

DECISION

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

Kiedinger
P2M-I

29408

FILE: B-211007

DATE: September 25, 1984

MATTER OF: Gary Van Hine, et al., - Fair Labor
Standards Act Overtime

DIGEST:

1. Two nonexempt employees stationed at Sitka, Alaska, were required to perform a 1-day temporary duty assignment on a remote island with transportation to and from the island solely dependent on Government aircraft. At their scheduled return time, neither a plane nor a boat could be safely dispatched because of inclement weather. They were forced to remain there overnight without food or shelter. They claim 15 1/2 hours of overtime, but the agency wants to deduct for sleep time. Although not entitled to overtime compensation under 5 U.S.C. § 5542, the employees' claims under the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201 et seq., are allowed. Under FLSA in order for sleep time to be considered noncompensable, adequate facilities must exist for that purpose. Since there were no such facilities and the employees were forced to spend the night in the open, they remained in a compensable duty status the entire time.
2. Three nonexempt employees stationed at Sitka, Alaska, were required to perform a multiple-day temporary duty assignment at an isolated site in mid-winter. Transportation to and from that site was solely dependent on Government aircraft. They were to be returned at 9 a.m., on a non-workday, but the plane did not arrive as scheduled. They were each paid for some of the time actually spent on the beach waiting for the plane. The

030126

agency denied overtime for other corresponding hours because they had been relieved from duty. They are not entitled to overtime compensation under 5 U.S.C. § 5542. Under the Fair Labor Standards Act the employees are only entitled to receive compensation for the hours they spent on the beach waiting for the travel back to Sitka as the waiting time occurred during their corresponding work hours, 8-4:30. They are not entitled to overtime compensation for the time when they were relieved from duty and were not on the beach waiting for the plane.

This decision is in response to a request from an Authorized Certifying Officer, National Finance Center, Department of Agriculture. The matter involves the entitlement of five Forest Service employees to receive overtime compensation incident to travel to locations isolated from their permanent duty station.

Since all of the employees discussed in this decision are designated as nonexempt employees under the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201 et seq. (1976), they are entitled to overtime compensation under the FLSA, or title 5, United States Code, whichever provides the greater benefit. Canal Zone Government Employees, 54 Comp. Gen. 371, 375 (1974); and Dian Estrada, 60 Comp. Gen. 434 (1981).

Two separate factual situations are presented for our consideration.

I.

The first involves two nonexempt engineering technicians, Mr. Gary Van Hine and Mr. Theodore A. Allio, both of whom were stationed in Sitka, Alaska, at the time the claim arose. Their regular tour of duty was 8 a.m. to 4:30 p.m., Monday through Friday.

On Wednesday, September 24, 1980, Mr. Van Hine and Mr. Allio were assigned to perform a 1-day temporary

B-211007

duty assignment at a remote duty site, Catherine Island. Transportation from Sitka to Catherine Island and return was provided by Government-owned aircraft. On the day in question, they were flown to the island to perform their assignment. However, by the time they were scheduled to return to Sitka that day, the weather had become inclement and neither a plane nor a boat could be safely dispatched to pick them up. There were no provisions for food or shelter on the island. As a result, they were forced to spend the night of September 24-25, 1980, on the beach in the open.

Mr. Van Hine and Mr. Allio were brought back to Sitka on the morning of September 25, 1980, during regular working hours. Following their return, each of them requested and was paid for 15 1/2 hours of overtime for the period between the close of business on the 24th and the beginning of business on the 25th. The certifying officer now asks the following two questions:

Were the employees properly paid for all the hours spent waiting to be picked up, or would the fact that they performed no work during this time preclude payment at all?

If reimbursement is allowed, should they only have been reimbursed for the hours in excess of the eight hours allocated to sleep?

There is no entitlement to overtime compensation under 5 U.S.C. § 5542 because the mere restriction of an employee to his worksite outside of duty hours does not entitle him to overtime compensation therefor. We have held that to be entitled to overtime compensation an employee must not only be so restricted but he must also be required to hold himself in a state of readiness to perform work. Paul E. Laughlin, 57 Comp. Gen. 496 (1978). Since standby duty was neither contemplated nor actually performed, the hours spent overnight on the island are not compensable under 5 U.S.C. § 5542.

Subsection 204(f), of Title 29, United States Code, authorizes the Office of Personnel Management (OPM) to

B-211007

administer the FLSA. In view thereof, we requested and received OPM's views on these claims.

The advisory report from OPM in Messrs. Van Hine's and Allio's case cited 5 C.F.R. § 551.432 which sets forth the conditions under which sleep time is considered noncompensable and is to be appropriately deducted from a tour of duty. The OPM analyzed these two claims as follows:

* * * It would be difficult to imagine an environment in which an employee would be less free to use the time for his or her own purposes than an uninhabited island without shelter off the coast of Alaska. The argument that the employees are not entitled to compensation for the time in question because they performed no actual work is without merit. OPM's regulations for deductions of sleep time from a tour of duty obviously presupposes a situation in which sleep time may be compensable. As long as the employees are in a duty status, in fact, sleep time must be compensated unless it meets the conditions for deduction specified in 5 C.F.R. § 551.432. Under the facts presented, there were no adequate facilities for sleeping, and sleep time may not then be deducted. Therefore, we believe that the agency's original decision to consider the time between the shifts compensable is required by the FLSA.

