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DECISION



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

27119

FILE: B-210722

DATE: December 27, 1983

MATTER OF: Gerald A. Mendiola, et al. - Overtime
Pay While Traveling

DIGEST:

1. Three employees of the Naval Ship Repair Facility, Guam, were assigned to temporary duty at Bremerton, Washington. During their journeys to and from the temporary duty site, they spent approximately 50 hours traveling, but were paid for only 8 hours of that time. Employees are not entitled to overtime for such travel under 5 U.S.C. § 5542(b)(2)(B), since they did not meet any of the requirements of that statute. However, official who approved travel during nonduty hours should state his reasons in writing and, upon request, furnish a copy of his reasons in accordance with 5 C.F.R. § 610.123.

2. Three employees of the Naval Ship Repair Facility, Guam, were assigned to temporary duty at Bremerton, Washington. During their journeys to and from the temporary duty site, they spent approximately 50 hours traveling, but were paid for only 8 hours of that time. If these employees are non-exempt under the Fair Labor Standards Act (FLSA), and they worked 33 hours or more during their first week at Bremerton, they may be entitled to overtime pay for a portion of their trip to Bremerton because it corresponded to their normal tour of duty. There is no additional entitlement for the return trip, since they were already given credit for 8 hours of work during that journey.

Mr. Juan P. Diaz, President, Local 1689, American Federation of Government Employees (AFGE) has requested a decision concerning claims for overtime pay by three employees of the U.S. Naval Ship Repair Facility, Guam.

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Pursuant to 4 C.F.R. Part 22, the Commanding Officer and Administration Officer were served with a copy of Local 1689's submission, but they have filed no written comments or response.

The issue presented is whether the three employees, who traveled from Guam to Seattle, Washington, are entitled to overtime pay for hours spent traveling outside of their basic workweek. The answer is that they are not entitled to overtime pay for the travel performed under the circumstances presented, because they did not meet the statutory requirements for overtime pay while in a travel status as set forth at 5 U.S.C. § 5542(b)(2)(B). However, under the Fair Labor Standards Act (FLSA) they may be entitled to 8 hours overtime for the travel from Guam to Seattle if they meet the other statutory requirements.

FACTS

Mr. Gerald A. Mendiola, Mr. Julian M. Damian, and Mr. Vincent M. Rosario are all employed by the U.S. Naval Ship Repair Facility in Guam and worked a 40-hour basic workweek from 7 a.m. to 3:40 p.m., Monday through Friday. They were all assigned to temporary duty at Puget Sound Naval Shipyard, Bremerton, Washington. They all traveled together to Bremerton, leaving Guam International Airport on Sunday, February 21, 1982, at 8 p.m. (local time) and arriving at their temporary duty site approximately 23 hours later at 1 a.m. (local time) February 22, 1982. None of the traveltime was scheduled during their administrative workweek. The three employees did not return to Guam at the same time but they all spent 35 hours traveling during the trip home, of which 8 hours were during their normally scheduled basic workweek. Therefore, they are claiming a total of 50 hours overtime pay; 23 hours for travel from Guam to Bremerton and 27 hours (35 hours of traveltime less 8 hours during their basic workweek) for travel from Bremerton back to Guam.

Overtime Under Title 5, U.S. Code

Pursuant to 5 U.S.C. § 6101(b)(2), to the maximum extent practicable, Federal employees' travel should be scheduled during the employees' regularly scheduled workweek. A similar provision is contained in Article XXVI,

section 4 of the negotiated agreement between the United States Naval Ship Repair Facility, Guam, and the AFGE Local 1689. In cases such as this where travel takes over 20 hours, it is impossible to schedule all the travel during the workweek. However, Congress, instead of providing a remedy for this stituation has by statute only allowed payment of overtime for time spent traveling if one of the exceptions stated below is met. The pertinent statute, 5 U.S.C. § 5542(b) provides:

"(b) For 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--

"(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) 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."

