

11097J
DECISION



12167
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-194217

DATE: November 29, 1979

MATTER OF: Overtime Compensation - Immigration Inspectors

DIGEST: Immigration inspector entitled to overtime pay under 8 U.S.C. § 1353a for 3.25 hours worked on Sunday morning and 3 hours worked Sunday night outside his 8-hour Sunday shift was properly paid 1½ days' pay for time on duty of 6.25 hours, computed as an aggregate of the 2 periods of overtime work. Attorney General did not exceed his broad authority to determine what constitutes overtime services under 8 U.S.C. § 1353a in prescribing a midnight-to-midnight cutoff for Sundays and holidays. Also, computation of overtime on second Sunday under similar circumstances was proper.

By letter dated September 27, 1979, Mr. James A. Broz has appealed the July 13, 1979, settlement of our Claims Division denying him additional overtime compensation for work performed on Sunday, January 18, 1976, and Sunday, August 22, 1976. While Mr. Broz does not question the Claims Division's determination that he was paid in accordance with the applicable regulations, he asks whether those regulations are in fact a correct interpretation of the Overtime Act of March 2, 1931, 8 U.S.C. § 1353a.

Mr. Broz is employed by the Immigration and Naturalization Service (INS) as an immigration inspector. As such, he is entitled to overtime compensation for inspectional duties under the following authority of 8 U.S.C. § 1353a:

"§ 1353a. Officers and employees; overtime services;
extra compensation; length of working day

"The Attorney General shall fix a reasonable rate of extra compensation for overtime services of immigration officers and employees of the Immigration and Naturalization Service who may be required to remain on duty between the hours of five o'clock postmeridian and eight o'clock antemeridian, or on Sundays or holidays, to perform duties in connection with the examination and landing of passengers and crews of steamships,

trains, airplanes, or other vehicles, arriving in the United States from a foreign port by water, land, or air, such rates to be fixed on a basis of one-half day's additional pay for each two hours or fraction thereof of at least one hour that the overtime extends beyond five o'clock postmeridian (but not to exceed two and one-half days' pay for the full period from five o'clock postmeridian to eight o'clock ante-meridian) and two additional days' pay for Sunday and holiday duty; in those ports where the customary working hours are other than those heretofore mentioned, the Attorney General is vested with authority to regulate the hours of such employees so as to agree with the prevailing working hours in said ports, but nothing contained in this section shall be construed in any manner to affect or alter the length of a working day for such employees or the overtime pay herein fixed."

Overtime compensation payable under the above-quoted authority is commonly referred to as "1931 Act overtime."

The INS regulations implementing the 1931 Act are set forth in Administrative Manual (AM) 2818. Insofar as pertinent to Mr. Broz' claim, Section 6 provides for payment of 2 days' pay in addition to any payment for the basic workweek for time on duty of eight hours or less on a Sunday or holiday. Section 5 of those regulations provides:

"Section 5, Computation of Overtime Payments:

An immigration officer shall be entitled to the following payments for overtime in the fifteen-hour period beginning at 5 p.m. on one day and ending at 8 a.m. on the following day except where either of these days is Sunday or a holiday. Where either day is a Sunday or a holiday, an immigration officer shall be entitled to the following payments for overtime separately in the seven-hour period from 5 p.m. to midnight which precedes a Sunday or a holiday but which itself is not one, and separately again for the eight-hour period from midnight to 8 a.m. on days following Sundays and holidays which themselves are neither. The following payments

for overtime shall also apply to overtime at any time during the period of the sixteen hours on a Sunday or a holiday remaining upon identification of the eight hours of Sunday or holiday duty:

"One-half day's pay for the initial time on duty of less than three hours: Provided, that time on duty is at least one hour;

"One day's pay for time on duty of three hours or more, but less than five hours during the period;

"One and one-half days' pay for time on duty of five hours or more, but less than seven hours during the period;

"Two days' pay for time on duty of seven hours or more, but less than nine hours during the period; or

"Two and one-half days' pay for time on duty of nine hours or more during the period."

