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DECISION



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

FILE: B-195946

DATE: November 26, 1979

MATTER OF: John B. Currier

[Propriety of Payment of Claims Presented by Forest Service Employee]

DIGEST:

1. Penalty payments made by air carriers for failing to furnish accommodations for confirmed reserved space are due the Government, not the traveler, when payments result from travel on official business. This is so notwithstanding that the delay in the employee's travel did not result in any additional cost to the Government and regardless of the fact that the travel was performed outside of the employee's regular duty hours.
2. Where airline overbooked the Thursday night flight on which employee had reservations for return travel and rebooked him on the next available flight, employee is not entitled to overtime compensation or compensatory time off for his travel time under 5 U.S.C. 5542(b)(2)(B). Although agency did not have control over airline's actions which delayed employee's travel, the event that necessitated his travel -- return to his permanent duty station -- was subject to administrative control. Employee's presence at his duty station the following workday was not an administratively uncontrollable event.

Mr. David L. Olexer, an authorized certifying officer for the *AGC00034* Forest Service, U.S. Department of Agriculture, requests an advance decision of this Office concerning the propriety of payment of two related claims presented by Mr. John B. Currier, an employee of the Forest Service.

Upon return, from temporary duty on Thursday, August 24, 1978, Mr. Currier was unable to use his confirmed plane reservation because the airline had overbooked that particular flight. Mr. Currier was rebooked on the next available flight and told by the airline ticket agent that he would be compensated for his inconvenience and delay in an amount equal to the ticket price. Subsequently a check was issued to Mr. Currier in the amount of \$53.70.

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When Mr. Currier was advised by the agency that the check had to be endorsed over to the Government, he questioned the requirement because he felt that the check belonged to him personally insofar as it represented compensation for his personal delay and inconvenience. He pointed out that the delay in his return travel did not result in any increase in his per diem entitlement.

Based on our holdings in B-148879, July 20, 1970, and B-148879, August 28, 1970, the Forest Service denied Mr. Currier's claim to be refunded the amount of the denied boarding compensation. In those decisions we held that employees traveling on Government business may not retain liquidated damages payments made by airlines for failure to provide confirmed reserved space. The basis for so holding is explained in our decision of July 20, 1970, as follows:

"* * * an individual traveling on official business may be reimbursed under applicable statutes for additional expenses caused by unavoidable delays. We, therefore, stated the rule that when a carrier is liable for liquidated damages for failure to provide a traveler on Government business with confirmed space on its flight it is the Government which is damaged and which should be compensated. See also B-151525, dated June 18, 1963, copy enclosed.

"In addition decisions of this Office have consistently held, in these and other circumstances, that an employee of the Government may not be directly reimbursed from private sources for expenses incurred incident to the performance of official duties. Any such payments made in accordance with statutory authority must be to the Government and if tendered to an individual employee shall be viewed as having been received on behalf of the Government. 36 Comp. Gen. 268, 41 id. 806, 46 id. 689, B-166850, dated June 13, 1969.

Mr. Currier is not satisfied with the disposition of his claim by the agency and presents the following alternative arguments in support of his claim which is now before this Office:

"It is my contention that I was not traveling on official time and the inconvenience was my personal loss of time. Therefore the check for compensation was rightfully mine. The two Comptroller General decisions used to rationalize the decision reference 'damages suffered by Government' and there were none; and 'official duties' and I was traveling after my regular duty hours.

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"If it is your opinion that I was on official business at the time, then the check should go to the Government. However, in that case, since I was considered on official business, I should receive four and one-half (4.5) hours of overtime or compensatory time since my duty hours ended at 1630 and I did not arrive home until 2100."

Mr. Currier's argument that the delay for which he received denied boarding compensation did not result in any "damage" to the Government was specifically addressed in B-148879, August 28, 1970. In response to the claimant's argument that no additional expenses were attributable to his delay, we stated:

"As for the fact that, in your case, no additional expenditures were incurred for which the Government would have reimbursed you, we would point out that, although this was so, other travelers in the same circumstances may incur such expenses and cases may well arise in which those expenses would exceed the amount of the denied boarding compensation airlines are required to tender."

