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DECISION

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

FILE: B-197128

DATE: March 31, 1980

MATTER OF: Wallace N. Peterman - ^{Claim for} Overtime compensation - time spent in travel status away from official duty station

DIGEST:

(1) Air Force employee performed official travel to Germany totalling 24 hours 15 minutes in connection with temporary duty on non-duty days. Air Force paid employee for 8.25 hours of compensable overtime under the Fair Labor Standards Act (FLSA) (29 U.S.C. §§201 et. seq.). Employee claims overtime for full 24 hours 15 minutes. Claim is denied where record provides no evidence that employee's time spent in travel status qualified as hours of employment under 5 U.S.C. §5542(b)(2)(B). Air Force correctly applied provisions of the Attachment to FPM Ltr. 551-10 (April 30, 1976) in determining employee's overtime entitlement under FLSA.

(2) Air Force employee claims overtime compensation for time spent in travel status away from official duty station. Air Force officials stated that employee's travel outside of normal workweek was not in conformance with policy expressed in applicable labor agreement and in 5 U.S.C. §6101(b)(2) that, to the maximum extent practicable, official travel should be scheduled within the regularly scheduled workweek. However, this does not in itself provide a legal basis for payment of overtime compensation not in accordance with statutory entitlements.

The American Federation of Government Employees on behalf of Mr. Wallace N. Peterman requests an opinion

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concerning Mr. Peterman's entitlement to overtime pay for time spent in a travel status during non-duty days as an employee of the Department of the Air Force. *ACC 00035*

Mr. Peterman performed official travel during non-duty hours, departing his residence in Thomaston, Georgia, at 1200 hours on Saturday, May 19, 1979, and arriving at Sembach, Germany, at 1215 hours (EDT) on Sunday, May 20, 1979. For the total traveltime of 24 hours 15 minutes the Air Force authorized payment for 8.25 hours of overtime. Mr. Peterman contended that he should have received payment for overtime for the entire 24 hours 15 minutes. *ACC 000823*

The resulting dispute was the subject of a grievance filed by Mr. Peterman with the appropriate Air Force command. The final decision on Mr. Peterman's grievance appears in the form of a letter of September 26, 1979, to Mr. Peterman from the Commanding General, Headquarters Warner Robins Air Logistics Center, Robins Air Force Base, which states in part as follows:

"As you were informed * * * at step 2 of the grievance procedure, you have been paid that which is authorized in accordance with applicable regulations. Section 22.01 of the Master Labor Agreement provides that employees will not be scheduled to travel on non-duty days, if it is administratively controllable, unless mission requirements dictate non-duty day travel. The actions resulting in your travel in this instance were not in conformance with that provision. Your supervisor did not actually select a non-duty day to begin your travel as it was determined by the travel office based on availability of seating. Corrective measures have been taken to insure travel is not scheduled in the future on a non-duty day, if it is administratively controllable, unless mission requirements dictate otherwise. I cannot grant the remedy sought in your grievance as there is no legal basis for payment; however, it should not recur in the future."

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Mr. Peterman disputes the conclusion that there is no legal basis for the payment of his claim. Specifically, he contends that the Air Force violated Article 22, Section 22.1 of the AFGE/AFLC Master Labor Agreement as well as applicable regulations controlling the payment of overtime compensation.

Article 22, Section 22.1 of the referenced AFGE/AFLC Master Labor Agreement addresses the scheduling of official travel as follows:

"Section 22.1 Scheduling Official Travel

"If administratively controllable and/or unless mission requirements dictate otherwise, travel will be scheduled during an employee's basic workweek. It is recognized that situations will develop when the employee will be required to travel away from his/her official duty station outside his/her regularly scheduled work hours. In accordance with the FPM, travel shall constitute hours of employment where such travel is performed under one of the following conditions:

"A. The travel involves actual work while traveling:

"B. The travel is incident to travel that involves the performance of work while traveling:

"C. The travel is carried out under such arduous and unusual conditions that the travel is inseparable from work:

"D. The travel results from an event which could not be scheduled or controlled administratively."

We note that these provisions are clearly consistent with the policy expressed in section 6101(b)(2) of title 5, United States Code, that to the maximum extent

practicable official travel should be scheduled within the regularly scheduled workweek of an employee. The four conditions for paying overtime for travel outside duty hours are based on section 5542 of title 5, United States Code, governing overtime compensation for General Schedule employees. The labor agreement provisions in question are also consistent with regulations implementing 5 U.S.C. § 5542(b)(2)(B) promulgated by the Civil Service Commission (now Office of Personnel Management) in Federal Personnel Manual (FPM) Supplement 990-2, Book 550, Subchapter S1-3; and Department of the Air Force Regulation 40-552 (September 15, 1971).

