

DECISION

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

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FILE: B-207446

DATE: November 10, 1982

MATTER OF: Jacquelyn D. Cruce and
Christopher F. Perry

DIGEST: Two nonexempt employees of the Department of the Interior earned overtime for travel under the Fair Labor Standards Act, 29 U.S.C. 201 et seq., but not under title 5, United States Code. Agency attempted to grant compensatory time off in lieu of paying overtime due to a need to conserve available funds. Since there is no authority for granting compensatory time off under the Fair Labor Standards Act where entitlement to overtime pay accrues solely under the Act, a need to conserve funds does not serve as a basis to permit the granting of compensatory time off in lieu of paying the overtime compensation due. Matter of Barnitt, 58 Comp. Gen. 1 (1978) distinguished.

An Authorized Certifying Officer, Department of the Interior, requests a decision on the propriety of granting compensatory time off in lieu of paying overtime compensation to two employees, Ms. Jacquelyn D. Cruce and Mr. Christopher F. Perry, under the provisions of the Fair Labor Standards Act, 29 U.S.C. 201 et seq.

Ms. Cruce and Mr. Perry are nonexempt employees and both are entitled to overtime pay under the Act as the result of having performed official travel. Neither employee is entitled to overtime pay under title 5, United States Code, because the circumstances of their travel meet none of the criteria of 5 U.S.C. 5542 under which time in a travel status may be compensated as overtime hours of work.

In order to conserve funds, each of their supervisors, with the concurrence of the employee in

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question, approved the crediting of compensatory time off in lieu of overtime pay. That action was taken in reliance on our ruling in Matter of Barnitt, 58 Comp. Gen. 1 (1978).

The question asked is whether, based on a need to conserve funds, a nonexempt employee may be granted compensatory time off in lieu of overtime pay where his entitlement to such pay arises solely under the Fair Labor Standards Act. The Certifying officer points out that managers seeking ways to save funds may find it helpful to grant compensatory time off rather than pay overtime whenever possible. Since there is no authority under the Act for granting compensatory time off, we hold that compensatory time off may not be substituted for the FLSA overtime compensation to which the employees are entitled, even in an effort to conserve funds.

In Matter of Barnitt, the employee was entitled to overtime under both the Fair Labor Standards Act and title 5, United States Code. Since 5 U.S.C. 5543 specifically authorizes the granting of compensatory time off in lieu of overtime pay for employees entitled to overtime compensation under title 5, United States Code, we held that there was no violation of the Fair Labor Standards Act if, due to a lack of funds for payment of overtime, an employee is not given a choice between overtime pay and compensatory time off. That case is distinguishable from the present situation.

In the present case, the sole authority for the payment of overtime pay is contained in 29 U.S.C. 207, which provides in part:

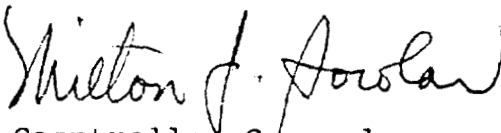
"(a)(1) Except as otherwise provided in this section no employer shall employ any of his employees * * * for a workweek longer than forty hours unless such employee receives compensation for his employment in excess of the hours above specified at a rate not less than one and one-half times the regular rate at which he is employed."

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Paragraph A.1c. of Attachment 1 to Federal Personnel Manual Letter No. 551-6, June 12, 1975, states:

"c. Overtime pay entitlement solely under FLSA. If a nonexempt employee earns his overtime pay entitlement in a given workweek solely under FLSA, he must be paid for the overtime work. No compensatory time off is allowed."

In view of the foregoing, a need to conserve funds would not serve as a basis for crediting compensatory time in lieu of paying overtime compensation where the entitlement to overtime accrued solely under the provisions of the Fair Labor Standards Act. Compare Matter of Customs Patrol Officers, 58 Comp. Gen. 547 (1979).

for 
Comptroller General
of the United States