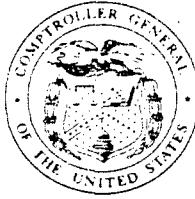


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DECISION



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

FILE: B-197336

DATE: January 28, 1981

MATTER OF: Department of Energy and International
Brotherhood of Electrical Workers - [Use
of Privately Owned Vehicles in Commuting
to Remote Worksites]

DIGEST:

1. Western Area Power Administration, DOE, provided transportation by small chartered aircraft to remote temporary duty worksites located approximately 175 to 300 miles from employees' official duty station. Employees who, because of hazard involved, fear of flying, and unavailability of Government owned vehicles, elected to drive their POV's to and from worksites, are entitled to reimbursement of mileage at the rate specified in para. 1-4.2a, FTR.
2. Claimants, who drove to remote temporary duty worksites in lieu of traveling by chartered aircraft, are not entitled to overtime compensation, while driving, under authority of title 5, U.S.C., or Fair Labor Standards Act. Employees who elect to drive their POV's may do so during regular working hours but only to extent such driving time does not exceed time required during regular duty hours to transport other employees to and from worksites by agency-selected mode of transportation. Any additional traveltime during regular duty hours is chargeable to annual leave. Accordingly, such employees may arrive at, and leave, the worksites at the same time as employees using Government chartered aircraft.

This decision is in response to a joint request by the International Brotherhood of Electrical Workers (IBEW), Local Union No. 640, and the Western Area Power Administration (WAPA), Department of Energy, for a decision in lieu of arbitration. We are asked certain questions which have arisen in regard to the use of privately owned vehicles by wage board employees

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B-197336

of the WAPA in traveling to and from remote worksites to perform temporary duty.

The facts and circumstances from which the questions evolve, as reported in the joint stipulation of facts, are as follows:

"Both the Water and Power Resources Service (formerly the U.S. Bureau of Reclamation) and WAPA have provided Government vehicles to transport employees to distant worksites, on regular work time, where they have normally worked for a week before returning to Phoenix District Office in Government-owned vehicles. Government-owned and chartered aircraft have also been used by both Water and Power Resources Service and WAPA to transport employees to and from distant work sites.

"The Department of Energy has directed reduced allotments for gasoline, causing WAPA to increase the use of small chartered aircraft to transport their employees to these work assignments that are located approximately 175 to 300 miles from Phoenix.

"Some of the employees have decided to drive their personally-owned vehicles to these work sites because they do not want to fly for various reasons, including the fear of flying and the belief that they should be able to refuse the use of transportation furnished by WAPA and be paid for the expense and time outside of regular working hours incurred by using their privately-owned vehicles. Western Area Power Administration has required employees who use their privately-owned vehicles to arrive at distant working sites at their ordinary beginning work times and remain at work until their ordinary shift ends. Employees using WAPA-furnished charter aircraft do not arrive at such work sites until up to two to five hours after starting work time on Mondays and leave up to two to

B-197336

three hours early on Friday in order to be at Phoenix Headquarters before quitting time.

"Non-flying employees believe that WAPA should furnish transportation in Government-owned vehicles in addition to charter aircraft. Barring the use of Government vehicles, these employees feel that if they use their own cars, they should drive during WAPA's working hours and be reimbursed for use of their privately-owned vehicles at the rates established by the GSA.

"Western Area Power Administration has indicated that employees who decide they want to drive a privately-owned vehicle will not be reimbursed, and has stated that they must drive to and from the work sites on their own time and at their own expense if they choose to drive a privately-owned vehicle."

In order to render a determination in the matter, this Office propounded certain questions to the WAPA. The following additional information was provided:

1. The Phoenix District Office, 615 South 43rd Avenue, in Phoenix, Arizona, is the official duty station and regular place of work for the employees.
2. Travel to distant worksites is considered to be temporary duty status.
3. Employees performing temporary duty to distant worksites are authorized to travel by either Government-owned vehicles, commercial aircraft, or Government chartered aircraft. The most economic and advantageous mode to the Government is selected by supervisory/managerial personnel prior to the commencement of the work assignment, based upon the availability of specific approved modes to the chosen worksites, the number of employees assigned to the worksite, and operational requirements as reflected in work schedules.

B-197336

4. Government-owned ground transportation is frequently utilized to transport employees to distant work-sites. The specific mode selected depends upon the number of employees to be transported, operational time constraints, and economic considerations.

5. The Government bears the full expense of furnishing Government transportation to the employees by any of the above-mentioned approved modes.

