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DECISION

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

FILE: B-201648 DATE: December 8, 1981

MATTER OF: Mary Joyce Lynch and Darlene I. Drozd - Entitlement to Overtime Pay for Travel to Training - Fair Labor Standards Act

DIGEST:

1. Two Army employees, nonexempt under the Fair Labor Standards Act (FLSA), were authorized privately owned vehicle use as advantageous to the Government. They drove to temporary duty station on a Sunday and returned on a Saturday, their nonworkdays. The employees are entitled to credit for hours of work under FLSA for time they spent driving. The Army allowed employees to schedule travel and may not subsequently defeat employee's entitlement to overtime compensation by stating that travel should not have been scheduled in the manner the employee chose.

2. Employees who travel as passengers on their nonworkdays during hours which correspond to their regular working hours, are entitled to have such traveltime credited as hours of work under FLSA.

3. Fact that employees are not entitled under 5 U.S.C. § 5542 to overtime compensation for certain traveltime has no bearing on whether they are entitled to overtime under the Fair Labor Standards Act, FLSA. Where FLSA provides an employee with a greater pay benefit than that to which he is entitled under 5 U.S.C. § 5542, the employee is entitled to the FLSA benefit.

This decision is at the request of Captain R.N. Freckleton, Finance and Accounting Officer for Fort Indiantown Gap, Annville, Pennsylvania. It concerns the entitlement of two Department of the Army employees to overtime compensation under the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201 et seq.

(1976), for travel on nonworkdays to and from a training assignment. The claim may be paid in accordance with the explanation that follows.

Ms. Mary Joyce Lynch and Ms. Darlene I. Drozd, nonexempt employees under FLSA, travelled from their respective homes near their official duty station, the Army Support Element, Oakdale, Pennsylvania, to Harrisburg, Pennsylvania, on a temporary duty assignment. Both employees were authorized privately owned vehicle (POV) use as being advantageous to the Government. The travel authorizations stated that travel should commence on May 11, 1980, a Sunday.

Ms. Lynch departed her home on May 11, 1980, at 1245, arrived at McKees Rocks at 1330 and apparently departed with Ms. Drozd at 1400 arriving in Harrisburg at 1930. On completion of the temporary duty assignment Ms. Lynch and Ms. Drozd departed Harrisburg on May 17, 1980, a Saturday, at 1110 and arrived at McKees Rocks at 1645. Ms. Lynch left McKees Rocks at 1915 arriving back at her home in Venetia at 2000. Ms. Lynch and Ms. Drozd both claim 6 hours of overtime for travel on May 11, 1980, and 6 hours of overtime for travel on May 17, 1980. Their duty hours are Monday through Friday, 0745 to 1615.

Ms. Lynch claimed mileage from Venetia to McKees Rocks and return, 35 miles each way for a total of 70 miles. Ms. Drozd claimed mileage from McKees Rocks to Harrisburg and return, as well as local mileage in the temporary duty area. Therefore, since Ms. Lynch did not claim mileage from McKees Rocks to Harrisburg and return, it appears that the two employees travelled together for that portion of the trip and that Ms. Lynch travelled on her own between McKees Rocks and her residence.

The accounting officer states that the overtime was justified by the approving official on the basis of Federal Personnel Manual (FPM) Letter 551-10, April 30, 1976, and a Department of the Army letter entitled

"Overtime Pay in Conjunction With Travel to and From Training Courses," dated April 8, 1977. The latter two references outline conditions under which travel-time is considered hours of work under FLSA. The accounting officer questions this approval of the overtime because there is no indication that the performance of work was required while traveling, or that the agency could not possibly have scheduled the temporary duty assignment so as to allow travel during regular duty hours. In this regard he refers to 5 U.S.C. § 5542(b)(2) (1976) and FPM Supplement 990-2, Book 550, S1-3.b, April 7, 1972.

