

Putnam



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Ronald L. Barnhart - Overtime Compensation

File: B-231024

Date: April 12, 1989

DIGEST

An employee who performed and was paid for overtime work during a 4-month period claims overtime for another 4 months after his supervisor indicated he should no longer request payment for overtime. The employee may not be paid overtime under 5 U.S.C. § 5542 (1982) during the second 4-month period. Such overtime was not ordered or approved and there was no inducement on the part of the supervisor for the employee to continue to perform overtime work.

DECISION

Mr. Ronald L. Barnhart, an employee of the Department of the Army, appeals the settlement issued by our Claims Group denying his claim for overtime compensation.^{1/} For the reasons stated later in this decision, we sustain the disallowance of Mr. Barnhart's claim.

BACKGROUND

Mr. Barnhart requests payment for 98 hours of overtime work performed from June 18 through October 23, 1985. Mr. Barnhart states that he was paid for 106 hours of overtime performed during the period from February 23 through June 15, 1985, and that he then received a note from his supervisor, Lieutenant Colonel T. D. Manula, which read: "Ron, What am I getting for my money? Why should I pay overtime to a dedicated supervisor? (who is looking for promotion) TDM." Mr. Barnhart states that based upon this note and a request by Colonel Manula for him not to seek payment for overtime, he stopped submitting requests for overtime pay but continued to document the hours of overtime he worked.

^{1/} Z-2790986, Jan. 28, 1988.

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Mr. Barnhart states that there was never anything in writing authorizing him to be paid for the 106 hours he previously worked. Nevertheless, he says there was an understanding between him and Colonel Manula that overtime work was needed to accomplish the workload of the Contract Management Division. Mr. Barnhart says that when he received the note from Colonel Manula, referred to earlier, the message conveyed to him was that if he did what was expected of him, he would receive the promotion to Chief, Contract Management Division, GM-13. Since he did not later receive the promotion, he decided that he should at least be paid for the overtime work he performed.

OPINION

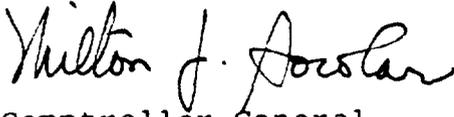
Under the provisions of 5 U.S.C. § 5542 (1982), overtime must be paid when an official with competent authority orders or approves hours of work in excess of 40 hours in an administrative workweek or in excess of 8 hours in a day. Therefore, the determinative issue presented is whether the work for which Mr. Barnhart seeks overtime compensation was work officially ordered or approved within the meaning of section 5542.

The standards to be utilized in determining whether overtime work was properly ordered or approved have been set forth by the United States Claims Court in Baylor v. United States, 198 Ct. Cl. 331 (1972). The court in Baylor examined a range of situations from a regulation specifically requiring overtime to the situation where there is only a "tacit expectation" that overtime is to be performed, and the court indicated that such a tacit expectation does not constitute an official order or approval of the overtime. Based on Baylor, we have held that only where there is "more than a tacit expectation" that overtime be performed or employees have been "induced" by their supervisors to perform overtime work in order to effectively complete their assignments will overtime work be deemed to have been officially ordered or approved. See 53 Comp. Gen. 489 (1974); Carl L. Haggins, B-216952, Oct. 18, 1985; Jim L. Hudson, B-182180, Jan. 6, 1982; Bordenkircher and Jew, B-188089, Oct. 31, 1977.

In this case, the record shows that Colonel Manula did not affirmatively order or approve overtime for Mr. Barnhart after June 15, 1985. Nor do we believe that the note constituted an inducement to Mr. Barnhart to work overtime. While the language of the note may be ambiguous in some respects, it is quite clear in stating that overtime would no longer be paid. We are not prepared to interpret the

remainder of the note as, at the same time, calling on Mr. Barnhart to work overtime without compensation.

Accordingly, we sustain our Claims Group's determination denying overtime compensation in this case.

for 
Comptroller General
of the United States