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DECISION

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

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FILE: B-194751 DATE: November 7, 1980

MATTER OF: Alfred W. Hill et al. [Request for overtime compensation]

DIGEST: 1. Civilian uniformed guards who were required to perform certain duties prior to their 8 hour shift cannot receive overtime compensation absent evidence that those duties required more than 10 minutes to perform. Preshift activities that take 10 minutes or less to perform may be disregarded as de minimis. Baylor v. United States, 198 Ct. Cl. 331 (1972).

2. Civilian uniformed guards were not required to change uniforms at work but were free to do so at home. Therefore claim for 20 minutes overtime compensation for uniform changing time is disallowed. Frank E. McGuffin, B-198387, June 10, 1980.

Mr. Alfred W. Hill et al., appeal our Claims Division's Settlement Certificate of February 28, 1979, which denied their claim for retroactive overtime compensation. We sustain the denial of the claim for the reasons set forth below.

The claimants are employed as uniformed guards by the Police Protection Branch of the Naval Education and Training Center (NETC), Newport, Rhode Island. As basis for their claim, they allege that from May 1954, to June 1977, they were required to: 1. report to work 30 minutes prior to each 8 hour shift; 2. spend at least 20 minutes each day in addition to their 8 hour shift, changing into and out of uniform. The claimants rely on Baylor v. United States, 198 Ct. Cl. 331 (1972) wherein overtime compensation was awarded to General Services Administration uniformed guards for the performance of preshift activities and for time spent changing into and out of uniform.

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In the Baylor case it was held that the guards were entitled to overtime compensation because their preshift "hours of work" had been officially, albeit indirectly, ordered or approved. The court held, however, that preshift "hours of work" had to exceed 10 minutes per day or they could be disregarded as de minimis. Id. at 365.

In the instant case, the record reveals that the claimants did, in fact, report early to perform preshift duties that had been officially ordered. This is confirmed by the General Orders of the Police Protection Branch, NETC, and by the agency's own account. In this connection there is no dispute between the agency and the claimants.

What is disputed is the length of time that was required to perform the preshift functions, i.e., exchange of equipment, weapons, vehicles, orders and information. The claimants assert that they often reported to work 30 minutes early and performed these preshift functions. Additionally, the claimants contend that the agency had officially approved the policy of early reporting in Chief of Police, NETC, Memorandum of February 27, 1974, which states, "It is also realized that the members of the Base Police have, in the past, relieved posts, in some cases, as much as 1 hour prior to the legal time of relief. This time will have to be cut to no more than one-half hour."

In contrast, the agency report indicates that while the guards did, in fact, report to work as much as 30 minutes early, they were always relieved equally early by their successors. Also, the time that was required to perform preshift functions was usually no more than 5 minutes and never more than 10 minutes. Thus, according to the agency, the guards never worked more than 10 minutes in excess of 8 hours even if they reported to work 30 minutes early.

Pursuant to the provisions of 4 C.F.R. 31.7 (1979) this Office decides claims on the basis of the written record and claimant must bear the burden of establishing the liability of the Government. The

evidence offered by the claimants lends scant support to their position and does not overcome the agency's report of the facts. Because the claimants have failed to carry the burden of proving that the preshift activities that had been ordered took more than 10 minutes to perform in view of the written record containing an irreconcilable dispute of fact, we are obliged to deny their claims. William C. Hughes, B-192831, April 17, 1979; Arthur L. Butler, B-190803, February 9, 1978. Accordingly, we find that the time the claimants spent performing preshift functions did not exceed 10 minutes; was de minimis; and may be disregarded for purposes of overtime compensation under the rule of Baylor v. United States, 198 Ct. Cl. 331 (1972).

Also, absent acceptable evidence that the employees worked more than 10 minutes overtime per day, it is entirely unnecessary to determine whether their coffee and lunch breaks may be offset against their overtime. Consequently, we do not reach this subsidiary question, and we will not devote further discussion to the question of "duty free" breaks.

A second issue raised by the claimants is whether they are entitled to overtime compensation for the time they spent changing clothes to comply with a regulation prohibiting off-duty wearing of their uniforms.

In the Baylor case it was held that an employee could receive overtime compensation for the time it took him to comply with a regulation requiring him to change into and out of uniform at his work place.

In the instant case, the General Orders of the Police Protection Branch, NETC, state:

"1. UNIFORM:

* * * * *

"d. Articles of the police uniform will not be worn off duty outside the limits of NETC. No police uniform whatever will be worn in restaurants, barrooms, stores, amusement places, or any other place while on way to work or returning home."

The administrative report indicates that the agency did not strictly enforce the uniform regulation. While it is unclear to what extent the regulation was actually enforced, the claimants themselves explicitly admit in their original claim, that, "There is no specific regulation or 'unwritten policy' requiring police officer/guards to change into or out of their duty uniforms within the perimeter of the NETC complex." This plainly reveals that the agency gave the employees the option of changing clothes at home or at work.

We have consistently held that where an employee has the option of changing into or out of uniform at home he may not be compensated for the time it takes to change. Bantom v. United States 165 Ct. Cl. 312 (1964), cert. denied 379 U.S. 890 (1964); Frank E. McGuffin B-198387, June 10, 1980; William C. Hughes, B-192831, April 17, 1979. Accord Baylor v. United States 198 Ct. Cl. 331, 393 (1972). But the claimants urge that they are entitled to overtime compensation notwithstanding the general rule, because they were compelled by the uniform regulations to change their clothes. Whether they changed at work or at home is immaterial, in their view, because their off-duty actions were subject to Government "control."

We can find no justification for the rationale in light of the previously cited decisions. As stated in Baylor v. United States, 198 Ct. Cl. 331, 373 (1972) (Judge Skelton, dissenting):

> "After all a person who works for the government must do some things for himself and on his own time. When he arises in the morning, he should be willing to wash his face and teeth, comb his hair, shave, perform various other normal functions, put on his clothes, including a uniform * * * without having the government pay him for doing it."

The wearing of the uniform on the job, in this case, was a condition precedent to employment, as was

the prohibition against wearing the uniform when off duty. Inasmuch as the claimants were permitted to change into and out of uniform at home, they are not entitled to overtime compensation for the time it took to change.

Finally, the claimants state in their letter dated March 23, 1979, that, "they were never provided with rebuttal statements by the employing agency and therefore were denied the opportunity to reply to the rebuttal" prior to the denial of their claim by our Claims Division.

As has been indicated, this Office does not hold hearings but decides claims on the basis of the written record established by the employee and his agency. When a claim is received from an employee a report is requested from his agency. This report is expected to be and, in the absence of persuasive evidence to the contrary, is accepted as an objective statement of the facts and circumstances surrounding the claim. In some instances the report may support and in others oppose the claim. In any event, the agency's report is not viewed by this Office as a rebuttal giving rise to a right to reply.

For the foregoing reasons we sustain the denial of this claim for retroactive overtime compensation.

Harry R. Van Cleve

For the Comptroller General
of the United States