



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: William Carragher -- Claim for Overtime
Compensation

File: B-231475

Date: August 12, 1988

DIGEST

An employee claims overtime compensation for excess travel time incurred in driving from his home to his temporary worksite over the course of a year. Entitlement to overtime compensation by the employee while in a travel status under 5 U.S.C. § 5544(a)(iv) (1982) requires that travel result from an event which is totally beyond the control of the government arising from a compelling reason of an emergency nature. Temporary relocation of employee's worksite for 1 year under the direction of the government resulting in additional travel time during that period does not meet statutory requirements of 5 U.S.C. § 5544(a)(iv). Therefore, employee is not entitled to overtime compensation for excess travel time under that statute.

DECISION

This decision is in response to a claim by Mr. William Carragher, an employee of the Naval Undersea Warfare Engineering Station, Keyport, Washington, for overtime pay under 5 U.S.C. § 5544 while traveling to and from temporary duty at Indian Island, Washington, during the approximately 1 year he was assigned to that worksite. For the reasons set forth below, we conclude that Mr. Carragher is not entitled to overtime pay under title 5.

BACKGROUND

In early 1987 the Navy temporarily transferred the container refurbishment workload site where Mr. Carragher is assigned from Keyport, Washington to Indian Island, Washington, pending the renovation of a new permanent worksite near Keyport. Indian Island is approximately 35 miles away from Keyport and the transfer resulted in an additional 90 minutes of round-trip travel each day for Mr. Carragher in his private automobile during the year he worked at Indian Island.

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Since Mr. Carragher was expected to work at the Indian Island worksite between 7:15 a.m. and 3:45 p.m., the same hours he had worked at Keyport, Mr. Carragher believes the Navy erroneously failed to provide overtime compensation under title 5 of the United States Code for the additional travel time he incurred by virtue of the transfer. Specifically, Mr. Carragher alleges that he is entitled to overtime compensation pursuant to 5 U.S.C. § 5544(a)(iv) for travel time which "results from an event which could not be scheduled or controlled administratively." This provision applies, he argues, because the Navy failed to issue written orders in accord with its regulations authorizing the transfer. Therefore, the event was not "scheduled or controlled administratively" within the meaning of section 5544(a)(iv).

The Navy asserts that Mr. Carragher is not entitled to overtime compensation under title 5 because:

"Management scheduled and controlled the event; determined that the travel was necessary due to our desired relocation of the container refurbishment site; and established that the regularly scheduled hours of work would be from 7:15 A.M. to 3:45 P.M. Since the new work site was originally expected to be ready in approximately 6 months, the issuance of Permanent Change of Station orders was not deemed to be cost effective."

DISCUSSION AND ANALYSIS

The general rule regarding title 5 overtime pay is that employees may not be compensated for time spent on travel outside their scheduled duty hours when they do not actually perform work during the period of travel. See 55 Comp. Gen. 629, 632 (1976); B-227695, Sept. 23, 1987. As an exception, however, wage board employees are entitled to overtime compensation under 5 U.S.C. § 5544(a)(iv) for travel time away from their official duty station where the travel "results from an event which could not be scheduled or controlled administratively."

For an event to qualify as administratively uncontrollable there must be a total lack of government control. Barth v. United States, 568 F.2d 1329 (Ct. Cl. 1978); see also, Dr. L. Friedman, 65 Comp. Gen. 772 (1986). In Barth, the plaintiffs requested overtime and night differential pay for time spent in travel status between their duty station and temporary worksite. The worksite was a testing range where the plaintiffs were "directed by the Navy to observe,


monitor and evaluate the results of tests on a weapons system which were being conducted by the Sperry Rand Company under a contract with the Government." 568 F.2d at 1330. The temporary worksite was 40 miles from plaintiffs' permanent duty station and they received transportation allowances, reimbursement for expenses and per diem allowances for each trip. Plaintiffs argued that since Sperry Rand was scheduling the weapons testing program, the government had relinquished its role in scheduling or administratively controlling the event and, therefore, they should be entitled to overtime compensation for the travel.

In holding against the plaintiffs in Barth, the court stated: "Our starting point is the proposition that travel which has no purpose other than to transport an employee to and from the place where he is to perform his duties is not work and is not compensable as overtime" Id. at 1331. The court went on to say:

"It is beyond question that plaintiffs' travel was in response to a wholly foreseeable directive and that they, in fact, went to work the same place at the same time over a period of weeks and months. In this regard they were much like any other commuters and certainly not within the 'could not be scheduled' portion of the statute upon which they must rely." Id. at 1332.

As in Barth, the claimant here, Mr. Carragher, argues that the government has abdicated its responsibility to control and schedule the event. However, as was made clear in Barth, overtime compensation may not be allowed under the "not scheduled or administratively controlled" provision where an employee works at the same place at the same time over a period of months under the direction of the government. That is, the fact that Mr. Carragher alleges that the Navy failed to schedule and control the event consistent with its own regulations does not mean there was a total lack of control arising from a compelling reason of an emergency nature, a prerequisite to overtime compensation under 5 U.S.C. § 5544(a)(iv).

Accordingly, we deny Mr. Carragher's claim for overtime pay.

for 
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