More recently in B-192841, February 5, 1979, we rejected a claim for refund of denied boarding compensation based on an argument similar to Mr. Currier's that the travel was performed outside regular duty hours. Pointing out that the employee was nonetheless on official business, we noted that under the provisions of the Federal Travel Regulations (FPMR 101-7)(May 1973), paragraph 1-3.5b, penalty payments made by air carriers for failing to furnish accommodations for confirmed reserved space are due the Government, not the traveler, when the payments result from travel on official business. See also FPMR 101-41, 41 C.F.R. § 101-41.209-4 (1977).

Therefore, since Mr. Currier was traveling on official business within the meaning of paragraph 1-3.5(b) of the Federal Travel Regulations, the check which was tendered to him by the airline for its failure to furnish accommodations for confirmed reserved space due the Government, must be viewed as having been received on behalf of the Government. Accordingly, the claim may not be allowed on the basis of Mr. Currier's personal delay and inconvenience.

As an employee exempt from coverage under the Fair Labor Standards Act Mr. Currier's entitlement to overtime compensation is governed by

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the applicable provisions of section 5542(b)(2)(B) of title 5 of the United States Code, which states in part as follows:

"(b) For the purpose of this subchapter -

* * * * *

"(2) time spent in a travel status away from the official-duty station of an employee is not hours of employment unless--

* * * * *

"(B) the travel (i) involves the performance of work while traveling, (ii) is incident to travel that involves the performance of work while traveling, (iii) is carried out under arduous conditions, or (iv) results from an event which could not be scheduled or controlled administratively."

An agency may grant compensatory time or pay overtime compensation for travel performed outside an employee's regular workday or work-week only if one or more of the conditions set forth in section 5542(b)(2)(B) have been met. B-172671, March 8, 1977. This applies equally to the initial travel and the return trip. 51 Comp. Gen. 732 (1972) and B-172671, supra.

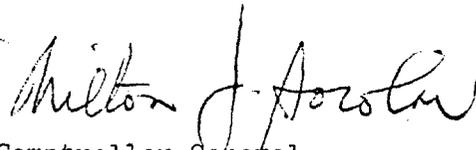
There is nothing in the administrative record which indicates that the conditions listed in items (i) or (ii) apply to Mr. Currier's travel. Similarly there is no evidence in the record that the travel in question was performed under arduous conditions as contemplated by item (iii), and this is true even though some delay and inconvenience was involved. See for example, 41 Comp. Gen. 82 (1961); and B-191045, July 13, 1978.

Thus, the issue presented in Mr. Currier's case is whether, under 5 U.S.C. § 5542(b)(2)(B), his travel on August 24, 1978, resulted from an event which could not be scheduled or controlled administratively. FPM Supplement 990-2, Book 550, Subchapter S-1-3 provides that the phrase "could not be scheduled or controlled administratively" refers to the ability of an executive agency to control the event which necessitates an employee's travel.

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While the airline's action in overbooking the flight on which Mr. Currier had reservations was beyond the agency's control, the fact that his return travel was delayed by that event is not determinative. B-160928, April 16, 1970, and James C. Holman, B-191045, July 13, 1978. To meet the requirements of the statute, the event which necessitated Mr. Currier's travel outside of regular duty hours must have been one which could not be scheduled or controlled administratively. Nothing in the record shows that an event beyond the agency's control required Mr. Currier to return on Thursday evening rather than during duty hours of that or the following workday. In fact, the administrative report indicates that Mr. Currier was responsible for scheduling his own travel and suggests that he could have scheduled his return so he could be home well within his normal workday. An employee's mere presence at his permanent duty station on the following workday is not normally considered an administratively uncontrollable event. Raymond Ratajczak, B-172671, April 21, 1976, and James C. Holman, supra.

Accordingly, Mr. Currier's time in a travel status during hours outside his regular workday on August 24, 1978, did not constitute hours of employment within the meaning of the exceptions contained in 5 U.S.C. § 5542(b)(2)(B) so as to entitle him to overtime compensation or compensatory time off.



For the Comptroller General
of the United States