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DECISION



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

FILE: B-210065

DATE: April 2, 1984

MATTER OF: Janice C. Hankins and Annie Archie -
Overtime While Traveling

DIGEST:

1. An NLRB Field Examiner in a travel status claims compensatory time for after-hours return travel incident to a hearing conducted away from her duty station. Basis for claim is assertion that the hearing's late start was an uncontrollable event and supervisor's request to continue hearing late to complete record established the immediate official necessity under 5 U.S.C. § 5542(b)(2)(B)(iv). Claim is denied. While delays in the field may prevent an employee from performing return travel during normal working hours, such delays do not qualify as an uncontrollable event which requires after-hours travel as a matter of official necessity under those provisions. Employee is then merely returning to duty station with no special urgency requiring that travel.
2. An NLRB Field Examiner in a travel status in one case, claims compensatory time under 5 U.S.C. § 5542(b)(2)(B)(iv) for after-hours travel to meet an essential witness in a second case, who was to be interviewed that evening. Claim is denied. The after-hours travel did not qualify as an administratively uncontrollable event since it was set by mutual agreement and could have been arranged for a later date.

This decision is in response to a request from the General Counsel, National Labor Relations Board (NLRB), for our opinion concerning the entitlement of two employees to receive overtime pay or compensatory time off for after-

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hours travel each performed during July 1982. For the reasons set forth below, we hold that the employees are not entitled to overtime pay or compensatory time.

This matter was submitted under our procedures for the consideration of labor relations cases, 4 C.F.R. Part 22. All the relevant parties have been served and the union has stated that it joins in the General Counsel's submission.

Ms. Janice C. Hankins

The first situation involves Ms. Janice C. Hankins, a field examiner in the NLRB New Orleans Regional Office. She was assigned as the hearing officer in a case which was administratively scheduled for a hearing in Linden, Alabama, on Friday, July 2, 1982, to commence at 9 a.m. The next workday was Tuesday, July 6, 1982; however, on that date Ms. Hankins was scheduled to begin 2 weeks of previously approved annual leave. The hearing did not commence until approximately 11 a.m. because of the late arrival of the court reporter. Later that day, Ms. Hankins advised her supervisor by telephone that because of the late start and the fact that the attorney for one of the parties had to leave at 3:30 p.m., the hearing could not be completed that day. Based on the request of her supervisor to develop as full a record as possible, Ms. Hankins continued the hearing until 3:45 p.m., at which time she immediately left for her home in New Orleans, arriving there about 9 p.m., approximately 4-1/2 hours after the end of her normal workday.

She requested compensatory time off for the period in question, contending that she had no alternative but to perform return travel after the completion of her normal workday. She argues further, that the combination of the hearing's late start and the instructions from her supervisor to continue the hearing as long as possible, constituted administratively uncontrollable events and, since she is precluded from receiving per diem because of the 2-day rule limitation, she is therefore entitled to compensatory time off.

The agency suggests, in turn, that Ms. Hankins should be entitled to compensatory time off in the circumstances. The NLRB explains that, due to the numerous cases which must be processed, if the agency is to do so as promptly and as

efficiently as possible, it occasionally becomes necessary for its field examiners to utilize as much of their working hours as possible on the cases and, as in Ms. Hankins' case, to remain as late as possible in an effort to complete the record.

Ms. Annie Archie

The second situation involves Ms. Annie Archie, also a field examiner in the NLRB New Orleans Regional Office. She was in Vicksburg, Mississippi, on Wednesday, July 28, 1982, on an investigative assignment. She also had an ongoing investigative assignment in another case which required travel to Baton Rouge, Louisiana, to take a charging party's evidence.

It is reported that while in Vicksburg on July 28, she was contacted by counsel for the charging party in the Baton Rouge case, and they arranged a 7 p.m. meeting that same evening so the charging party's witness could be interviewed. That date and time were apparently selected because the charging party's counsel would be unavailable for 7 working days after the 28th and the charging party witness would be available only after normal working hours.