We concur with OPM's analysis. The operative conditions used in the regulations as establishing noncompensable periods of sleep time are that it must be "bona fide" and the facilities for sleep must be adequate. In the present case, the record shows that Mr. Van Hine and Mr. Allio had no shelter or other facilities on the island. Accordingly, we conclude that their overnight time was hours of work under FLSA and that they were properly paid for overtime for the 15 1/2 hours between 4:30 p.m. on September 24, 1980, and 8 a.m. on September 25, 1980.

II.

The second situation arose in February 1981, and involved three other nonexempt engineering technicians, Mr. Daniel T. Barnett, Mr. Barnet M. Freedman and Mr. Albert M. Gonzales. They were also stationed at Sitka and their regular tour of duty was 8 a.m. to 4:30 p.m., Monday through Friday. During the period in question, they were assigned to multiple-day field work at an isolated location, Trap Bay. Transportation from Sitka to Trap Bay and return was provided by Government-owned aircraft. They were scheduled to be picked up by aircraft at 9 a.m. on Saturday, February 14, 1981, a nonworkday. While preparing to be picked up that morning, they were notified that the plane would not arrive until 10 a.m. They went to the beach to meet the plane at the rescheduled time. When it did not arrive by 11 a.m., they recontacted Sitka and were advised that the plane could not make it until later that day and they were to check back. At 2 p.m., they returned to the beach and were advised that the plane would arrive about 4:30-5 p.m. They remained on the beach until the plane arrived at 5:11 p.m., and they arrived in Sitka at 6 p.m.

The Forest Service subsequently reimbursed the three employees for 2 1/2 hours of overtime, representing the time they actually spent waiting on the beach after 2 p.m., but not for the travel time from Trap Bay to Sitka. The reasons given for the denial for reimbursing them for any additional hours were: (1) The travel time to Sitka was on a nonworkday and outside of their normal working hours, and (2) except for the time these employees spent on the beach waiting for the plane, they were not working and their time was not unduly restricted.

The certifying officer asks the following questions:

Were the employees properly paid for the time they spent on the beach waiting for the plane, or should they also have been paid for the time spent between 10 and 11 a.m. while on the beach?

Should they have been reimbursed for the entire time spent waiting for the plane to arrive?

Since the time spent traveling outside of the employees regular work hours was beyond the control of the agency or the employees, would the time be reimbursable under Title 5?

As stated above, 5 U.S.C. § 5542 only provides overtime compensation when an employee is restricted to a worksite outside of duty hours if he is also on standby duty. Laughlin, above. Messrs. Barnett, Freedman and Gonzales were not in a standby duty status within the meaning of section 5542. Moreover, although the return travel was delayed it is not compensable under 5 U.S.C. § 5542(b)(2)(B)(iv) which provides for overtime compensation when travel results from an event which could not be scheduled or controlled administratively. In order for travel to be compensable as overtime hours of work under 5 U.S.C. § 5542(b)(2)(B)(iv) there must be both an uncontrollable event and an immediate necessity for the employee's travel. 50 Comp. Gen. 674 (1971). There was no immediate necessity for the employee's travel in this case. Finally, since the traveltime back to Sitka is noncompensable under 5 U.S.C. § 5542, the actual waiting time on the beach, being incident to noncompensable traveltime is also noncompensable under 5 U.S.C. § 5542.

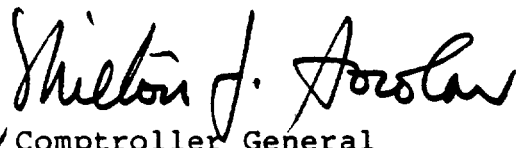
In view thereof, we conclude in the cases of Messrs. Barnett, Freedman, and Gonzales that any overtime compensation to which they may be entitled must be by virtue of the FLSA, or not at all.

The Office of Personnel Management, citing to 5 C.F.R. § 551.422(a)(4) and FPM letter 551-10, April 30, 1975, has advised us that travel and waiting time on a nonworkday is compensable when it occurs within the corresponding work hours of the employee's workday. We concur with OPM's advice. Therefore, the time spent by these employees waiting for the plane from 10 a.m. to 11 a.m. and again from 2 p.m. to 4:30 p.m. is compensable as that time was normal waiting time during the employee's corresponding work hours. However, this travel and waiting time may only be compensable to the extent that it falls within corresponding work hours. Mary Joyce Lynch and Darlene I. Drozd, 61 Comp. Gen. 115 (1981). FPM Letter 551-10, above. Accordingly, the waiting time and travel performed after 4:30 p.m. when

B-211007

the employee's regular workday ended, is noncompensable under FLSA. The time spent between 8 a.m. and 10 a.m. and between 11 a.m. and 2 p.m. when the employees were relieved from duty and were not on the beach waiting for the plane would not be compensable worktime.

In view of the above, Messrs. Barnett, Freedman and Gonzales should be compensated for one more hour of overtime from 10 a.m. to 11 a.m. for their waiting time on Saturday, February 14, 1981.

for 
Comptroller General
of the United States