6. The Western Area Power Administration is not providing Government transportation for its employees in lieu of allowance for duty at remote worksites as provided in section 5942 title 5, United States Code.

The specific questions asked and our discussion of each follows:

Question 1

Should the employees refusing to use the transportation furnished by WAPA be entitled to claim expenses incurred from the use of their privately owned vehicles?

Mileage for official use of privately owned vehicles is authorized by 5 U.S.C. § 5704 (1976), which provides for full payment if the use of the vehicle is authorized or approved as more advantageous to the Government. A determination of advantage is not required when mileage is limited to the cost of travel by common carrier. The statute further provides for mileage payments limited to the cost of travel by Government vehicle when an employee chooses to use his own vehicle in lieu of a Government vehicle.

The determination of advantage to the Government is primarily the responsibility of the agency concerned after consideration that common carrier transportation or Government-furnished vehicle transportation is not available or would not be advantageous to the Government. Federal Travel Regulations (FTR) (FPMR 101-7, May 1973), paragraph 1-2.2c(3). In 56 Comp. Gen. 865 (1977), we stated that an agency's determination of whether:

B-197336

"* * *an employee's use of his privately owned vehicle for travel is or is not advantageous to the Government will not generally be questioned by this Office, 26 Comp. Gen. 463 (1947); B-161266, March 24, 1979; B-160449, February 8, 1967. The particular determination that privately owned vehicle travel of FAA employees to the FAA Academy in Oklahoma from distant locations is not advantageous to the Government is not questioned here. If the FAA found such method of transportation to be to the Government's advantage, then traveltime during regular duty hours of work would be allowed, and per diem and mileage expenses would be payable, without regard to the constructive cost of travel by common carrier."

In the instant case, travel by the employees to and from the temporary duty sites by privately owned vehicles has not been administratively determined to be advantageous to the Government. However, the general travel order authorizing the temporary duty travel approved travel by privately owned vehicle at the rate of 18.5 cents per mile, provided the total cost does not exceed the cost of travel by common carrier. Due to the remote locations of the temporary duty worksites, no common carrier service was available for the travel in question here. Also, according to the agency's report, Government-furnished land vehicles were not made available to the employees who elected not to fly by small chartered aircraft.

Part 4, chapter 1, of the FTR does not specifically cover the circumstances involved in this case where the agency-selected method of transportation is by Government chartered aircraft. Although travel by privately

B-197336

owned vehicle has not been determined to be advantageous to the Government, such mode of travel has been authorized by the WAPA.

We have been informally advised by WAPA officials that some element of hazard was involved in transporting employees to the remote worksites by small chartered aircraft over mountainous terrain. Also, that the two former employees (now retired) who refused to travel by chartered aircraft had a fear of flying and further, that one employee had a leg condition which was aggravated by high altitudes and which was one of the bases for his retirement due to disability. We therefore do not view the refusal by the two employees to travel by small chartered aircraft as being for their own personal convenience, particularly in light of the time of 3 to 6 hours required to drive their privately owned vehicles both to and from the worksites. Further, since the use of privately owned vehicles was authorized in the general travel orders issued to the employees, and inasmuch as Government owned vehicles were not available nor offered for use by the employees, we conclude that in the particular circumstances here involved, the two employees who elected to drive their privately owned vehicles to and from the remote worksites in lieu of Government chartered aircraft are entitled to reimbursement of mileage at the rate specified in paragraph 1-4.2a, FTR, in effect at the time the travel in question was performed.

Question 2

Should employees using privately owned vehicles instead of the aircraft furnished by WAPA be entitled to overtime compensation for the extra traveltime required outside of regular working hours?

No, the entitlement of wage board employees to overtime compensation is governed by section 5544(a) of title 5, United States Code, 1976, which provides that time spent in a travel status away from the employee's official station is not hours of work unless the travel:

B-197336

"(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."

It does not appear from the information submitted in this case that any actual work is performed during the period of travel between the employees' residences and their temporary duty sites; that the travel is incident to any work performed during travel; that such travel is performed under arduous conditions; or that the travel results from an event (performance of work at the duty worksite) which could not be scheduled or controlled administratively.

Entitlement of the employees to overtime compensation because of the additional traveltime required by the optional use of their privately owned vehicles must also be considered under the provisions of the Fair Labor Standards Act (FLSA), codified in 29 U.S.C. § 202 (1976), provided the employees are nonexempt from the FLSA. There is no statement in the record concerning the exempt or nonexempt status of the employees here. However, even if the employees in question are covered by FLSA, they are not entitled to overtime compensation for the reasons set out below.