We find none of these four conditions for paying overtime for time spent in travel status either evident in or supported by the administrative record in Mr. Peterman's case. As a result, we are not aware of any legal basis under which Mr. Peterman's claim may be paid pursuant to 5 U.S.C. § 5542.

Turning to the Fair Labor Standards Act (FLSA), 29 U.S.C. §§ 201 et. seq., as amended, we have noted that the Air Force authorized payment to Mr. Peterman for 8.25 hours of overtime in accordance with FLSA authority. The Attachment to FPM Letter 551-10 (April 30, 1976) entitled "Travel Time as 'Hours of Work' under FLSA" applies only to nonexempt employees under FLSA and provides that whether time spent in authorized travel by a nonexempt employee is to be considered hours of work under the FLSA depends upon the kind of travel involved. Paragraph E of the instruction contains basic principles for determining whether traveltime is properly considered "hours of work" under the FLSA when the travel is away from - as opposed to within the limits of - the official duty station.

Subparagraph 1 of paragraph E of the Attachment to FPM Ltr. 551-10 provides principles for determining the overtime compensation entitlement where work is performed while traveling. However, as we have noted, there is no evidence that Mr. Peterman performed any work during the period of his official

travel within the meaning of the applicable regulations or the labor agreement in question. As a result, we believe that the following provisions of subparagraph 3 of paragraph E provide the controlling authority for determining Mr. Peterman's entitlement to overtime compensation:

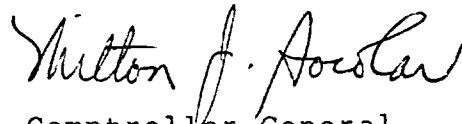
"3. Travel as a Passenger That Keeps an Employee Away From Official Duty Station Overnight. When an employee performs authorized travel as a passenger to a temporary duty station outside the limits of the official duty station and as a result of such travel is required to remain at the temporary duty station overnight (i.e., the employee is required to secure lodgings at the temporary duty station for one night or more), such travel is in excess of a one-day assignment and, therefore, is considered to be travel that keeps an employee away from official duty station overnight. An employee who performs such travel during regular working hours on regular workdays is substituting travel for other duties during these hours and the time spent traveling is hours worked. The same principle applies to such travel as a passenger during corresponding hours on nonwork days (hours which correspond to an employee's regular working hours on regular workdays). However, time spent traveling as a passenger that occurs outside regular working hours (and outside corresponding hours on nonwork days) is not considered hours of work if the travel keeps the employee away from official duty station overnight and the employee performs no work while traveling. Thus, if an employee regularly works from 9 a.m. to 5:30 p.m. (with a 30 minute meal period) from Monday through Friday, travel performed during these hours on any of the seven days of the workweek (including travel time on Saturday, Sunday, or on a holiday) is working time. Bona fide meal periods are deducted from hours worked. Furthermore, time spent waiting at a common carrier

terminal in excess of normal waiting time which occurs during corresponding hours on nonwork days is not included in hours worked; see note 3 above, for the definition of normal waiting time." (Underscoring in original.)

Upon careful review of the record before us, we find that the Air Force correctly computed Mr. Peterman's overtime entitlement under FLSA in accordance with the instructional guidelines set out above.

Finally, although Air Force officials have stated that actions resulting in Mr. Peterman's travel were not in conformance with Section 22.01 of the Master Labor Agreement, supra, this does not provide a legal basis for the payment of Mr. Peterman's claim in the circumstances of this case. In enacting 5 U.S.C. § 6101(b)(2) it is clear that the Congress intended that generally travel should not be scheduled outside of an employee's regularly scheduled workweek. At the same time, however, it left to the discretion of the employing agency the determination of when it is impracticable to schedule official travel within the scheduled workweek of an employee. Moreover, Congress did not provide a remedy if an agency fails to adhere to the policy enunciated in 5 U.S.C. § 6101(b)(2), there being nothing in that section requiring the payment of compensation for travel outside an employee's regularly scheduled workweek. 51 Comp. Gen. 727, 733 (1972).

Accordingly, our decision is that Mr. Peterman is not entitled to additional overtime pay for his temporary duty travel on May 19 and 20, 1979.



For the Comptroller General
of the United States