

DECISION



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

60804
99018

FILE: B-183691

DATE: APR 27 1976

MATTER OF:

R. Elizabeth Rew - Vacation Leave Entitlement

DIGEST:

1. While on vacation leave, employee traveled from Victoria, British Columbia, to Prince Rupert, British Columbia, by foreign bottom carrier. Although such travel was not authorized, reimbursement may be made if otherwise proper since route was reasonable and no American vessel was available for travel.
2. Claim for compensation and premium (overtime) pay for period of time during which employee is traveling on vacation leave may not be paid because such time is not compensable official duty time. Further, since Fair Labor Standards Act applies only where employee has in fact worked during period for which compensation and premium pay is claimed, FLSA is inapplicable to vacation leave travel.
3. Employee, whose duty station is at Juneau, Alaska, must be charged annual leave for each day he would otherwise work and receive pay while on vacation leave, irrespective of when he commenced or completed travel, because 5 U.S.C. § 6303(d), which provides leave-free travel time for employees whose duty station is outside the United States, does not apply to travel from Alaska, which is a state.
4. Notwithstanding Federal Travel Regulation (FPMR 101-7) para. 1-7.5 (May 1973), round-trip travel expenses of employee incident to vacation leave may be paid pursuant to FTR para. 2-1.5h(2)(b) because leave provisions of former paragraph, dealing with interruptions of official travel, are inapplicable to overseas tour renewal agreement travel which is governed by latter section.

5. Where administrative agency establishes tour of duty of two years, less time spent by the employee on the immediately preceding vacation leave trip, employee begins to earn vacation leave rights for each successive tour of duty on the biennial date for the commencement of such leaves of absence.
6. Where certifying officer seeks GAO advance decision on matters of travel incident to change of permanent duty station or attendance of meetings or training but submits voucher relating only to propriety of payment of items incident to vacation leave travel, GAO will not render decision on matters unrelated to accompanying voucher.

This matter is before us on a request of April 14, 1975, from an authorized certifying officer of the Department of Agriculture, Forest Service, Juneau, Alaska, as to the propriety of certifying for payment the travel voucher of Mrs. R. Elizabeth Row for expenses and compensation relative to vacation leave taken.

Having satisfactorily completed a prescribed tour of duty, in Alaska, Mrs. Row executed a new employment agreement with the Forest Service. Pursuant to Federal Travel Regulation (FFTR 101-7) para. 2-1.5h(1) (May 1973), travel was authorized for the purpose of taking vacation leave between tours of duty.

The travel authorization dated March 27, 1974, approved travel by mixed modes including use of privately owned vehicle, Alaska State Ferry, and air transportation limited to the lowest cost jet fare, family plan, or excursion rates generally offered by airlines for travel which apply using most direct routes. It also approved the trip to an alternate location (Spokane, Washington) not to exceed the lowest air fare to Mrs. Row's actual residence which was Portland, Oregon.

The Forest Service issued a GTR for transportation on the Alaska State Ferry with auto from Juneau, Alaska, to Seattle, Washington. Mrs. Row and her husband (dependent) then traveled via Amtrak from Seattle to Spokane and return to Seattle. From Seattle they then

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boarded the B. C. Ferry System at Victoria, British Columbia, Canada, and proceeded to Prince Rupert, British Columbia. From Prince Rupert they changed to the Alaska State Ferry under a GTR and traveled with automobile back to her official station at Juneau, Alaska.

During the period from the date of issuance of travel authorization, March 27, 1974, until Mrs. Row actually commenced travel on May 14, 1974, the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201 et seq., was amended effective May 1, 1974, to extend coverage of the minimum wage and overtime provisions to most Federal employees. Having been designated by the Service as a nonexempt employee for FLSA purposes, Mrs. Row has submitted a claim against the Government for salary and overtime for the period of time she traveled on vacation leave.

With respect to the claim of Mrs. Row the certifying officer has submitted certain questions to this Office. The questions will be considered in the order presented, except that question 5 will be considered after question 6.

