

DECISION

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

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PLaw Matters

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FILE: B-213593**DATE:** March 20, 1984

MATTER OF: Gerald F. Krom and James A. Bosch
"Two-day Per Diem Rule"
Reimbursement of Travel Costs

DIGEST:

The "2-day per diem" rule limiting per diem which is outlined in 56 Comp. Gen. 847 (1977) and 55 Comp. Gen. 590 (1975) is not applicable where an employee's travel is extended by 2 or more days, not due to his personal desire to avoid working on nonworkdays, but rather due to Government orders based upon an administrative determination that it would be cost effective to extend the employee's traveltime in lieu of requiring weekend overtime work.

This responds to a request for an advance decision by a certifying officer of the Omaha District, Army Corps of Engineers (Corps) as to the propriety of payment of travel claims submitted by Mr. Gerald F. Krom and Mr. James A. Bosch. For the following reasons, we conclude that the claims may be paid as submitted by the employees.

Claim of Gerald F. Krom

Mr. Krom, a drill rig operator with the Corps was ordered to travel from Denver, Colorado, his temporary duty (TDY) station, to his permanent duty station, Omaha, Nebraska, to transport a drill rig from Omaha to Denver because of a major mechanical breakdown of the rig being used in Denver. Mr. Krom prepared a Government-owned, truck-mounted rig for transport to Denver on the afternoon of November 18, 1982. He departed from Omaha with the rig at 9:15 a.m. on Friday, November 19, and drove to Julesburg, Colorado, arriving at 5:15 p.m. the same day. Mr. Krom remained in Julesburg Saturday and Sunday and departed for Denver on Monday at 7:00 a.m. He arrived with the rig at 11:15 a.m. Monday. Mr. Krom then remained in Denver performing work in a TDY status.

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Relying on our decision at 55 Comp. Gen. 590 (1975), the Corps' Finance and Accounting Office denied Mr. Krom's claim for per diem for the weekend spent in Julesburg, Colorado. In 55 Comp. Gen. 590 (1975), we denied payment of per diem for a 3-day (holiday) weekend to an employee who traveled during work hours on a Friday to report for temporary duty the following Tuesday. Noting the administrative finding that the employee's early departure "was a matter of personal convenience," we discussed the "2-day per diem rule" stating that, "* * * the payment of additional per diem costs for 2 days or more for the purpose of facilitating an employee's travel during regular duty hours is not considered reasonable." (Emphasis added.) We also discussed the so called "2-day per diem" rule in George K. Derby, B-203915, June 8, 1982, where we stated that it, "* * * governs payment of per diem when an employee delays travel in order to travel during regularly scheduled working hours * * *." (Emphasis added.)

The facts here are distinguishable from those in 55 Comp. Gen. 590 (1975). Mr. Krom, a nonexempt employee under the overtime provisions of the Fair Labor Standards Act (FLSA) was ordered by his supervisors to travel as he did and stay in Julesburg for the weekend based upon a management decision that it would be more cost effective to pay Mr. Krom per diem for the weekend than to pay him FLSA required overtime for working on the weekend. In addition, due to the potential cost of having the drilling crew idle, it was administratively determined that Mr. Krom had to start moving the rig Friday, instead of waiting until the following week. Under circumstances such as these, where an employee's traveltime is extended for the calculated pecuniary advantage of the Government rather than for the employee's personal convenience, the "2-day per diem" rule of 56 Comp. Gen. 847 (1977) and 55 Comp. Gen. 590 (1975), limiting per diem does not apply. Accordingly, Mr. Krom may be paid per diem for the Saturday and Sunday during which he was instructed to remain in Julesburg, Colorado.


Claim of James A. Bosch

Mr. Bosch was a drill rig operator and driver with the Corps and was a nonexempt employee under the overtime provisions of the FLSA. He was ordered to drive a heavy duty Government-owned vehicle from Fort Peck, Montana, his TDY station, to his permanent duty station in Omaha, Nebraska. The travel began on Wednesday, September 29, 1982, and Mr. Bosch arrived at Sioux City, Iowa, on Friday, October 1, at 4:30 p.m. Under standing orders requiring prior approval for overtime work, Mr. Bosch was not given approval to continue travel from Sioux City, Iowa to Omaha, Nebraska on October 2, 1982, in an overtime status.

Instead, Mr. Bosch remained in Sioux City over the weekend and completed his travel between the hours of 7:30 a.m. and 11:00 a.m. on Monday, October 4.

While it is unclear whether it would have been possible for Mr. Bosch to begin transporting the vehicle on Tuesday instead of Wednesday thereby preventing the weekend holdover in Sioux City, we nonetheless conclude that since the holdover in Sioux City was based upon orders to avoid overtime work and an administrative determination that the Government would save money if Mr. Bosch stayed over in Sioux City the "2-day per diem rule" of 56 Comp. Gen. 847 (1977) and 55 Comp. Gen. 590 (1975) is not applicable. Mr. Bosch may be paid per diem for the weekend of October 2 and October 3, 1982, spent in Sioux City.

The vouchers are returned and payment may be made in accordance with the above.


for Comptroller General
of the United States