controlled administratively. See Barth v. United States, above, at 1333, and 52 Comp. Gen. 446 (1973). However, the Army's report states that

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Mr. Nolin's travel resulted from an administratively controlled event and no work was performed while traveling. Thus, Mr. Nolin's travel between his lodgings and worksite cannot be regarded as overtime hours of work within the limited exceptions provided in 5 U.S.C. § 5542(b)(2).

Accordingly, the action by our Claims Group, denying Mr. Nolin's claim, is sustained.

A handwritten signature in cursive script, reading "Milton J. Acosta".

Acting Comptroller General
of the United States