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DECISION



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

*W. P. ...
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Billard*

FILE: B-185974

DATE: March 21, 1977

MATTER OF: White Sands Missile Range--Overtime Compensation and mileage for travel incident to call-back overtime.

- DIGEST: 1. Employee required to perform call-back overtime at White Sands Missile Range (WSMR), New Mexico, Government reservation located 28 miles from nearest city, requests establishment of policy granting minimum of 2 hours overtime compensation for call-back overtime, plus mileage and overtime compensation for travel to and from headquarters. Proposed policy is not legally acceptable since the travel does not constitute hours of work within 5 U.S.C. 5544. Furthermore, employees are required to place themselves at their place of duty and return to their homes at their own expense.
2. Employee claims overtime compensation for time spent traveling between residence and headquarters incident to call-back overtime. Claim may not be allowed under 5 U.S.C. 5544(a) since such travel does not constitute "Time spent in a travel status away from the official duty station" of claimant. Nor does such travel time qualify for overtime under provisions of Fair Labor Standards Act. Civil Service Commission Regulations contained in Federal Personnel Manual Letter No. 551-10, April 30, 1976, state that travel time incident to call-back overtime does not constitute "hours of work" for entitlement to overtime compensation.
3. Employee claims mileage for travel between residence and headquarters, which is located 28 miles from nearest city, for call back overtime on basis that remote location of headquarters imposes hardship on employees required to perform travel between residence and headquarters in addition to normal commute. Decisions of this Office have consistently held that employees must bear expense of travel between residence and headquarters in absence of specific statutory authority. That such expenses may be increased by overtime or other emergency conditions does not change rule. Therefore, mileage may not be allowed for such travel.

The Per Diem, Travel and Transportation Allowance Committee forwards a request for an advance decision, PDTATAC Control Number 76-19, from the White Sands Missile Range, New Mexico, Department of the Army, with regard to overtime for travel time and payment of mileage between residence and headquarters incident to call-back overtime.

It appears that in call-back overtime situations employees in the Utilities Division, Facilities Engineering Directorate, White Sands Missile Range (WSMR), were permitted to include as hours of work travel time between home and headquarters. That practice was administratively corrected by the Personnel Office, WSMR, during March 1975. However, incident to the correction, a grievance was filed by letter of September 18, 1975, by Mr. Paul Calderon, an employee of the Utilities Division, WSMR. Mr. Calderon sought, inter alia, establishment of a WSMR policy requiring that employees performing call-back overtime be paid a minimum of 2 hours overtime, plus additional pay for travel time and mileage allowance. In responding to the grievance, the Acting Chief, Civilian Personnel Division, WSMR, by letter dated October 31, 1975, stated that establishment of such policies would require a decision of the Comptroller General.

The record submitted in this matter indicates that the circumstances under which employees are required to perform call-back overtime at WSMR are unusual. As stated in the request:

"At the heart of both issues* * * i.e. payment of overtime for travel time and reimbursement on a mileage basis for POC transportation expenses encountered under call-back overtime circumstances, is the remote location and relative inaccessibility of WSMR which is located in the south central section of New Mexico. The main post of the installation is situated approximately 48 miles north of El Paso, Texas, (1970 population: 322,261) 28 miles east of Las Cruces, New Mexico, (population: 37,857) and 50 miles southwest of Alamogordo, New Mexico, (population: 23,035). The Range extends over an area of roughly 40 miles by 100 miles making it the largest military reservation in the country. Though remote from established communities and suitable places of residence, WSMR has averted incurring liability for remote worksite allowance under 5 U.S.C. 5942 by providing car pool locator services and Government transportation from major

residential areas adjacent to the Range. Government operated bus routes run on schedules designed to match established regular tours of duty only. The cost of furnishing the Government transportation is supported mainly by fares charged to participating employees, but it is also partially supported by appropriated funds."

Mr. Calderon and the local union of the National Federation of Federal Employees believe that these factors impose a hardship on employees required to perform travel between their residence and headquarters incident to call-back overtime in addition to their regular commuting travel.

