

DECISION



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

PM2

10,095

FILE: B-192184

DATE: May 7, 1979

MATTER OF: Shirley B. Hjellum and Gary B. Humphrey - Per diem expenses

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Request for

DIGEST:

Employees of the Department of Interior who in fact function as itinerant employees working as a survey crew were traveling between temporary duty stations with a 4-hour official stopover planned for their official duty station in Denver. The employees spent the weekend in Topeka, *enroute* Kansas, to avoid incurring overtime under the Fair Labor Standards Act for travel on Saturday and Sunday. *on weekend* Itinerant employees are required to travel on nonworkdays to extent required by the 2-day rule stated in 56 Comp. Gen. 847 (1977) when returning to their official duty station. However, in this case, due to the distance involved in traveling by automobile, the employees are entitled to per diem for the weekend.

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By a letter dated June 8, 1978, Mr. Ernest G. Cummins, an Authorized Certifying Officer with the Bureau of Land Management, Department of the Interior, requests an advance decision on the reclaim vouchers of Mr. Shirley B. Hjellum and Mr. Gary B. Humphrey for per diem expenses.

The record shows that Mr. Humphrey, Mr. Hjellum, and a third employee, Mr. Jimmy W. Begley, worked together as a survey crew. Mr. Hjellum was party chief and Mr. Humphrey and Mr. Begley were survey aids. Mr. Humphrey and Mr. Begley as survey aids were covered by the provisions of the Fair Labor Standards Act, FLSA; however, Mr. Hjellum was exempt from the Act.

The survey crew completed a temporary duty assignment near Hannibal, Missouri, at noon on Friday, September 9, 1977. After closing their temporary field headquarters they left Hannibal and proceeded by automobile to their next temporary duty site in Mecker, Colorado, with an official stopover of 4 hours planned for Denver, their permanent duty station. Mr. Hjellum was traveling in a

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Government vehicle. The other two employees were traveling in Mr. Humphrey's personal vehicle. No mileage was authorized for this vehicle since transportation was available in the Government vehicle.

The survey crew reached Topeka, Kansas, which is approximately 550 miles from Denver around 6 p.m. on Friday, September 9. If the crew traveled on Saturday and Sunday, employees Begley and Humphrey would receive overtime pay under FLSA. However, the survey crew had already worked the previously authorized overtime for that pay period, and Mr. Hjellum did not have the authority to authorize additional overtime. Therefore, the crew remained in Topeka until Monday, September 17.

Mr. Hjellum arrived in Denver in the Government vehicle about 8 p.m. on Monday, September 12, having driven for 12 hours. The other employees stayed overnight in Limon, Colorado, and arrived in Denver at 10 a.m. on Tuesday, September 13. The survey crew left Denver for Meeker, Colorado at 2 p.m. on Tuesday.

The certifying officer suspended per diem for all three employees from the time they departed the temporary duty station at 12 noon on Friday, September 9, until their departure from Denver on Tuesday. The employees have subsequently reclaimed the same, and the certifying officer asks the following questions:

- "1. Should Begley and Humphrey be considered passengers in the Government vehicle and, as such, entitled to the same pay (duty hours) and allowances that Hjellum is entitled to?
- "2. If the answer to Question 1 is negative, should Begley and Humphrey be allowed to delay their return travel to avoid traveling on nonworkdays?
- "3. Should Hjellum be allowed to delay his return travel to avoid traveling on nonworkdays?
- "4. If the answer to Question 3 is negative, should per diem for all three employees be reconstructed

through the fourth quarter on Saturday since Hjellum was able to complete his travel within a reasonable time (8:00 p.m.) on Monday?

- "5. Should annual leave be charged for the excess travel time for Hjellum, an exempt employee and/or for Begley and Humphrey who are nonexempt employees?

The employees involved in this case apparently spend most of their time traveling away from their permanent duty station. In fact it appears that Denver is the designated permanent duty station of the survey crew primarily for administrative purposes because they spend such a large part of their time in a travel status. Only Mr. Hjellum claims a residence at or near the permanent duty station. Travel vouchers of Mr. Humphrey and Mr. Begley show Lebanon, Kansas, and El Dorado Springs, Missouri, respectively, as the employees' residences.

It is stated that although all three employees could have traveled in the Government vehicle operated by Mr. Hjellum, the party chief, Messrs. Humphrey and Begley chose to travel in a privately owned vehicle at no expense to the Government. In the circumstances mileage for operation of the privately owned vehicle is not authorized; however, we do not find that per diem allowed all three employees must necessarily be predicated on the travel performed by Mr. Hjellum. If the travel performed by the employees in the privately owned vehicle was reasonable in the circumstances, per diem and hours of duty for overtime purpose may be paid to them based upon such travel as actually performed. The first question is answered accordingly.

It is stated that the employees remained in Topeka for 2 days because of uncertainty as to whether they should incur excess overtime under FLSA which would have resulted from their continued travel.

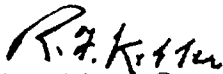
Generally, payment of per diem where an employee delays travel in order to travel during regularly scheduled working hours is governed by the "so called" 2-day per diem rule. This rule was set forth in B-191045, June 13, 1978, as follows:

"* * *inssofar as permitted by work requirements, travel may be delayed to permit an employee to travel during his regular duty hours where the additional expenses incurred do not exceed 1-3/4 days' per diem costs. 56 Comp. Gen. 847 (1977). * * *"

We noted in 55 Comp. Gen. 590, 591 (1975) that where scheduling to permit travel during normal duty hours would result in the payment of 2 days or more of per diem, the employee may be required to travel on his own time. If, however, the circumstances of an employee's travel meet the criteria for payment of overtime compensation set forth at 5 U.S.C. 5542(b)(2), we have held that the travel time on nonworkdays may be compensated. 53 Comp. Gen. 882, 886 (1974); 51 id. 727, 732 (1972); 50 id. 674, 676 (1971). Likewise, an employee may be paid overtime under FLSA when travel must be performed on a nonworkday in order to avoid the payment of more than 1 3/4 days' per diem costs.

The 2-day per diem rule normally would not be for consideration in cases of itinerant employees' travel since for the most part they are in a continuous travel status. Rather, the issue in such cases usually would be the extent to which those employees should be required to travel between temporary duty stations on nonworkdays. That is a matter primarily for administrative determination. However, when travel of itinerant employees to their headquarters is involved the application of the 2-day rule would be required. In the instant case it would appear that in view of the length of the trip from Topeka to Denver, and based on usual driving time, the employees would not have arrived at Denver until Sunday afternoon had they continued travel on Saturday. Thus, the travel performed during normal working hours did not result in payment of 2 days or more per diem. Accordingly, the employees may be allowed per diem for the travel performed.

For the reasons stated the travel vouchers which are returned may be certified for payment if otherwise correct. It follows also that no leave should be charged the employees for the days in question.


Deputy Comptroller General
of the United States