McCann

The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Charleston Naval Shipyard Employees--Claim for Overtime Compensation

File: B-227695

Date: September 23, 1987

DIGEST

Several Charleston Naval Shipyard employees claim overtime compensation when they are in a temporary duty status and travel by bus, outside of their normal duty hours, from their lodgings to the Naval Submarine Base, Kings Bay, Georgia, during extended refit periods. The time spent traveling outside of regular duty hours as passengers by these prevailing rate (wage board) employees who are covered by the Fair Labor Standards Act (FLSA) between the point of temporary duty lodgings and the temporary duty job site is not considered compensable hours of work under either the FLSA or 5 U.S.C. § 5544(a) (1982). Thus, the employees' claims for overtime compensation under these statutes are denied.

DECISION

The issue involved in this decision is whether certain "prevailing rate" (wage board) employees who are covered by the Fair Labor Standards Act (FLSA) may be compensated for the time spent traveling outside of their regular duty hours between the point of temporary duty lodging and the temporary duty job site. For the following reasons, we hold that the time spent while so traveling may not be considered compensable hours of work under either the FLSA or 5 U.S.C. § 5544(a) (1982).

BACKGROUND

This decision is in response to a joint request from the Charleston Naval Shipyard, Department of the Navy (agency), and the Federal Employees Metal Trades Council of Charleston (union). This request has been handled as a labor-relations matter under 4 C.F.R. Part 22 (1987), and pursuant to 4 C.F.R. § 22.7(b), our Office will issue a decision to the parties on their joint request.

The mission of the Charleston Naval Shipyard (Shipyard) is to overhaul and repair naval submarine and surface crafts. In addition to performing this work at the shipyard in Charleston, South Carolina, groups of employees, known as "Tiger Teams," are sent to the Naval Submarine Base, Kings Bay, Georgia, to make all arrangements and provide self-contained, on-site industrial support for extended refit periods of submarines at Kings Bay. All the employees involved in this case are "nonexempt" i.e., covered by FLSA, and are "prevailing rate" (wage board) employees covered by the overtime provisions of 5 U.S.C. § 5544(a) (1982).

The Naval Submarine Base, Kings Bay, Georgia, is located approximately 48 miles from Brunswick, Georgia, 10 miles from Kingsland, Georgia, and 5 miles from St. Mary's, Georgia, which are the places where Shipyard employees stay in motels while in a temporary duty status. The motel and hotel accommodations are designated as government-furnished quarters and are utilized by all Shipyard Tiger Team members. Due to the distance from the motels to Kings Bay and the inadequacy of parking facilities, the Shipyard contracts for charter buses to transport employees from their lodging to the job site at the Naval Submarine Base. The employees' travel orders state that these buses will be utilized from lodging to work site and return daily. Commuting time from Brunswick is approximately 1 hour and from Kingsland it is approximately 20 minutes. The vast majority of employees are transported from Brunswick due to the limited number of motel rooms in Kingsland and St. Mary's.

The employees are assigned to one of two basic 8-hour shifts, which are their regularly scheduled hours of work: shift 1 (7:30 a.m. to 4 p.m.) or shift 2 (5:30 p.m. to 2 a.m.). The employees depart their motels approximately 1 hour before their shift to board the buses for the trip to the Naval Submarine Base. The return trip commences immediately after the end of their shift and takes approximately 1 hour. On the bus trip, the employees do not engage in any work, and if they arrive early, they are not required to commence work until the beginning time for their assigned shift.

The union contends that the Shipyard employees' travel on the buses outside of their regularly scheduled hours of work should be considered as compensable hours of work. The union states that the employees are instructed to report to board the buses 1 hour before they are required to report for duty, and for the most part, they are not allowed to use a privately owned vehicle. Furthermore, smoking is not allowed on the buses, and the distance traveled by the majority of the employees on the buses, 45 miles, is much

greater than they would travel from home to work when at the Shipyard.

