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**DECISION**



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

10,320

FILE: B-193127

DATE: May 31, 1979

MATTER OF: Department of Labor - Overtime Compensation  
for Traveltime

DIGEST: Department of Labor employees who traveled outside regular working hours to attend training are not entitled to overtime compensation for their traveltime under 5 U. S. C. § 5542 and Federal Personnel Manual as the classes were solely for the benefit of the employees and the training was an administratively controllable event.

This action concerns the request of David C. Zeigler, Director, Administrative Programs, Occupational Safety and Health Administration (OSHA), Department of Labor, for an advance decision as to whether employees who traveled outside regular working hours to attend training courses scheduled on Monday morning may be paid overtime compensation.

Mr. Zeigler reports that grievances were filed on behalf of five OSHA employees contending that their collective-bargaining agreement was violated in that the employees should have been compensated for travel spent in weekend travel status or, that under the provisions of the agreement, travel should have been scheduled during normal working hours. In this regard, Article 27 of the agreement required OSHA to schedule and arrange for all official travel to occur within each employee's standard workweek and that travel which results from an event which cannot be scheduled or controlled administratively is to be considered hours of employment for pay purposes.

The grievances for overtime compensation were denied by the Department of Labor "on grounds that the training courses in question were under OSHA's administrative control and should have been scheduled to allow employee travel during normal duty hours." The record indicates that the determination was made because the classes were solely for the benefit of Federal OSHA employees.

The general rule is that traveltime outside of regular duty hours is not considered hours of employment and is not compensable except as provided for by the Congress in 5 U. S. C. § 5542 (1976). See Barth and Levine v. United States, 215 Ct. Cl. (Ct. Cl. No. 349-74, decided January 25, 1978). The relevant statutory

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exception in 5 U. S. C. § 5542(b)(2)(B)(iv) permits overtime pay for travel that "results from an event which could not be scheduled or controlled administratively."

In our view, the overtime statute and the implementing regulations preclude treating the weekend travel in question as constituting an uncontrollable event for the purpose of 5 U. S. C. § 5542(b)(2)(B)(iv).

The Civil Service Commission is authorized by 5 U. S. C. § 5548(a) to prescribe regulations to administer the overtime statutes. In implementing the statutory exception in 5 U. S. C. § 5542(b)(2)(B)(iv), the Commission has interpreted the phrase "could not be scheduled or controlled administratively" to refer to "the ability of an executive agency \* \* \* to control the event which necessitates an employee's travel." Federal Personnel Manual (FPM) Supplement 990-2, Book 550, subchapter S1-3, page 550-8.03 (added July 1969). The FPM Supplement continues as follows:

"--For example, training courses throughout the country generally are scheduled to start at the beginning of the workweek, and usually start at 9 a. m. daily. Attendance at training centers located away from an employee's duty station, therefore, usually will require the employee to travel outside his normal work hours. Since the agency which is conducting the training course can schedule the hours of training, the training course is an event which can be scheduled or controlled administratively; and employees who attend the course will not be paid for time in travel status regardless of whether employed by the agency conducting the training course or another agency.

"--On the other hand, travel will be considered hours of work when it results from unforeseen circumstances (e. g., a breakdown of equipment) or from an event which is scheduled or controlled by someone or some organization outside the Government. (See Comptroller General decision B-163554, April 19, 1968.) (Emphasis added.)

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The FPM Supplement then listed additional examples as an aid in applying the rule as to administratively uncontrollable travel (id. at 550-8.05).

"Case No. 5:

"Training courses by private organizations generally are scheduled to start at the beginning of the work-week. Attendance at a training course conducted in a location away from an employee's duty station may require the employee to travel outside his normal work hours.

"Determination:

"Unless the training course is conducted by a private institution for the benefit of the Government, when a training course is conducted by an institution outside the Government, it is an event which cannot be scheduled or controlled administratively and required travel outside the employee's regular work hours to attend the training course will be considered hours of employment. However, when a training course is conducted by an institution for the benefit of the Government, it is to be assumed that the Government can control the scheduling of the course and therefore the events are under administrative control of the Government." (Emphasis added.)

Our decisions have consistently followed the Commission's instructions on this matter. See B-165311, November 12, 1968. In 50 Comp. Gen. 519, 522-23 (1971), an employee traveled on Sunday to attend two national milk hearings in Washington, D. C., during the week. We stated that economy or other reasons for scheduling a meeting on Monday do not provide a basis for concluding that the meeting is beyond the control of the agency involved. Then, citing the same FPM provision noted above, we held that the travel could not be compensable as overtime. See also B-146288, January 3, 1975.

In deciding the same issue as presented by the OSHA employees in this case, in B-190494, May 8, 1978, we interpreted the cited FPM provisions as follows:

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"\* \* \* Under the statute and the FPM provisions, the agency's ability to control the event necessitating the travel is the key which determines whether the statutory exception is satisfied. The FPM provision states in effect that, when an outside institution conducts a training course for the benefit of the Government, the event is under the administrative control of the Government because the Government can control the scheduling of the course. This is not a rebuttable presumption. Instead, the FPM provision is an administrative interpretation of the statutory exception to the effect that the scheduling of training courses conducted by outside parties for the benefit of the Government is controlled by the contracting agency by virtue of the contract. Since the agency could control scheduling through the contract, a training course is not an uncontrollable event for the purposes of the overtime statute."

In view of the above, the employees' claim for overtime compensation or compensatory time in lieu of overtime compensation must be denied.

  
Deputy Comptroller General  
of the United States