

DECISION



B. Hubbard 1-10-1
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

8259

FILE: B-189883

DATE: November 7, 1978

MATTER OF: James L. Wilson - Fair Labor Standards
Act - Overtime While Traveling to Temporary
Duty Station

DIGEST: Employee was detailed to temporary duty station to which he commuted on a daily basis. He claimed compensation for the excess time of the travel over his normal home to work commute. Since he traveled away from his official duty station on behalf of his employing agency, GSA, he is deemed to be working when traveling under the Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq., and is entitled to be compensated for the excess of the time spent in travel to the temporary duty station over the time for his normal home to official duty station commuting.

Mr. Sol Cohen, Director, Finance Division, Region 9, General Services Administration (GSA), who is a certifying officer, has requested a decision whether Mr. James L. Wilson, a GSA employee, is entitled to overtime compensation for traveltime under the Fair Labor Standards Act (FLSA), 29 U.S.C. §§ 201 et seq. Mr. Cohen doubts Mr. Wilson's travel meets all of the criteria set out in Federal Personnel Manual (FPM) Letter 551-10, April 30, 1976, entitled "Travel Time as Hours of Work Under FLSA," so as to entitle him to overtime compensation therefor.

The facts in this case are reported by Mr. Cohen as follows:

"Mr. Wilson is assigned to the Santa Ana Field Office of the Public Buildings Service which is located in San Pedro, California. He was detailed to the West Los Angeles Field Office located in Los Angeles, California, from May 10, 1976 through June 20, 1976. The detail was officially documented. Mr. Wilson claims that the time spent in travelling from his home to the West Los Angeles Field

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Office took him more time than his normal home-to-work travel time to the Santa Ana Field Office, that this difference constitutes overtime, and that he is entitled to overtime compensation under the FLSA as outlined in FPM Letter 551-10.

"The travel time was verified in an affidavit from the GSA Field Investigations Office, San Francisco, and resulted in an excess of time in the amount of twenty (20) minutes each way."

Mr. Cohen states, however, that:

"* * * I continue to have doubts as to the validity of the claim in view of the language referred to in FPM Letter 551-10 Table 4; specifically:

"1) Travel as a passenger, which he was not; 2) one-day assignment, which I interpret to mean an employee is instructed on a day-to-day basis as opposed to a one-time 40-day detail; 3) On the question of 'travel.' Was his travelling from home to new assignment a commute or can it be considered 'travel' for purposes of overtime; 4) If the claimant was in a travel status, is he entitled to mileage."

Under FLSA, a non-exempt employee must be compensated at overtime rates for such work which exceeds 40 hours in a week. 29 U.S.C. § 207 (1976). The Civil Service Commission, which administers the FLSA as to Federal employees, has issued guidance concerning FLSA in the form of FPM Letters. The pertinent one here is FPM Letter 551-10, April 30, 1976, entitled "Travel Time as 'Hours of work' under FLSA." In regard to Mr. Cohen's first two points, Table 4 in the Attachment to FPM Letter 551-10 only concerns employees traveling as passengers and, therefore, the rules set out in that table have no application to Mr. Wilson's claim as he drove his car to his temporary duty station. Rather,

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the rule to be applied here is found in paragraph E.I. of the Attachment to FPM Letter 551-10, which holds that if an employee is required to drive to a destination away from his official duty station on behalf of his employing agency he is deemed to be working while traveling. In this connection FPM Letter 551-11, October 4, 1977, entitled "Additional Instructions for Travel Time as 'Hours of Work' under FLSA," clarifies FPM 551-10. Paragraph E of the Attachment to FPM Letter 551-11 states that if an employee drives himself outside regular working hours directly from his home to a temporary duty station, the excess traveltime spent over the time for the normal home to official duty station commuting is compensable traveltime.

In regard to Mr. Cohen's third point, although the travel performed by Mr. Wilson would generally be considered noncompensable commuting time under 5 U.S.C. § 5542 (1976), this has no bearing on his entitlement to compensation under FLSA. An employee who is not exempt from FLSA may be entitled to compensation under either FLSA or 5 U.S.C. § 5542, and he is to be paid under whichever law gives him the greater benefit. 54 Comp. Gen. 371 (1974).

Accordingly, since Mr. Wilson was directed by GSA to drive beyond the limits of his official duty station for the purpose of performing temporary duty, he is entitled to have the excess traveltime as described above treated as work time under FLSA for compensation purposes.

As to the last point raised in the submission, the matter of authorizing mileage to an employee for the use of his automobile in connection with official travel is discretionary with the agency in which he is employed. 52 Comp. Gen. 446 (1973). We have specifically held that a determination that an employee is entitled to overtime under FLSA for time spent in travel does not necessarily mean he would also be paid mileage for the travel performed. B-131810 January 3, 1978. It would depend on GSA's regulations and its determination made thereunder, therefore, as to whether an employee performing travel in a situation such as here present would be entitled to mileage.

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Payment should be made on the voucher in accordance
with the above if otherwise proper.

R. G. K. 11-1-44
Deputy Comptroller General
of the United States