Traveltime as "hours of work" under the FLSA is discussed in Federal Personnel Manual (FPM) Letter No. 551-10, April 30, 1976, the implementing regulations issued by the United States Civil Service Commission (now Office of Personnel Management). Paragraph E(1) of the Letter states that any work which an employee is required to perform while traveling shall be counted as hours worked. Paragraph F(1) provides that when an employee for personal reasons, such as an aversion to flying, does not use the mode of transportation selected by the employing agency, the employee shall be credited with the lesser of

B-197336

(1) that portion of the actual traveltime which is to be considered working time under the instructions, or (2) that portion of the estimated traveltime which would have been considered working time under the instructions had the employee used the mode of transportation selected by the employing agency. The employees here have been authorized to travel by either Government-owned vehicles, privately owned vehicles, commercial aircraft, and Government chartered aircraft, but have chosen to travel by privately owned vehicle, a mode of transportation other than the one (chartered aircraft) selected by the WAPA as being advantageous to the Government. Therefore in regard to actual traveltime by privately owned vehicle, no "hours of work" occurred during travel prior to reporting for duty on Monday mornings or after completion of duty on Friday afternoons since no work was performed during such travel. In regard to estimated travel time by chartered aircraft (arrival 2 to 5 hours after start of tour of duty on Mondays and departure 2 to 3 hours prior to end of tour of duty on Fridays) had the employees traveled by chartered aircraft, the traveltime required would have been "hours of work" inasmuch as the WAPA has determined that this mode of travel is advantageous to the Government. However, under the facts before us, there is no entitlement to overtime compensation under the FLSA for the excess traveltime outside regular duty hours by privately owned vehicle since paragraph F(1) of FPM Letter No. 551-10 states that the employee shall be credited with the lesser of the two alternatives.

Question 3

If the answer to question 2 is "no", are these employees entitled to drive their privately owned vehicles to the distant sites on regular working time?

Yes, but only to the extent that their traveltime does not exceed the traveltime that would have been used, during regular duty hours, if they had traveled by the method of transportation selected by the agency. In 56 Comp. Gen. 865, supra, the agency had authorized travel by common carrier to a training course based upon its determination that travel by privately owned vehicle was not advantageous to the Government. We held that it was not appropriate to

B-197336

excuse absences without charge to leave for the additional traveltime occasioned by the employees' use of privately owned vehicles for personal reasons. It was stated at page 868 that:

"Travel situations in which we have consistently held that absence should be charged to leave are those in which the excess traveltime is attributable to the employee's delay or deviation from the direct route of travel for personal reasons or where the excess traveltime is otherwise a matter of personal convenience to the employee. Thus, we have held that where additional time away from his official duties was occasioned by the employee's election to travel by privately owned vehicle as a matter of personal preference, the excess absence from work should be charged to annual leave. * * *

"These holdings are consistent with the following language of FPM Supplement 990-2, chapter 630, subchapter S3-4:

"* * * Absences because of excess travel time resulting from the use of privately owned motor vehicles for personal reasons of official trips is generally chargeable to annual leave. * * *"

In applying the foregoing decision to the facts of the instant case, in the absence of a determination by the WAPA that travel by privately owned vehicle is advantageous to the Government, we regard the employees who drive their privately owned vehicles to and from the remote worksites as being subject to the same rules as other employees who utilize the mode of transportation selected by the agency. Therefore, the employees who elect to drive their privately owned vehicles may do so during regular working hours but only to the extent that such driving time does not

B-197336

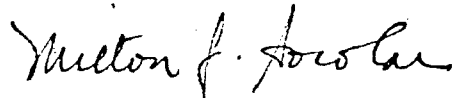
exceed the time required, during regular duty hours, to transport other employees to and from the temporary duty worksites by the agency-selected mode of transportation. Any additional traveltime utilized during the the employees' regular tour of duty must be charged to their respective annual leave accounts.

Question 4

If the answer to question 3, above, is "no", are the employees using privately owned vehicles entitled to arrive at, and leave, distant worksites at the same time as those using provided aircraft transportation by using the combination of regular working hours and uncompensated personal time that will achieve this result, or are the employees required to arrive at the job site at the beginning of normal worktime and remain until the end of normal worktime?

In light of our reply to Question 3, employees who drive their privately owned vehicles to and from the remote worksites may arrive at, and leave, the worksites at the same time as those employees using Government chartered aircraft.

The four questions are answered accordingly.



For the Comptroller General
of the United States