Section 5542 of title 5, United States Code, and the Office of Personnel Management's instructions in FPM Supplement 990-2, Book 550, S1-3.b, should not be confused with overtime compensation under FLSA. The two employees here are covered by the overtime provisions of both § 5542 and FLSA, but separate determinations must be made to ascertain whether the employees are entitled to overtime compensation under either law. The fact that Ms. Lynch and Ms. Drozd are not entitled to overtime compensation for their travel under 5 U.S.C. § 5542 and FPM Supplement 990-2, Book 550, S1-3.b, has no bearing on whether they are entitled to overtime compensation under the FLSA's separate criteria. We have held that where FLSA provides an employee with a greater pay benefit than that to which he is entitled under 5 U.S.C. § 5542, the employee is entitled to the FLSA benefit. Dian Estrada, B-199360, May 5, 1981, 60 Comp. Gen. _____; 54 Comp. Gen. 371, 375 (1974).

In determining whether the traveltime in question is hours of work under FLSA, the following instructions are pertinent if a nonexempt employee:

> "(1) performs work while traveling (including travel as a driver of a vehicle), * * * or (3) travels as a passenger on nonworkdays during hours which correspond to his/her regular working hours." FPM Letter No. 551-10, April 30, 1976.

There is no question that the Army authorized the travel on May 11, 1980, a Sunday. Moreover, the Army did not direct the employees to return on a day other than May 17, 1980, a Saturday. We have held that where an agency allows an employee to schedule travel and the employee travels during corresponding hours on a nonworkday, the agency may not subsequently defeat the employee's entitlement to overtime compensation by stating that the travel should not have been scheduled in the mannner the employee chose. Dian Estrada, cited above.

Therefore, under the above rules the employees' entitlement for credit of traveltime as hours of work under FLSA is as follows.

On May 11, 1980, Ms. Lynch travelled for 3 hours, 1245-1330 and 1400-1615, during her corresponding duty hours and she is entitled to credit for that time as hours of work. The 3 hours and 15 minutes she spent travelling outside her corresponding work hours are not hours of work unless she drove during that time. Assuming Ms. Drozd did all of the driving from McKees Rocks to Harrisburg on May 11, Ms. Drozd is entitled to credit for 5-1/2 hours of work from 1400 to 1930.

On May 17, 1980, Ms. Lynch travelled for 5 hours and 5 minutes, from 1110 to 1615, during her corresponding work hours and is entitled to credit for such time as hours of work. Of the traveltime after her corresponding work hours, it appears that Ms. Lynch only drove 45 minutes, from 1915 to 2000, on her return to Venetia from McKees Rocks, for which she is entitled to credit for hours of work. The total hours of work for Ms. Lynch for May 17, therefore, is 5 hours 50 minutes. Again assuming Ms. Drozd drove her car from Harrisburg to McKees Rocks, she is entitled to credit for 5 hours 35 minutes of driving time as hours of work (1110 to 1545).

The above computation, of course, assumes that each employee did the driving which we have constructed from their separate claims for mileage. If Ms. Lynch were to have shared the driving between McKees Rocks

and Harrisburg, then any time she drove after her corresponding duty hours would be credited to her as hours of work. See Note 2, Table 3, Attachment to FPM Letter 551-10. By the same token, any time spent by Ms. Drozd as a passenger after corresponding work hours would not be creditable hours of work. The computation also assumes the travel was between home and lodgings at the temporary duty station and return. See Attachment to FPM Letter 551-11(4), Table 2A, October 4, 1977.

The Army has not supplied us with the time of the two employees' lunch periods. We note, however, that bona fide meal periods are deducted from hours of work. Attachment to FPM Letter 551-10(8), Table 3, Note 1. If, therefore, the employees' lunch periods cut across any of the above time periods found to be hours of work, such time must be deducted from the total creditable hours of work.

If, after considering the above, it is found that any hours of work for the time spent travelling exceeds 40 in a week for either employee, the employee should be paid overtime for such traveltime under FLSA.

for Milton J. Socolar
Comptroller General
of the United States