

*7/24/86*

**DECISION**



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

**FILE:** B-222343

**DATE:** August 4, 1986

**MATTER OF:** Dr. L. Friedman

**DIGEST:**

Entitlement to overtime compensation by Federal employees while in a travel status under 5 U.S.C. § 5542(b)(2)(B)(iv) requires that travel result from an event which could not be scheduled or controlled administratively and that there be an immediate official necessity requiring travel in connection with the event. Thus, travel performed by an employee to attend a scheduled event conducted by a licensee of the employee's agency does not qualify as travel to or from an event over which the Government had a total lack of control, and the employee may not be paid overtime compensation for that travel.

This action is in response to a request for an advance decision from the Nuclear Regulatory Commission regarding the claim of an employee for overtime compensation while in travel status.<sup>1/</sup> It is our view that the employee may not be paid overtime under the circumstances presented.

Dr. L. Friedman, an employee of the Nuclear Regulatory Commission, traveled from his duty station to observe a procedure conducted by a licensee of the agency on Friday, June 7, 1985. The agency states that the event was scheduled by the licensee with advance notice, so that the agency was able to schedule Dr. Friedman's travel during his regular work hours on Thursday, June 6, 1985.

The procedure apparently extended beyond Dr. Friedman's regularly scheduled work hours on Friday, and he was paid overtime compensation for the overtime hours during which he was actually observing the event. That evening after the

<sup>1/</sup> The request was submitted by Graham D. Johnson, Director, Division of Accounting and Finance, Office of Resource Management, U.S. Nuclear Regulatory Commission, Washington, D.C.

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procedure was completed, Dr. Friedman returned to his duty station. He now claims additional overtime compensation for the time during which he performed the return travel to his duty station.

The agency notes that pursuant to 5 U.S.C. § 5542(b)(2)(B)(iv), an employee may be paid overtime for travel to an event which cannot be scheduled or controlled administratively, and that a 1984 amendment to that provision expressly provides that both the travel to and the return travel from such an event are to be considered hours of employment for purposes of overtime pay. The agency asks whether Dr. Friedman's return travel qualifies as hours of employment for purposes of overtime pay under the amended statute.

The general rule regarding overtime pay is that employees may not be compensated for time spent on official 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). As an exception, however, employees of the Federal Government are entitled to overtime compensation pursuant to 5 U.S.C. § 5542(b)(2)(B)(iv), which provides that:

"(2) time spent in a travel status away from the official-duty station of an employee is not hours of employment unless--

\* \* \* \* \*

"(B) the travel \* \* \* (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."

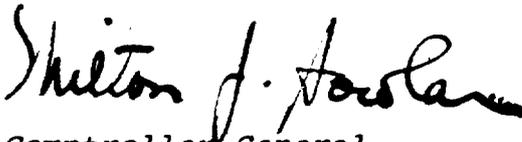
For an event to qualify as administratively uncontrollable there must be a "total lack of Government control." Barth v. United States, 568 F.2d 1329 (Ct. Cl. 1978). In that case, the plaintiff contended that since a weapons test he was sent to observe was an event scheduled by a contractor of the agency, the event was not administratively

controllable. The court found that since the test was performed under contract and the agency was advised in advance of the test dates, there was not a total lack of governmental control. Similarly, in conformity with the court's reasoning in that case we have held that where an employee was required to attend a meeting scheduled with foreign representatives, although the meeting was a matter of accommodation with the foreign governments, overtime compensation was not payable for the traveltime involved since there was not a total lack of control on the part of the United States Government. James M. Ray, B-202694, January 4, 1982.

The 1984 amendment to 5 U.S.C. § 5542 was added to provide overtime pay for all return travel from administratively uncontrollable events. The legislative history of the amendment shows that the provision was in response to our decision B-169419, August 26, 1970, in which we held that although travel by a firefighter to a forest fire for duty associated with its suppression was administratively uncontrollable, travel returning from a fire to the firefighter's duty station was administratively controllable unless lodging facilities at the site of the fire were unavailable. The amendment was designed to authorize overtime compensation for the return travel of firefighters from a forest fire regardless of the availability of lodgings at the site of the fire. See 130 Cong. Rec. S12681 (daily ed. October 2, 1984) (statement of Senator Melcher).

The present case does not involve a forest fire or similar situation. Instead Dr. Friedman attended and observed an event which was scheduled and conducted by an organization operating under a license issued by his agency and the agency was provided with advance notice of this scheduled event. In our view, this precludes a finding of "total lack of Government control" as required under the standard established in Barth v. United States, supra, and thus the travel does not fall within the exceptions authorized by 5 U.S.C. § 5542(b)(2)(B)(iv).

Accordingly, Dr. L. Friedman may not be allowed overtime pay for his return travel.

for   
Comptroller General  
of the United States