The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Paul E. Laughlin - FLSA Entitlement

File: B-170264

Date: September 22, 1986

DIGEST

Electronics Maintenance Technician employed by the Federal Aviation Administration (FAA) claims additional Fair Labor Standards Act (FLSA) compensation. The employee's original entitlement was based on an administrative compromise settlement of an action filed by similarly situated employees. Employee's claim is denied in the absence of evidence that the FAA acted unreasonably in its implementation of the compromise settlement for claimant here and the other 3,000 similarly situated employees. Further, employee has not met his burden of proof to show that meal and sleep periods were not bona fide.

DECISION

This decision is in response to an appeal by Mr. Paul E. Laughlin, an employee of the Federal Aviation Administration (FAA), from the amount awarded him for overtime compensation. For the reasons that follow, Mr. Laughlin's claim is denied.

BACKGROUND

In our decision Paul E. Laughlin, B-170264, September 28, 1982, we held that Mr. Laughlin was entitled to overtime compensation under the Fair Labor Standards Act (FLSA), 29 U.S.C. §§ 201 et seq., retroactive to May 1, 1974. Thus, we remanded his claim to the FAA for calculation of the amount due. The FAA did so and now Mr. Laughlin protests the findings, the determination as to the hours worked, and the gross amounts due.

Mr. Laughlin was employed as an Electronics Maintenance Technician at an FAA long-range radar facility. Mr. Laughlin worked a 4-day week, spending 4 days and 3 nights at the facility. His active duty time consisted of four 10-hour shifts with transportation to and from the facility taking 2 hours from the beginning of the first 10-hour shift and 2 hours from the last shift in the week. His standby time consisted of an average of 28 hours a week. The FAA reports that there were adequate sleeping and eating facilities available on site for use by the crews during the workweek.

The FAA has offered to pay Mr. Laughlin FLSA overtime for all standby hours that exceeded 28, a figure which represents 24 hours of sleep time and 4 hours of meal time. Thus, FAA has determined that Mr. Laughlin is entitled to $602.04 in FLSA overtime for the period of his claim from July 7, 1975, through May 28, 1978. Mr. Laughlin, on the other hand, states that the sleep and meal periods were not bona fide because the staff were always liable to be called on for emergency duty, and that there were never any regularly scheduled periods which would qualify as bona fide sleep and meal time. Mr. Laughlin does not specify when he was called away from meals or had his sleep interrupted. He contends that the mere fact that these meal and sleep periods could be interrupted prevents them from being bona fide.

DISCUSSION

Both the FAA and Mr. Laughlin refer to FPM Letter 551-14 as controlling authority. The letter was issued May 15, 1978, by the Civil Service Commission, now the Office of Personnel Management (OPM), and set out instructions for applying FLSA to Federal employees in receipt of annual premium pay (excepting firefighters and law enforcement personnel). Thus, the instructions were not in effect for nearly the entire period of Mr. Laughlin's claim. Since the instructions were not issued until so late, it could be argued that there was no guidance in effect during the period of Mr. Laughlin's claim that would allow time spent by an employee in a standby status to be compensable as hours of work under the FLSA. Compare Plum Island Animal Disease Center, B-213179, October 2, 1984. However, we decline to so interpret this FPM Letter at this time.

Mr. Laughlin was an Electronic Maintenance Technician. As a result of a reevaluation of duties of this type of position stemming from an administrative settlement agreement made on August 1, 1980, in the case of Schaeffer v. Goldsmith, United States District Court, District of Columbia, Civil Action No. 79-0531, the FAA administratively changed this position's classification for FLSA purposes from exempt (not covered) to nonexempt (covered). The FAA then made compromise payments of FLSA overtime compensation to over 3,000 employees with the same job classification as Mr. Laughlin retroactive to May 1, 1974, based upon an interpretation of the above-cited FPM Letter. See FAA Electronic Maintenance Technicians, B-200112, December 21, 1981.

Therefore, the FAA has compromised and settled thousands of backpay claims similar to Mr. Laughlin's based on the principles later promulgated by OPM. Accordingly, we decline to disturb this compromise settlement in the absence of any evidence that the FAA acted unreasonably in its interpretation, and where to do so might disturb the rights of the claimants whose claims have already been settled. We find nothing in the record to demonstrate that Mr. Laughlin was treated any differently than the other claimants.

Mr. Laughlin also contends that the mere fact that an employee may be called from his meal or sleep period prevents such periods from being considered bona fide meal and sleep periods. However, we have specifically considered this issue in relation to meal periods under FLSA in Edward L. Jackson, 62 Comp. Gen. 447 (1983), where we held that the essential consideration in determining whether a meal period is bona fide is whether an employee's meals are in fact frequently interrupted.

In this case, Mr. Laughlin has merely alleged that the meal and sleep periods were not bona fide. Therefore, he has not met his burden of proof and established his right to payment. 4 C.F.R. § 31.7 (1985).

Accordingly, Mr. Laughlin's claim for additional FLSA compensation is allowed in the amount of $602.04 as calculated by the FAA.

Milton J. Socolar

for Comptroller General
of the United States