



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

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B-176241

May 25, 1973

The Honorable Rogers C. B. Morton
The Secretary of the Interior

Dear Mr. Secretary:

We refer to letter of March 13, 1973, from Mr. Leonard J. Horwood, Associate Director, Administration, National Park Service, reference P90-ASF, requesting the opinion of this Office as to the validity of Mr. William R. Hamilton's [claim for overtime compensation] for time spent in travel returning from his worksite, upon completion of his daily tour of duty, to the central point of assembly.

Mr. Hamilton, a wage board employee with the National Park Service's Lake Mead National Recreation Area, Boulder City, Nevada, is assigned a daily tour of duty from 7 a.m. to 3:30 p.m. with one-half hour for lunch. At 7 a.m. he is generally required to report to the Boulder City Utility Area to perform various functions and to obtain Government transportation to the worksite at which he is scheduled to perform work. His travel to the worksite is performed within regular duty hours. On Wednesday, March 29, 1972, Mr. Hamilton reported to the Utility Area at 7 a.m., picked up a Government vehicle and drove to his assignment at Cottonwood Cove, a distance of 55 miles, where he worked until 3:30 p.m. He returned to Boulder City by Government vehicle, arriving there at 4:40 p.m. It is this hour and ten minutes of travel time from the worksite to the Boulder City Utility Area which is the basis for Mr. Hamilton's claim.

Mr. Hamilton argues that since the travel time was administratively controllable, he ought to have been released from his duties at the worksite in such time as to permit him to perform the return travel within the 8-1/2 hours of his regularly assigned tour of duty. In the absence of such scheduling, he argues that he is entitled to overtime compensation for the time which he spent in a travel status after his regular tour of duty. For the legal basis of his claim the employee relies on regulations contained in Book 550, Subchapter S1-3 of Federal Personnel Manual (FPM) Supplement 990-2 (previously contained in FPM Letter 550-52, dated February 5, 1969) implementing 5 U.S.C. 5542. However, such regulation and law are not applicable to wage board employees. Section 5544 of title 5 of the United States Code, as amended by section 222 of Public Law 90-206, 74 Stat. 664, enacted December 16, 1967, is applicable to wage board employees and contains substantially

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identical provisions to 5 U.S.C. 5542(b)(2). 5 U.S.C. 5544(a) provides in pertinent part as follows:

* * * Time spent in a travel status away from the official duty station of an employee subject to this subsection is not hours of work unless 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 discussing the amendments to 5 U.S.C. 5542 and 5544 proposed by H.R. 7977, 90th Congress, 1st Session, and ultimately enacted as Public Law 90-206, it is explained at Senate Report No. 801, November 21, 1967, as follows:

The committee has revised the provisions of the House bill in regard to traveltime and overtime pay. The Senate amendment revises present law so that an employee in the classified service, under wage board pay systems, or in the postal field service shall be paid for traveltime outside of his regular work schedule if the travel involves the performance of work while traveling (such as an ambulance attendant taking a patient to a hospital); is incident to travel that involves the performance of work while traveling (such as a postal employee riding in a truck to a destination to pick up another truck and drive it back to his original duty station); is carried out under arduous conditions; or results from an event which could not be scheduled or controlled administratively.

The committee believes that regulations to implement these provisions should take into account the provisions of section 16 of Public Law 89-301, which requires agencies to the maximum extent practicable to schedule travel within the regular work schedule. The committee is convinced that the heads of executive departments and agencies can do much more to prevent the abuse of an employee's own time.

We are not satisfied with the progress agencies have made to comply with the 1965 act. An employee should not be required to travel on his offday in order to be at work at a temporary duty station early Monday morning to attend a

meeting. It is an imposition upon his private life that should not be made. Nevertheless, pay for travel status should not be made so attractive that employees would seek to travel on their offdays in order to receive overtime pay. Proper scheduling and administrative planning is the answer to the problem of travel pay in many cases. When emergencies occur or when events cannot be controlled realistically by those in authority, travel time must be paid for.

Section 16 of Public Law 89-301, 78 Stat. 400, enacted October 29, 1965, referenced in the above-quoted discussion, requires that to the maximum extent practicable, travel time of an employee away from his official duty station shall be scheduled within his regularly scheduled workweek. That provision, now codified at 5 U.S.C. 6101(b)(2), is not applicable to wage board employees. However, in view of the express legislative purpose in amending 5 U.S.C. 5544(a) to bring pressure to bear upon agencies to solve problems of travel where possible by proper scheduling, it would appear that agencies should endeavor to schedule travel of wage board employees accordingly where practicable.

The corollary to the requirement that travel be scheduled within the employee's regular workweek where practicable, however, is not that time involved in travel not so scheduled is compensable as overtime. Travel time is compensable only to the extent that it meets the criteria contained at 5 U.S.C. 5544(a), above, or is an inherent part of or inseparable from the employee's regular duties, as discussed below.

There is no indication that under subsection 5544(a) the travel which Mr. Hamilton performed either involved work, was incident to travel which involved work, or was performed under arduous conditions. Furthermore, as Mr. Hamilton points out, the travel was subject to administrative scheduling and control, for, as he suggests, the travel could have been scheduled to be performed within his regular duty hours. We therefore find no basis under 5 U.S.C. 5544 for allowance of Mr. Hamilton's claim.

The only additional basis upon which travel may be compensable as overtime hours of work is where travel is an inherent part of or inseparable from work. Travel which has no purpose other than to transport an employee to and from the place where he is to perform actual work is not regarded as an incidental duty which is itself to be regarded as work, and compensable as overtime. See B-173558, August 16, 1971, and B-177438, March 28, 1973, copies enclosed. See also

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Ahenra v. United States, 142 C. Cls. 309 (1958) and Blum v. United States, 152 C. Cls. 545 (1961) where the Court of Claims distinguished travel circumstances substantially similar to Mr. Hamilton's from travel which is a necessary incident to employment.

For the above-stated reasons, there is no basis for payment of Mr. Hamilton's claim for overtime compensation for time spent in travel from his workplace after completion of his tour of duty.

Sincerely yours,

Paul G. Doehling

For the Comptroller General,
of the United States