The agency and union have filed a joint statement of facts and thus the agency does not contest those facts stated above. However, the agency contends that it has no legal authority to consider the Shipyard employees' travel on the buses outside their regularly scheduled work as compensable under either the FLSA or 5 U.S.C. § 5544(a). In regard to the FLSA, the agency notes that under the criteria stated in attachments to FPM Letter 551-10 (April 30, 1976) and FPM Letter 551-11 (October 4, 1977), it believes that the time spent by employees merely commuting as passengers from temporary lodgings to the job site at the temporary duty station before and after the regular workday is considered as home to work travel, and thus is not compensable as hours of work under the FLSA. Furthermore, the agency contends that since none of the four criteria for overtime compensation of "prevailing rate" (wage board) employees in 5 U.S.C. § 5544(a) has been met, the Shipyard employees here are not entitled to overtime compensation for travel under that statute.

DISCUSSION AND ANALYSIS

The FLSA, codified as amended in 29 U.S.C. §§ 201-219 (1982), is administered with respect to federal employees by the Office of Personnel Management (OPM). See 29 U.S.C. § 204(f) (1982). The OPM regulation relevant to this case is 5 C.F.R. § 551.422(b) (1987), which provides:

> "(b) An employee who travels from home before the regular workday begins and returns home at the end of the workday is engaged in normal 'home to work' travel; such travel is not hours of work. When an employee travels directly from home to a temporary duty location outside the limits of his or her official duty station, the time the employee would have spent in normal home to work travel shall be deducted from hours of work as specified in paragraphs (a)(2) and (a)(3) of this section."

Furthermore, additional guidance as to the proper interpretation of the phrase "home to work" travel is found in paragraph D1 of the Attachment to FPM Letter 551-11, October 4, 1977, which clearly states that the time spent by employees commuting from their temporary lodging to a temporary duty station is considered "home to work" travel, and therefore is not considered as compensable hours of work under FLSA, unless such travel meets one of the specific conditions in paragraph C of the Attachment to

FPM Letter 551-11 and Table 1 of the Attachment to FPM Letter 551-10, April 30, 1976.

In this case, the time spent by the employees as passengers commuting from their temporary duty lodgings to the temporary duty station in Kings Bay is considered as "home to work travel" under paragraph D1 of the Attachment to FPM Letter 551-11. Furthermore, the travel does not meet the specific conditions either in paragraph C of the Attachment to FPM Letter 551-11 or in Table 1 of the Attachment to FPM Letter 551-10, which outline the criteria used to determine when "home to work" travel is to be considered as hours of work under FLSA. Indeed, Table 1 to FPM Letter 551-10 states that the travel time of employees who report at a designated meeting place and who are transported as passengers by a government vehicle to a temporary duty job site is not considered "hours of work" under FLSA. Thus, we hold that the time spent traveling as passengers outside of regular duty hours between the point of temporary duty lodging and the temporary duty job site by these prevailing rate employees may not be considered as compensable hours of work under FLSA.

In addition to the claim for overtime compensation under the FLSA, the union also claims a similar entitlement under 5 U.S.C. § 5544(a) (1982). That statute provides, in relevant part, that:

> "[t]ime spent in travel status away from the official duty station of an employee subject to this subsection is not hours of work unless 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."

In this case, the Shipyard employees do not perform work while being transported on the bus from their motels to the temporary job site. The travel on the bus is not incident to travel that involves the performance of work while traveling. Furthermore, the travel is not carried out under arduous conditions, and the travel arrangements are planned in advance and thus the travel does not meet the fourth criterion of travel resulting from an event which could not be scheduled or controlled administratively. Therefore, there is no legal basis for the allowance of the union's alternative claim for overtime compensation under 5 U.S.C. § 5544(a).

Accordingly, the union's claims on behalf of the Shipyard employees for overtime compensation under the FLSA and 5 U.S.C. § 5544(a) are denied.

for Harry R. Van Cleve
Comptroller General
of the United States