1. Because the travel from Victoria, to Prince Rupert, British Columbia, was by foreign bottom carrier, the B. C. Ferry System, the certifying officer expresses doubt as to the propriety of payment of this item. We have concluded that even though this travel was not authorized, this item is reimbursable if otherwise proper since this route was reasonable and no American vessel was available for travel. B-171748, May 27, 1971.

The travel order shows that Mrs. Row may use mixed modes of transportation with costs limited to the lowest cost jet fare offered for travel direct from Juneau to Portland and return. The official Airline Guide in our Office, Airline Tariff Publishers, Inc., C.T.C.(A) No. 107, OAS No. 214, shows that the following travel schedule by jet coach could have been used by Mrs. Row and her husband at a total cost of \$340.38 for a round trip.

Depart Juneau	10:00 a.m.	Alaska Airlines flt. 60	5/14/74
Arrive Seattle	1:00 p.m.		5/14/74
Depart Seattle	1:50 p.m.	Hughes Air West flt. 935	5/14/74
Arrive Portland	2:25 p.m.		5/14/74
Depart Portland	12:20 p.m.	N.W. Airlines flt. 108	5/24/74
Arrive Seattle	12:56 p.m.		5/24/74
Depart Seattle	2:30 p.m.	Alaska Airlines flt. 67	5/24/74
Arrive Juneau	6:40 p.m.		5/24/74

While the voucher shows a claim for \$468 as actual transportation expenses reimbursement should be limited to \$340.88 as set forth above. Also, the employee would be entitled to reimbursement of constructive per diem for air travel.

"2. Is the time the employee spends in route considered compensable duty time for salary and/or overtime under provisions of the FLSA in lieu of annual leave status?"

The statutory authority for overseas tour renewal agreement travel is found at 5 U.S.C. § 5728(a) (1970) and reads as follows:

"§ 5728. Travel and transportation expenses; vacation leave

"(a) Under such regulations as the President may prescribe, an agency shall pay from its appropriations the expenses of round-trip travel of an employee, and the transportation of his immediate family, but not household goods from his post of duty outside the continental United States to the place of his actual residence at the time of appointment or transfer to the post of duty, after he has satisfactorily completed an agreed period of service outside the continental United States and is returning to his actual place of residence to take leave before serving another tour of duty at the same or another post of duty outside the continental United States under a new written agreement made before departing from the post of duty." (Emphasis added.)

This statute merely authorized the payment, under the conditions specified, of certain expenses of an employee and his immediate family incident to his return to the continental United States for the purpose of taking leave. It does not liberalize existing or create new leave rights or benefits in any employee. 34 Comp. Gen. 328, 330 (1955). Although expenses of travel are authorized, no provision is made to make such time official duty. B-171947.62, November 27, 1974. Accordingly, since the travel time is properly chargeable to the annual leave of the employee, no portion of the time during which the employee is on vacation leave is compensable duty time.

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"3. For vacation leave purposes, does the employee's annual leave begin prior to travel or after arrival at designated location?

"4. Same as above only for persons designated as 'except' from FLSA."

Annual leave of civilian personnel is controlled by Annual and Sick Leave Act of 1951, now codified in 5 U.S.C. §§ 6301-11. The implementing regulations are in Federal Personnel Manual (FPM) Supplement 990-2, Book 630. Under the provisions of 5 U.S.C. § 6303(d) and FPM Supplement 990-2, Book 630, subchapter 52-7, no annual leave is charged for the time actually and necessarily occupied in going to or from a post of duty and time necessarily occupied awaiting transfer, in the case of an employee whose post of duty is outside the United States and who returns to the United States. "United States" is defined in 5 U.S.C. § 6301(1) and FPM Supplement 990-2, Book 630, subchapter 52-2a(1), as "the several States and the District of Columbia." Therefore, since Alaska is a state, it is not outside the United States, and section 6303(d) does not provide leave-free travel time from and to Alaska. Except for section 6303(d) or any other statutory exception, the general rule in 5 U.S.C. § 6302(a) applies and leave is required to be charged for days on which the employee would otherwise work and receive pay exclusive of holidays and nonworkdays established by Federal statute, executive order, or administrative order.

