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DECISION



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

FILE: B-196195

DATE: February 2, 1981

MATTER OF: William C. Boslet, et. al. - Overtime -
Return from Administratively Uncontrol-
lable Travel

DIGEST:

Fact that out bound traveltime of DOA meat and poultry inspectors is compensable as hours of employment because it resulted from events that could not be scheduled or controlled administratively does not of itself make return traveltime compensable. Unless it qualifies on its own merits-apart from the out bound traveltime - as hours of employment under 5 U.S.C. § 5542(b)(2), return traveltime is not compensable.

Mr. Charles Carroll, Certifying Officer, Food Safety and Quality Service (FSQS), Department of Agriculture (DOA), has requested a decision on claims of Mr. William C. Boslet and Doctors Bill A. Price and Harold M. Johnson. These are claims for overtime compensation for return traveltime in situations where the agency has determined that the out bound traveltime is compensable under 5 U.S.C. § 5542(b)(2)(B)(iv) because it resulted from events which could not be scheduled or controlled administratively. For the reasons set forth hereinafter, this Office concludes that these claims may not be allowed.

The Certifying Officer indicates that the submitted cases are typical of those frequently arising in FSQS. Due to the emergency absences of the regularly assigned inspectors of meat and poultry slaughtering and processing operations at other plants, the concerned employees were dispatched to these establishments away from their duty stations for the purpose of performing the inspections required by law. See chapters 10 and 12 of title 21, United States Code. The employees in the cases under consideration were regularly scheduled to work Monday through Friday and the return travel was performed outside their regular duty hours.

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B-196195

The first case posed is that of Mr. Boslet, a food inspector, stationed in Postdam, New York. He was dispatched to Brier Hill, New York, on Monday, July 3, 1978, and, after working 8 hours he returned to his duty station the same day. Mr. Boslet claims overtime compensation for 1-1/4 hours return traveltime.

The second case is that of Dr. Price, a veterinary medical officer stationed in Scottsbluff, Nebraska, who was sent to Grand Island, Nebraska, for temporary duty from November 20 through November 24, 1978. On Friday, the 24th, Dr. Price finished work at 11:30 p.m. in Grand Island and began his return trip at midnight. He arrived in Scottsbluff at 7 a.m. on Saturday, the 25th.

The third case also concerns Dr. Price and another temporary duty assignment in North Platte, Nebraska, from March 19 through the 24th, 1979. On Saturday, the 24th, the last day of this assignment, he returned to Scottsbluff after working 3 hours. Dr. Price claims overtime compensation for a total of 11 hours [return traveltime in these two instances.]

The fourth case concerns Dr. Johnson, a veterinary medical officer, who was sent from Lincoln to Wahoo, Nebraska to perform temporary duty on March 12 and 13, 1979. He returned on Tuesday, the 13th, after working 8 hours on that day and claims overtime compensation for 1 hour return traveltime.

The statutory provision governing the issue raised in these cases is 5 U.S.C. § 5542(b)(2) which provides:

"(2) (time spent in a travel status away from the official duty station of an employee is not hours of employment unless--

"(A) the time spent is within the days and hours of the regularly scheduled administrative workweek of the employee, including regularly scheduled overtime hours; or

B-196195

"(B) 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 Certifying Officer indicates that ESQS has been denying these return travel claims on the basis of some of our decisions interpreting this law - but apparently with some reluctance and doubt. The cited decisions, 50 Comp. Gen. 519 (1971); 50 Comp. Gen. 674 (1971); and Raymond Ratajczak, B-172671, April 21, 1976, hold that the fact that the out bound traveltime qualifies as hours of employment under one of the provisions of the foregoing statute (in this case clause (B)(iv)) does not of itself qualify the return traveltime as such. [The return traveltime must be considered separately and to be compensable it must qualify on its own merits as hours of employment under the statute.] [The Certifying Officer, however, has some reservations about this interpretation. He suggests that where the out bound travel results from an event which could not be scheduled or controlled administratively, the return travel also results from that event.]

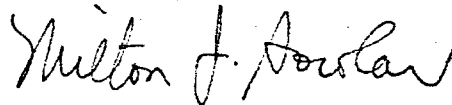
We are unable to agree and must affirm our prior decisions. Clause (B)(iv) provides an exception to the general rule that traveltime outside regular duty hours is not hours of employment and, in our view, it may not properly be construed so broadly. As the United States Court of Claims stated in Barth v. United States, 568 F. 2d 1329 (1978) at page 1332:

"Though we are aware that Congress has exhorted the agencies to schedule travel time so that it occurs within the work shift, 5 U.S.C. § 6101(b)(2) (1970), sometimes this is impossible. Yet Congress, far from providing a

B-196195

remedy, has affirmatively prohibited an award of overtime pay for travel time unless the peculiar conditions of the statutory exception are met."

Accordingly, in the absence of evidence that the return traveltime here involved qualified on its own merits - apart from the out bound traveltime - as hours of employment under 5 U.S.C. § 5542(b)(2), it is not compensable and the claims of Mr. Boslet and Doctors Price and Johnson may not be allowed.



For the Comptroller General
of the United States