DECISION

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

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FILE: B-184717 DATE: FEB 17 1976

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MATTER OF: John B. Rose - Return to duty station on nonworkdays

DIGEST: Employee who voluntarily returns from a temporary duty point to his official station for weekends or other nonworkdays is limited by section 6.5c of the Standardized Government Travel Regulations to reimbursement for the travel expenses occasioned by such return based on the amount of per diem he would have received if he had remained at the temporary duty point for those nonworkdays. The travel policy expressed at 5 U.S.C. § 6101(b)(2) (1970) does not require agencies to return employees to their permanent duty stations for nonworkdays.

This decision is rendered upon the request of Mr. John. B. Rose, an employee of the Department of Transportation, for reconsideration of the determination reached in our Transportation and Claims Division's Settlement Certificate No. Z-2500293, dated January 8, 1974, denying his claim for additional travel expenses.

The additional expenses claimed by Mr. Rose were incurred by him in connection with voluntarily returning to his home or some alternate location during the weekends or other nonworkdays that fell within the periods of his temporary duty assignments in October and November of 1971. His claim for the amount by which his round-trip travel expenses on those occasions exceeded the per diem allowance to which he was entitled for the nonworkdays involved was initially denied by the Department of Transportation under paragraphs 743 and 744 of FAA Handbook 1500.13, Travel, July 30, 1968.

The regulation relied on by the Department of Transportation is the Federal Aviation Administration's implementation of the following language of section 6.5c of the Standardized Government Travel Regulations (SGTR), Office of Management and Budget Circular No. A-7, effective October 10, 1971:

"Return to official station on nonworkdays. At the discretion of the administrative officials a traveler may be required to return to his official

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> station for nonworkdays. In cases of voluntary return of a traveler for nonworkdays to his official station, or his place of abode from which he commutes daily to his official station, the reimbursement allowable for the round trip transportation and per diem en route will not exceed the per diem and any travel expense which would have have been allowable had the traveler remained at his temporary duty station."

Prior to October 10, 1971, substantially the same language appeared at section 6.4 of the SGTR, Bureau of the Budget Circular No. A-7, effective March 1, 1965.

In disallowing Mr. Rose's claim our Transportation and Claims Division (now Claims Division) relied on section 6.5c of the SGTR, quoted above, and on our holding in B-160088, June 2, 1967, indicating that the cost to be borne by the Government in connection with an employee's return to his home for nonworkdays should not exceed the cost which would have been incurred if the employee had remained at his temporary duty station. Mr. Rose takes exception to the applicability of the holding in B-160088, supra, to his situation. Concisely stated, it is his contention that the holding in B-160088, supra, has been rendered inapplicable generally by the enactment of 5 U.S.C. § 6101(b)(2) by section 16 of the Act of October 29, 1965, Public Law 89-301, 79 Stat. 1123. The language of that provision is as follows:

> "(2) To the maximum extent practicable, the head of an agency shall schedule the time to be spent by an employee in a travel status away from his official duty station within the regularly scheduled workweek of the employee."

It is Mr. Rose's understanding that 5 U.S.C. § 6101(b)(2) (1970) requires the employing agency, when practical, to provide for an employee's return to his permanent duty station at all times outside his regular workweek. His argument on this point and with regard to the inapplicability of B-160088, supra, is as follows:

> "On 10/29/65 a substantial change was made in government travel rules by enactment of Sect 16

of PL 89-301. For the first time, the statute provided that '... to the maximum extent practicable, the head of any department ... shall schedule the time to be spent by an officer or employee in a travel status away from his official duty station within the regularly scheduled workweek of such officer or employee.' To use plain language, for the first time the statute required that an employee was to be at his permanent duty station at all times outside of his regular 40 hour workweek unless it was not practicable to do so.

"The Decision B-160088 cited by your rejection of my claim concerned travel primarily in the early part of 1965, before the change of statute was enacted, and under rules adopted under the old statute. The Decision does not mention the change of statute or the changed statute. It does not state any facts that indicate that any of the travel in that case occurred after 10/29/65, the date of statute change. All of the rules cited were adopted before 10/29/65. Therefore Decision B-160088 is not applicable to my claim, and your rejection of my claim based on it is erroneous.

