

DECISION

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

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FILE: B-183493

DATE: JUL 28 1976

MATTER OF: Eugene L. Mellinger - Compensation for
Traveltime

- DIGEST:
1. Wage board employee traveled 4 hours on Saturday to correct an aircraft's unscheduled rudder movement, notice of which was received at his base on Friday. Official necessity existed for employee to travel prior to his workday Monday. However, since record is not clear as to reason employee could not travel on Friday, the matter is referred to employing agency to determine if employee could not have been scheduled to travel during Friday work-hours because of lack of sufficient advance notice. If he could have been scheduled to travel on Friday he is not entitled to overtime compensation under 5 U.S.C. § 5544(a).
 2. Wage board employee who traveled on Saturday may be entitled to overtime compensation under Fair Labor Standards Act (FLSA). If the employee was not exempt from FLSA and either drove himself to his destination or traveled as a passenger during hours which correspond to his regular work-hours, he would be entitled to overtime compensation under FLSA for those hours of travel which were in excess of 40 hours in a week. If employee is entitled to overtime compensation under both 5 U.S.C. § 5544(a) and FLSA, he should receive compensation under whichever of the two laws provides the greater benefit.

This matter involves a request for an advance decision submitted by Major C. T. Woolsey, USAF, Accounting and Finance Officer, Tinker Air Force Base, Oklahoma City, Oklahoma, concerning a claim for overtime compensation for time spent in travel by Mr. Eugene L. Mellinger, a wage board employee of the Department of the Air Force.

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The record shows that Mr. Mellinger is employed as a WG-11, step 3, maintenance rigging specialist, at Tinker Air Force Base, Oklahoma. On January 23, 1969, Mr. Mellinger was assigned to an investigation team responsible for investigating and reporting on unscheduled rudder movement for C/KC-135 series aircraft. This team was to determine all factors, human or material, contributing to the cause of reported hard-over rudder or unscheduled rudder inputs for these aircraft. The investigation team was designed to respond promptly to any unit experiencing an unscheduled rudder movement.

On June 7, 1974, Carswell Air Force Base, Fort Worth, Texas, reported to Tinker Air Force Base that there was an unscheduled rudder movement on KC-135 aircraft S/N 57-1438. Accordingly, an investigation team was organized to travel to Carswell Air Force Base and Mr. Mellinger was the maintenance rigging specialist selected to accompany the team. By memorandum of June 7, 1974, Tinker Air Force Base advised that the investigation team was scheduled to depart on the following day. Mr. Mellinger apparently left from his home for Carswell Air Force Base on Saturday, June 8, 1974, at 8 a.m. pursuant to travel orders dated June 7, 1974.

Mr. Mellinger is claiming overtime compensation for 4 hours traveltime, 8 a.m. to 12 noon, on June 8, 1975, from his residence in Oklahoma City to Carswell Air Force Base. Major Woolsey questions whether this traveltime is to be considered administratively uncontrollable, and thus compensable in view of the fact that Mr. Mellinger's travel orders were dated June 7, 1974, and he did not commence travel until 8 a.m. on June 8, 1974.

The pertinent part of 5 U.S.C. § 5544(a) (1970) dealing with the entitlement of a wage board employee to overtime for time spent in a travel status states that:

"Time spent in a 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

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(iv) results from an event which could not be scheduled or controlled administratively."

Mr. Mellinger's entitlement to overtime compensation under the above provision depends on whether the time he spent in travel resulted from an event which could not be scheduled or controlled administratively.

On the request for overtime duty which the duly authorized official has signed and approved, it is stated that:

"* * * Whenever this base receives a call that there is trouble with a KC-135 aircraft with unscheduled rudder movement we have four hours to dispatch one of these team members to the base where they go to work immediately to try and correct this situation."

As a matter of fact, however, Mr. Mellinger was not dispatched until the day after his base was notified of the event which precipitated the travel.

We have held with respect to classified employees covered by a similar provision of law as that in section 5544(a), *supra*, i.e., 5 U.S.C. § 5542(b)(2)(B)(iv) (1970), that notwithstanding the event which necessitates the travel was not subject to scheduling or control, there must be in addition an official necessity in connection with the administratively uncontrollable event which is so immediate as to preclude proper scheduling of the travel. 51 Comp. Gen. 727 (1972); 50 Comp. Gen. 674 (1971); B-172671, May 11, 1972; B-169078, April 22, 1970. In Mr. Mellinger's case, the unscheduled rudder movement was an administratively uncontrollable event. It also appears there actually was an immediate official necessity for travel despite the fact Mr. Mellinger was not dispatched within 4 hours of notice of the unscheduled rudder movement since the investigation could not be held up until his workday Monday without unduly delaying and impairing necessary corrective action.

However, no reason is given why Mr. Mellinger's travel was not scheduled on June 7 during his work-hours. It could have been that there was no sufficient advance notice of the event

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causing the travel to allow scheduling during his Friday work-hours. If such is the case, Mr. Mellinger is entitled to overtime compensation for the travel. 50 Comp. Gen. 674, supra.

Since the record is not clear as to whether the Department of the Air Force could have scheduled Mr. Mellinger's travel during his Friday work-hours, we are forwarding this matter to the Department of the Air Force for a determination of the facts. If the determination is that he could not have been scheduled to travel during his Friday work-hours, he is entitled to 4 hours of overtime compensation. If, on the other hand, the Department of the Air Force finds there was sufficient notice to schedule Mr. Mellinger's travel during his Friday duty hours, the time he spent in travel on Saturday is not compensable under section 5544(a), supra.

Mr. Mellinger may also be entitled to overtime compensation for the time he spent in travel under the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201, et seq., as amended by Public Law 93-259, approved April 8, 1974, if he is a nonexempt employee. We have held that if an employee drives a vehicle on a nonworkday at the request of or on behalf of an employing activity, he is entitled to having the time spent in travel counted as hours of work for purposes of compensation. If the employee is traveling as a passenger on a nonworkday however, he may only be compensated for the traveltime that is within the corresponding hours of work on his workday. B-183577, November 26, 1975. The record presented does not state whether Mr. Mellinger is exempt from the FLSA, whether he traveled as a passenger, nor what his regular work-hours were. Accordingly, if Mr. Mellinger is a nonexempt employee, the Department of the Air Force should determine if he has performed compensable work within the above-stated rules. Mr. Mellinger would be entitled to compensation for such part of the compensable traveltime which is in excess of 40 hours of work performed in that week. If it is found that Mr. Mellinger is entitled to overtime compensation under both 5 U.S.C. § 5544(a), supra, and FLSA, he should be paid under whichever law gives him the greater benefit. 54 Comp. Gen. 371 (1974).

R.F. KELLER

[Deputy] Comptroller General
of the United States