Accordingly, annual leave should be charged for each day the employee would otherwise work and receive pay irrespective of when the employee commenced or completed his travel. Because the FLSA has no application in these circumstances, the question is answered similarly irrespective of whether the employee is except or not except from the provisions of the FLSA.

"6. If the above questions 2, 3, and 4 are answered in the negative, is there a legal basis for payment of per diem if the employee begins her vacation leave travel while on annual leave? (See FTR, section 1-7-5 a, d, and 3)."

As noted above, statutory authority for the payment of the round-trip travel expenses of an employee pursuant to vacation leave is found at 5 U.S.C. § 5722(c). Implementing this provision, FTR

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para. 2-1.5h(2)(b) (May 1973) provides that reimbursement of such expenses shall be limited to per diem in lieu of subsistence and transportation for the employee. This paragraph provides the legal basis for payment of a per diem allowance to the employee for vacation leave travel.

The FTR paras. 1-7.5a and 1-7.5d (May 1973), referred to in the question, provide generalized guidance where official travel is interrupted. Travel incident to vacation leave is not, however, official travel. As specified by FTR para. 2-1.5h, it is "overseas tour renewal agreement travel." Because such travel is for the purpose of taking leave and is accomplished while on leave, the provisions of paragraph 1-7.5, insofar as they relate to matters of leave, are inapplicable in the circumstances of the instant case.

"5. If the time spent between official station and designated residence or an approved alternate location is considered duty time, when does employee begin to earn right for new two year waiting period?"

This Office has previously indicated that it will not object to the establishment by an administrative agency of a tour of duty of 2 years, less the time spent by the employee on the immediately preceding vacation leave trip, so as to permit the scheduling of vacation leave at regular 2-year intervals. 37 Comp. Gen. 62, 63 (1957). As set forth in Forest Service Manual para. 6543.511b (August 1973), the Forest Service permits, in accordance with said decision, the employee to earn vacation leave rights within successive 2-year periods. Accordingly, if otherwise proper, an employee of the Forest Service would begin to earn vacation leave rights for each successive year of duty on the biennial date for the commencement of such leaves of absence.

"7. If it is determined that exempt and/or non-exempt employees under the FLSA are entitled to compensation for travel time spent on vacation leave, would this also be applicable to time spent on Saturdays, and Sundays in excess of eight hours per day while in route between official stations under Transfer of Station?"

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"8. If travel in connection with transfer of official station is considered duty time under the FLSA, must we forbid travel on Saturdays and Sundays?

"9. If travel time is considered duty hours, would it be applicable to travel time in connection with attendance at meetings and training which are officially ordered and approved?

"10. If allowable, how would duty hours and travel costs be reconstructed where alternate destination or routing is involved, and where vacation leave is approved at a different location than where dependents take leave?"

The Comptroller General is required to render advance decisions at the request of disbursing officers, certifying officers, and the head of any department or establishment of the Government for their guidance in advance of payment. See 31 U.S.C. §§ 74 and 82d. In the case of disbursing officers and certifying officers, decisions are rendered only on specific vouchers before them for action. 1 GAO Manual For Guidance of Federal Agencies § 11.1 (December 17, 1970). The voucher before this Office is limited to the propriety of payment of certain items incident to the taking of vacation leave by a Forest Service employee. Inasmuch as no travel voucher is submitted with respect to questions 7 through 10 which concern travel in connection with transfer of official station or attendance at meetings and training, these questions may not properly be considered by this Office at this time.

The travel voucher should be processed in accordance with this decision.

PAUL G. DEERLING
For the Comptroller General
of the United States