



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Benjamin Brown and John R. Schacht - Claim for
Overtime Travel during Nonduty Hours

File: B-229373; B-232443

Date: April 4, 1990

DIGEST

Two Navy employees are not entitled to overtime or compensatory time for time spent in travel outside normal work hours to ships in response to messages requesting technical assistance to correct equipment breakdowns. The employees have not presented sufficient evidence or documentation which would indicate that travel was of an immediate official necessity and to an event that was unscheduled and administratively uncontrollable so as to permit payment under 5 U.S.C. § 5542 (1988). The burden of proof is upon the claimants to establish the liability of the United States and the claimant's right to payment.

DECISION

This decision is in response to a request from the Commander, Navy Regional Finance Center, Washington, D.C.^{1/} The issue presented is whether two Navy employees are entitled to overtime compensation or compensatory time for time spent in travel outside of normal work hours. We hold that the two employees may not be paid overtime or compensatory time for time spent in travel outside of normal work hours since they have not presented sufficient evidence to show that the conditions which would warrant payment have been met.

BACKGROUND

Mr. Benjamin Brown and Mr. John R. Schacht are both employed as Electronic Technicians with the U.S. Atlantic Fleet in Norfolk, Virginia. Their claims arose as the result of travel they performed to various ships in response to casualty report messages which the employees have characterized

^{1/} Navy References: Code 431(YHW), 7240(B)(S). Cl. Vou. I89308, 3 July 84; 189310m 24 Aug. 84.

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as urgent requests for technical assistance to correct equipment breakdowns.

Mr. Brown's claim involves five temporary duty assignments he performed between April 1981 and March 1984. Mr. Schacht's claim involves one trip he took in May 1984. Both employees claim that the emergency nature of their work required them to travel at once outside of their normal duty hours, and equipment failure is an example of an administratively uncontrollable event which would permit payment of overtime compensation for travel under the provisions of 5 U.S.C. § 5542 (1988).

With the exception of one trip taken by Mr. Brown to Holy Loch, Scotland, on June 25, 1982, neither the employee or the Navy have furnished any information as to when the message request for assistance was first received so that a correlation between the date of the request and the employee's actual travel time can be made. Further, outside of the employees' statement that the travel was of an emergency nature, there is no documentation or other evidence to this effect, such as statements from supervisors directing the employees to leave at once. The Navy has not commented on whether or not the travel could have been scheduled during the employees' work hours.

OPINION

Time spent in a travel status is not hours of employment unless it occurs within regularly scheduled work hours or, if outside those hours, unless it meets the requirements of 5 U.S.C. § 5542(b)(2)(B) (1988). The statutory provision in question here is the one which permits overtime if the travel results from an event which could not be scheduled or controlled administratively.

This statutory authority has been interpreted to require the satisfaction of two conditions. First, the event requiring off-duty travel must be administratively uncontrollable, Dr. L. Friedman, 65 Comp. Gen. 772 (1986). Secondly, there must exist an immediate official necessity occasioned by the unscheduled and administratively uncontrollable event. John B. Schepman, et al., 60 Comp. Gen. 681 (1981). Thus, in 49 Comp. Gen. 209 (1969), we held that travel on a nonworkday to repair gun mounts on a ship was not due to a sudden emergency and scheduling was under administrative control where the damage occurred over a period of time. See also Aimee A. Stover, B-229067, Nov. 29, 1988, where her travel to a port prior to a ship's arrival was held not compensable as overtime since adequate

notice of the arrival was available. Cf. Gary A. Pace, B-231718, Feb. 3, 1989, 68 Comp. Gen. 229.

In the present case, neither Mr. Brown nor Mr. Schacht has presented sufficient documentation or evidence which would indicate that there was an immediate official necessity for the travel occasioned by an administratively uncontrollable event. In fact, Mr. Brown's itinerary for his trip to Holy Loch, Scotland, in 1982 is the only example of his travel which shows the date of a message request for equipment assistance and the corresponding date of his travel, and it indicates a 9-day delay in travel. These facts do not support a finding of an immediate official necessity since there was ample time to administratively schedule the travel.

We also note that Mr. Brown seems to be claiming travel overtime for August 12, 1981, on the basis that a military flight was not available, he had to take a commercial flight, and such event could not be administratively controlled. This is an erroneous interpretation of the basis for travel overtime since the "event" is the original cause of the overtime and not events occurring in the course of travel such as an unavailable flight. Eunita Davis, B-231800, Feb. 3, 1989.

Claims presented to this Office are settled based on the written record, with the burden placed on the claimant to establish the liability of the United States and the claimant's right to payment. 4 C.F.R. § 31.7 (1989). Accordingly, in the absence of further documentation in support of Mr. Brown's and Mr. Schacht's claims showing their entitlement to travel overtime, their claims are denied. Christopher Hahin, B-233389, June 23, 1989; Louis R. Crooks, B-229193, Dec. 11, 1987.

Mr. Brown was covered by the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201 et seq. (1982), for a brief period of time, and we have held that where FLSA provides an employee with a greater pay benefit than that to which he is entitled under 5 U.S.C. § 5542, the employee is entitled to the FLSA benefit. Dian Estrada, 60 Comp. Gen. 434 (1981). Generally, a nonexempt employee is entitled to FLSA overtime under the circumstances presented when an employee travels as a passenger on nonworkdays outside of the workweek during hours which correspond to his/her regular working hours. Mary Joyce Lynch and Darlene I. Drozd, 61 Comp. Gen. 115 (1981); 5 C.F.R. § 551.422(a)(4) (1988). Hence, Mr. Brown is entitled to FLSA overtime pay if his travel complies with that standard.

The Navy also reports that Mr. Brown was paid overtime for time traveled on his return trip home and that this payment may have been in error. The Navy is correct in its view since prior to an amendment to the statutory authority in 5 U.S.C. § 5542 in 1984 the employee's return travel also had to be to an event that was administratively uncontrollable. Daniel L. Hubbel, et al., B-229363, Oct. 17, 1988, 68 Comp. Gen. 29. If the amount of the erroneous overpayment is less than \$500 it may be considered for waiver by the head of the agency or his designee in accordance with 5 U.S.C. § 5584(a)(2)(A). If the overpayment is more than \$500 it may be forwarded to this Office in accordance with our standard procedures, 4 C.F.R. part 92 (1989).

Milton J. Fowler
for Comptroller General
of the United States