On the basis of the above facts, three questions are submitted:

1. "Was the decision to disallow as hours worked travel time to and from WSMR appropriate in the instant case?"
2. "May WSMR establish a policy that would provide mileage allowances to employees in call-back overtime situations?"
3. "If the answer to the above is negative, are there any circumstances which would permit reimbursement of transportation expenses to call-back employees?"

Overtime Pay For Call-Back Travel Time

The first question is whether employees performing call-back overtime work may be paid overtime compensation for travel time in addition to the 2 hour call-back overtime. Section 5544(a) of Title 5, United States Code, provides with regard to wage board employees that time spent in a travel status away from his official duty station 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."

The application of that section to the situation presented here is that the time spent by an employee in traveling between his residence and headquarters, even in a call-back overtime situation, may not be regarded as "time spent in a travel status away from the official duty station." 55 Comp. Gen. 1009 (1976); and 41 Comp. Gen. 82 (1961).

The facts of this case must also be tested for entitlement to overtime against the requirements of the Fair Labor Standards Act (FLSA) (29 U.S.C. 202 (1974 Supp.)) which became effective May 1, 1974. Travel time as "hours of work" under the FLSA is the subject of Federal Personnel Manual Letter No. 551-10, April 30, 1976. Specifically, Part B of Table 1 of the Letter is to the effect that travel time incident to an emergency call outside regular working hours to return to the employee's normal duty location does not constitute "hours of work" for the purpose of entitlement to overtime compensation pursuant to the FLSA.

Accordingly, we are unable to find any authority which would permit payment of overtime while traveling between home and official duty station, regardless of any unusual circumstances present. Thus, the answer to the first question must be in the affirmative.

Mileage Allowance For Call-Back Travel

The payment of mileage for travel to and from an employee's headquarters has previously been the subject of decisions of this Office. We held that employees must place themselves at their regular places of work and return to their home at their own expense, absent statutory or regulatory authority to the contrary. 55 Comp. Gen. (B-183468, July 28, 1976); 36 *id.* 450 (1956); 27 *id.* 1 (1947); 16 *id.* 64 (1936). That such expenses may be increased by overtime or other emergency conditions does not change the rule. B-117159, October 20, 1953, and decisions cited therein. Also see B-171969.42, January 9, 1976, wherein we stated, quoting from the digest:

"There is no authority to reimburse an employee mileage for traveling by a privately owned automobile between his residence and official duty station on non-regular work days to perform voluntary overtime even though transportation is irregularly scheduled between the employee's residence and duty station on non-work days."

Hence, we are obligated to again state that in the absence of statutory or regulatory authority to the contrary, the payment of mileage for travel performed by an employee between his residence and headquarters for call-back overtime may not be allowed. Question two is answered accordingly.

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Concerning the third question, we are not aware of any authority to reimburse an employee for transportation expenses incident to call-back employment under the circumstances presented here.

Arthur
Deputy Comptroller General
of the United States



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

3-185974

MAR 21 1977

The Honorable Robert T. Griffin
Acting Administrator
General Services Administration

Dear Sir:

Enclosed is a copy of our decision 3-185974, dated today, concerning, inter alia, the payment of a mileage allowance to employees at the White Sands Missile Range, New Mexico, incident to the performance of call-back overtime.

In our decision we held that, in the absence of statutory or regulatory authority to the contrary, an employee may not be paid mileage for travel to and from his headquarters incident to the performance of call-back overtime.

The Federal Travel Regulation (FTR 101-7) would appear to allow payment of a mileage allowance to an employee who performs call-back overtime only when the conditions set forth by the provisions of FTR para. 102.3a (FTR 101-7), relating to travel between residence and office in cases of necessity, are satisfied.

This Office believes that a review is warranted of the matter of payment of a mileage allowance for call-back overtime and similar situations, with a view toward possible amendment of the Federal Travel Regulations. If the General Services Administration should determine to undertake such a review, we would be willing to assist in this matter.

Sincerely yours,

R. F. KELLER

Deputy Comptroller General
of the United States

Enclosure

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