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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: John C. Dudkiewicz, et al. - Overtime Pay While
Traveling

File: B-226191.2

Date: January 4, 1989

DIGEST

Five employees of the U.S. Naval Ship Repair Facility, Guam, claim that they are entitled to overtime pay under the Fair Labor Standards Act or title 5, United States Code, for time they spent waiting at air terminals for their flights to depart and for time they spent clearing the airport after their arrival while traveling to and from their temporary duty station at Diego Garcia. They are not entitled to overtime pay under either law because they did not meet the required criteria, particularly the time was outside regular work hours and corresponding hours on nonwork days, and they performed no work while traveling.

DECISION

This decision is in response to a joint request for decision submitted by F. R. Utsch, Acting Commanding Officer, U.S. Naval Ship Repair Facility (SRF), Guam, and five SRF employees^{1/} represented by the Vice President of the American Federation of Government Employees, Local 1689, Inc. The matter involves whether the five SRF employees are entitled to receive overtime compensation for time spent waiting at airports for their scheduled flights to depart and clearing the airport at Diego Garcia after arrival. We find that they are not entitled to overtime compensation.

The five employees were assigned to temporary duty at Diego Garcia from September 15 to November 14, 1986; their regular administrative workweek was Monday through Friday, 7 a.m. to 3:40 p.m. When traveling both to Diego Garcia and back to Guam, they were instructed by management to

^{1/} The employees involved in this case are John C. Dudkiewicz, Jesus C. Lujan, Cesar D. Devera, George F. Guerrero, and Roy C. Pocaigue.

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arrive at the air terminals 1 to 2 hours before their scheduled departure times, evidently standard procedure when traveling from Guam. After completing their temporary duty, the employees submitted claims for overtime pay for the time outside normal working hours spent waiting for flights and spent clearing the airport at Diego Garcia and awaiting billeting. The days and times were as follows:

<u>Date</u>	<u>Day</u>	<u>Hours</u>	<u>Location</u>	<u>Reason</u>
9/15/86	Mon.	0400-0700	Guam	Time spent awaiting commercial flight at airport
9/16/86	Tue.	1700-1900	Diego Garcia	Time spent clearing after arrival at airport and awaiting billeting
11/12/86	Wed.	0600-0700	Diego Garcia	Time spent awaiting MAC flight at airport. (Flight was forced to return after one hour in the air.) <u>2/</u>
11/13/86	Thu.	0600-0700	Diego Garcia	Time spent awaiting MAC flight at airport. <u>2/</u>
11/14/86	Fri.	0500-0700	Philippines	Time spent awaiting commercial flight at airport. <u>2/</u>

Since all of the employees involved in this case are designated as nonexempt employees under the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201 et seq. (1982), they could be entitled to overtime compensation under the FLSA, or title 5, United States Code, whichever provides the greater benefit. Gary Van Hine, et al., B-211007, Sept. 25, 1984; Dian Estrada, 60 Comp. Gen. 434 (1981).

For overtime compensation under title 5, United States Code, time spent in a travel status away from the employee's official duty station is not considered hours of employment unless:

2/ Due to a holiday on 11/11/86, the employees did not work 40 regular hours during this week.

"(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, including travel by an employee to such an event and the return of such employee from such event to his or her official-duty station." 5 U.S.C. § 5542(b)(2).

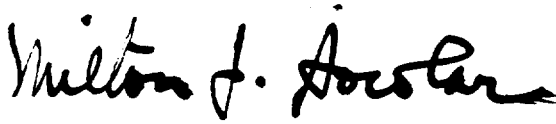
The times in question in this case were not within the employees' hours of regularly scheduled work so they did not qualify under paragraph (A). The travel did not involve nor was it incident to the performance of work while traveling, it was not carried out under arduous conditions, and it did not result from an event which could not be administratively scheduled or controlled. Therefore, the hours did not qualify under paragraph (B). Accordingly, the circumstances of the employees' travel meet none of the criteria of 5 U.S.C. § 5542, so they are not entitled to overtime compensation under title 5.

The Union contends, however, that the employees are entitled to overtime pay based on the FLSA. They cite paragraph E.3 of Federal Personnel Manual (FPM) Letter No. 551-10, April 30, 1976, which lays out the rules governing travel time as "hours of work" under FLSA. As pertinent here, that paragraph is as follows:

"3. Travel as a Passenger 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 of 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 work-week (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."

This section clearly does not support the Union's position. The hours in question were outside both regular working hours and corresponding hours on nonwork days and the employees performed no work while traveling. See Gerald A. Mendiola, et al., B-210722, Dec. 27, 1983. Since this section does not support the Union's position and no other sections of the FPM Letter are applicable, the employees are not entitled to overtime compensation under the FLSA.

for 
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