Therefore, in order for the three employees to be paid overtime under Title 5 of the U.S. Code for their traveltime, they must meet one of the four exceptions. In its submission, the Union has not alleged that the travel satisfied any of these exceptions. After analyzing our cases in this area, we conclude that none of the exceptions have been met. James M. Ray, B-202694, January 4, 1982; William L. Lamb, 61 Comp. Gen. 626 (1982); and Nathaniel R. Ragsdale, 57 Comp. Gen. 43 (1977). Therefore, we must conclude that the employees involved are not entitled to overtime pay under 5 U.S.C. § 5542 for their travel during hours outside of their basic workweek.

We also note that 5 C.F.R. § 610.123 (1983) provides that when an employee is traveling during nonduty hours and is not being paid overtime, the official concerned shall record his reasons for ordering travel at those hours and shall upon request, furnish a copy of his statement to the employee concerned. In its submission the Union states that for reasons unknown, they could not obtain any official documentation citing the justification for the travel during nonduty hours. The employees involved are entitled to receive such justification as required by the regulation. 51 Comp. Gen. 727 (1972). Accordingly, the appropriate official at the Naval Ship Repair Facility should provide such justification to the employees involved upon request.

OVERTIME UNDER FLSA

Although the Union in its submission did not specifically raise the issue of overtime under the Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq., the employees involved may be entitled to overtime pay under that act.

The record does not state whether the employees were covered (non-exempt) under the FLSA. However, the fact that they work on Guam is not controlling, since 29 U.S.C. § 213(f) states that employees working on Guam may be covered by the FLSA. Therefore, if the employees are non-exempt, the following analysis applies.

The threshold issue is whether the travel qualifies as "hours of work" under FLSA. In that regard, Federal Personnel Manual (FPM) Letter No. 551-10, April 30, 1976, paragraph 3 states that:

"* * * In general, authorized travel time outside regular working hours is 'hours of work' under FLSA if an employee (1) performs work while traveling (including travel as a driver of a vehicle), (2) travels as a passenger to a temporary duty station and returns during the same day, or (3) travels as a passenger on nonwork days during hours which correspond to his/her regular working hours. * * *"

Based on this instruction, the employees could be eligible for overtime under the FLSA if they traveled on nonwork days during hours which correspond to their regular working hours. We note that their regular working hours are from 7 a.m. to 3:40 p.m., Monday through Friday. Therefore, if the employees traveled during those hours during any of the days of the week including Saturday or Sunday, those travel hours would be considered hours of work under the FLSA. Also, in computing overtime for travel which involves more than two time zones, the time zone from the point of first departure is used to determine whether the employee performed the travel during regular working hours. See Attachment to FPM Letter 551-10, April 30, 1976, paragraph F(3).

As stated above, all three employees left Guam at 8 p.m. on Sunday, February 21, 1982. They traveled approximately 23 hours and arrived on Monday, February 22, 1982, 1 a.m. (local time) at their temporary duty site. However, under the FLSA, it is the time zone of the first departure (Guam) which is relevant in determining whether the employees traveled during working hours. Therefore, for purposes of the FLSA, they arrived at 7 p.m. Monday, February 22, Guam time at their temporary duty site. Therefore, since they traveled during their working hours to Guam, those 8 hours count as "hours of work" under the FLSA.

Under the FLSA, employees must work 40 hours a week before they are entitled to overtime pay. Excused absences with pay (holidays, sick, annual and other paid leave) are not considered hours of work for the purposes of determining whether 40 hours have been worked. See Attachment 4 to FPM Letter 551-1, May 15, 1974. Therefore, in the present case, all three employees would have to have worked at least 33 hours during the week of February 21 to 28 in order to get overtime pay for the 8 hours of work credited while traveling. If these employees were excused from work or were granted any kind of leave during that week, those hours would not count towards the hours of work requirement.

The record shows that the employees have already been credited with 8 hours of work when they traveled back to Guam during regular working hours. Therefore there is no extra entitlement under the FLSA for the return travel.

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In conclusion, the employees are not entitled to any overtime pay under the provisions of Title 5. Under the FLSA, if these employees are non-exempt, and if they worked a 40-hour week from February 21 to 28, they are entitled to overtime pay for the 8 hours traveled from Guam to the temporary duty site. There is no entitlement for overtime pay for their return travel under the FLSA.

for *Harry R. Van Cleave*
Comptroller General
of the United States