It appears that Ms. Archie anticipated completing her assignment in Vicksburg by noon on July 28, and, thus, would have arrived in Baton Rouge at approximately 4:30 p.m. However, due to difficulties encountered in securing the affidavit from the main witness in the Vicksburg case, she did not leave Vicksburg until 2:30 p.m., and arrived in Baton Rouge at 6:30 p.m., 2 hours after the end of her normal workday.

Ms. Archie's claim for compensatory time off is based on the assertion that since the appointment in Baton Rouge was set that day to accommodate the schedule of the charging party and counsel, the immediacy of the need to be there at that time created an administratively uncontrollable event.

The agency suggests that if Ms. Archie interrupted the Vicksburg case in order to avoid after-hours travel to Baton Rouge, it would have somewhat delayed the Vicksburg case. On the other hand, if she had not traveled to Baton Rouge because it would have required some after-hours

travel, that would have substantially delayed the Baton Rouge case. Additionally, such delay would have resulted in greater travel and per diem costs, as well as greater inconvenience to the employee.

DISCUSSION

Section 5542 of Title 5, United States Code, provides in part:

"(b) For the purpose of this subchapter

* * * * *

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

* * * * *

"(B) the travel * * * (iv) results from an event which could not be scheduled or controlled administratively."

The term "event" referred to in the above provision has been construed by this Office to be anything which requires the employee to perform official travel away from his duty station. 51 Comp. Gen. 727 (1972). While the phrase, "could not be scheduled or controlled administratively" is not susceptible to a precise definition, it may be said that such an event is one which required immediate attention. Additionally, we have also held that there must also exist an immediate official necessity in connection with the event which requires the travel to be performed outside the employee's regular duty hours. Thus, where the necessity for the travel is not so urgent so as to preclude proper scheduling of travel, then overtime compensation may not be paid nor compensatory time granted for the after-hours travel time. 51 Comp. Gen. 727 (1972), and Mark Burstein, B-172671, March 8, 1977.

The basic focus of these provisions is usually on the outbound portion of official travel, since ordinarily it is the performance of that portion which is in response to the

event. Eventual return travel by the employee to his official duty station is presumed to occur in the normal course of events in every case. Thus, even where the outbound portion of travel is performed in response to an administratively uncontrollable event and is compensable as hours of employment if performed during non-duty hours, we have held that after-hours return travel would not similarly qualify as hours of employment under 5 U.S.C. § 5542, unless such travel independently satisfied the same conditions. 50 Comp. Gen. 519 (1971); id. 674 (1971); and William C. Boslet, et al., B-196195, February 2, 1981.

In Ms. Hankins' case, the hearing was scheduled to commence at 9 a.m. on that Friday. It was known beforehand that that day would be her last workday for about 2 weeks due to her previously scheduled and approved annual leave and that she probably would be returning to New Orleans that day. Much seems to be made of the assertion that because the hearing was delayed 2 hours and Ms. Hankins received instructions to continue the hearing until 3:30 p.m., she would not have been required to travel during off-duty hours. We disagree. While the delays encountered and the instructions she received to continue the hearing until 3:30 p.m., could not have been anticipated and, therefore, scheduled in advance, such events were not those which required her to travel after hours. Rather, those events merely caused a delay in the timing of her anticipated return travel. In this regard, 5 U.S.C. § 6101(b)(2), requires agencies to schedule employee travel during duty hours, to the maximum extent practicable. However, we have held that an employee may be required to travel on his own time and without compensation if his travel assignment does not meet the criteria of 5 U.S.C. § 5542(b)(2). Charles C. Mills, B-198771, December 10, 1980. In view thereof, and the fact that Ms. Hankins' return travel at that time was merely to return to her permanent duty station, such return travel may not be considered hours of employment. John B. Schepman, et al., 60 Comp. Gen. 681 (1981).

In the case of Ms. Archie, it is evident that the appointment in Baton Rouge was an event which required after-hours travel. That event, however, was not administratively uncontrollable, since it was a meeting arranged by agreement between the parties, and it could have been rescheduled for a later date.

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Accordingly, it is our view, that since the return travel in neither case satisfies the conditions under 5 U.S.C. § 5542(b)(2)(B), neither Ms. Hankins nor Ms. Archie are entitled to compensatory time off for their after-hours travel.

for *Shelton J. Fowler*
Comptroller General
of the United States