For the purpose of computing an inspectional employee's overtime, the Attorney General has authorized "rollback" time, a credit of up to 2 hours for remaining on duty. Section 7 of AM 2818 which is made applicable to Sunday work by section 8 of AM 2818, provides that in addition to actual time spent on inspection, time shall be allowed for remaining on duty as follows:

"* * * Where two hours or less intervene between completion of an immigration officer's basic hours and the expected or actual time of an arrival, the beginning of time on duty shall be the time at which the immigration officer's basic hours of work ceased: Provided, That where these ceased before 5 p.m., the beginning of time on duty shall be at 5 p.m. Where more than two hours so intervene, the beginning of

B-194217

- time on duty shall be considered to be the time two hours before the time arrival is expected, but in no case earlier than 5 p.m. The ending time shall be the time at which the actual inspection was concluded, 8 a.m., or the beginning time of his next basic hours of duty, whichever is earliest.* * *

Rollback time is similar in concept to "back-up time" authorized for customs inspectors and discussed in 37 Comp. Gen. 276 (1957).

On January 18, 1976, Mr. Broz worked an 8-hour Sunday shift from 9 a.m. to 5 p.m. for which he received 2 days' pay. He does not question the correctness of this payment. Rather, his claim concerns the amount of 1931 Act overtime pay to which he is entitled on that day for working in the morning from 7:15 a.m. to 8:40 a.m. and at night from 11 p.m. to 12:20 a.m. on Monday morning. His work assignments on Sunday, August 22, 1976, involved similar circumstances.

For the purpose of applying the computational principles for Sunday work set forth in Section 5 of the INS regulations quoted above, only the time that Mr. Broz worked on Sunday was used and the hours worked at night were combined with those worked in the morning as follows:

<u>Actual Time</u>	<u>Hours</u>	<u>Rollback</u>	<u>Total</u>
7:15 a.m. to 8:40 a.m.	1.25	2	3.25
11:00 p.m. to midnight	1.00	2	<u>3.00</u>
		Total	6.25 hours

Under its regulations, INS paid Mr. Broz one and one-half days' pay for time on duty of 5 hours or more, but less than 7 hours.

Mr. Broz questions the INS' authority to consider the calendar day from midnight to midnight of Sunday, exclusive of the 8 hours of his Sunday shift, as a single period for the purpose of computing his overtime entitlement and claims that he should have been paid 2 days' pay for his work on Sunday, January 18, 1976. He feels he is entitled to 1 day's pay for his 3.25 hours of work in the morning and 1 day's pay for the 3 hours of work at night since each separate period of work involved time on duty of 3 hours or more, but less than 5 hours. Essentially, Mr. Broz questions whether INS may use the midnight cutoff for Sundays and holidays or whether it must regard the period from

B-194217

5 p.m. of the day preceding the Sunday or holiday until the beginning of the 8 hours of the Sunday or holiday duty as one continuous period for the purpose of determining 1931 Act overtime entitlement. The same question pertains to the period beginning at the end of the 8 hours of Sunday or holiday duty and ending at 8 a.m. of the day following the Sunday or holiday.

Within the limitation set forth in that provision, the 1931 Act authorizes the Attorney General to fix a rate of extra compensation for overtime services of INS officers and employees "who may be required to remain on duty between the hours of five o'clock postmeridian and eight o'clock antemeridian, or on Sundays or holidays to perform inspectional duties." Based on that language, recognizing a distinction between work performed on Sundays and holidays and work performed on other days, we do not believe that the Attorney General exceeded his broad discretion to determine what constitutes overtime services under that Act in prescribing the midnight cutoff for Sundays and holidays. In 24 Comp. Gen. 483 (1945) we considered and posed no objection to a substantially similar Treasury regulation concerning Customs employees that provided a midnight-to-midnight cutoff for Sundays and holidays. That regulation, quoted at page 488 of the decision, provided that the night hours at the end of the workday preceding a Sunday or holiday and the night hours at the beginning of the next regular workday shall be considered as part of a single night.

We find no basis to question the INS regulation insofar as it treats the period from midnight-to-midnight on Sundays and holidays, exclusive of the hours of Sunday or holiday duty, as a single period for computing inspectional employees' 1931 Act overtime entitlement. Accordingly, our Claims Division's settlement denying Mr. Broz' claim for an additional one-half day's pay on each of the two Sundays involved is sustained.

Wilton J. Foster

For the Comptroller General
of the United States