"The point of my claim is that the statute changed 10/29/65, but that travel rules used by government agencies have not changed to comply with it. When the statute states that the standard for return to permanent station is maximum practicality in favor or return, then rules which permit administrative officials to determine return at their discretion, or which permit return to permanent station only when it costs less (unless the employee pays the difference) are clearly not on accord with the statute. The rules cited in Standardized Government Travel Regulations, Circular A-7, revised 1971 which you also cited in your rejection, are clearly in this category and are therefore clearly contrary to the cited statute."

The argument offered by Mr. Rose assumes a broader construction of 5 U.S.C. § 6101(b)(2) (1970) than was intended. The term "travel status" as used in that subsection was not directed at all time spent by an employee on official business away from his official duty station,

but was intended to apply to the time spent by an employee in actually traveling to or from a point other than his regular duty station at which work is to be performed.

Section 16 of Public Law 89-301 is captioned "TRAVEL ON OFFICIAL DUTY TIME" and the comment on that section contained at S. Report No. 910, 89th Cong., 1st Sess. 11 (1965), further clarifies that the legislative concern in its enactment was with actual travel time. That comment is as follows:

> "Section 16 requires that, to the maximum extent practicable, employees' travel time be on official duty time rather than at night or on weekends."

In subsequently enacting the overtime travel provisions of 5 U.S.C. § 5542(b)(2) (1970) - provisions themselves applicable to time actually spent traveling - Congress confirmed that it had likewise intended section 16 of Public Law 89-301 to apply only to actual travel time. The following discussion of section 222 of the Act of December 16, 1967, Public Law 90-206, 81 Stat. 641, appears at S. Report 801, 90th Cong., 1st Sess. (1967):

> "The committee has revised the provisions of the House bill in regard to traveltime and overtime pay. The Senate amendment revises present law so that an employee in the classified service, under wage board pay systems, or in the postal field service shall be paid for traveltime outside of his regular work schedule if the travel involves the performance of work while traveling (such as an ambulance attendant taking a patient to a hospital); is incident to travel that involves the performance of work while traveling (such as a postal employee riding in a truck to a destination to pick up another truck and drive it back to his original duty station); is carried out under arduous conditions; or results from an event which could not be scheduled or controlled administratively.
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> "The committee believes that regulations to implement these provisions should take into account the provisions of section 16 of Public Law 89-301, which requires agencies to the maximum extent

practicable to schedule travel within the regular work schedule. The committee is convinced that the heads of executive departments and agencies can do much more to prevent the abuse of an employee's own time.

"We are not satisfied with the progress agencies have made to comply with the 1965 act. An employee should not be required to travel on his offday in order to be at work at a temporary duty station early Monday morning to attend a meeting. It is an imposition upon his private life that should not be made. Nevertheless, pay for travel status should not be made so attractive that employees would seek to travel on their offdays in order to receive overtime pay. Proper scheduling and administrative planning is the answer to the problems of travel pay in many cases. When emergencies occur or when events cannot be controlled realistically by those in authority, traveltime must be paid for."

We thus find no merit to Mr. Rose's argument that 5 U. S. C. § 6101(b)(2) (1970) requires an employee's return from a temporary duty assignment to his official station for nonworkdays or that the existence of that provision renders the holding in B-160088, supra, inapplicable to his claim.

In fact, the principle expressed in B-160088, supra, has been confirmed in recent decisions dealing with regulations and events postdating enactment of Public Law 89-301. In B-179131, September 27, 1973, we held that pursuant to section 6.5c of the SGTR, quoted above, an employee who voluntarily returned from a temporary duty assignment to his official station for nonworkdays was properly limited to reimbursement for the round-trip travel involved of an amount equal to the per diem he would have received if he had remained at his temporary duty point for the nonworkdays involved. This rule has been recently reiterated in 54 Comp. Gen. 299 (1974).

For the foregoing reasons the denial of Mr. Rose's claim by Settlement Certificate No. Z-2500293, January 8, 1974, is affirmed.

R.F.KELLER

Deputy Comptroller General
of the United States