



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Robert E. Brown - Limitation on Title 5 Overtime
Reimbursement By Foreign Government

File: B-229089

Date: December 28, 1988

DIGEST

Employee on 60-day temporary duty assignment in Saudi Arabia who worked 276 hours of overtime may only be paid for 216 of those hours in view of 5 U.S.C. § 5547 which limits basic pay plus premium pay for any pay period to the maximum rate for GS-15. Limitation in section 5547 is mandatory and applies regardless of fact that Saudi Arabian Government reimbursed the United States Government for the full cost of the accelerated construction program on which the employee worked the overtime hours.

DECISION

This decision is in response to a request by G. E. Durham, Finance and Accounting Officer, Mobile District, Corps of Engineers, Department of the Army, for an opinion as to whether 5 U.S.C. § 5547 prohibits the full payment of all overtime worked by Mr. Robert E. Brown during a 60-day temporary duty assignment in Saudi Arabia beginning September 1981. Mr. Brown was required to work 276 hours of overtime during this 60-day period due to an accelerated construction program for the nation of Saudi Arabia which reimbursed the United States for the total cost. Because the Department of the Army believes that 5 U.S.C. § 5547 is applicable, Mr. Brown was only reimbursed for 216 of his overtime hours worked.

The issue raised here is whether the limit imposed by 5 U.S.C. § 5547 on aggregate biweekly pay applies to a federal employee required to work overtime on a construction program for the benefit of another country and for which the United States is fully reimbursed by the other country.

Section 5547 of title 5, United States Code, in effect at the time, provided:

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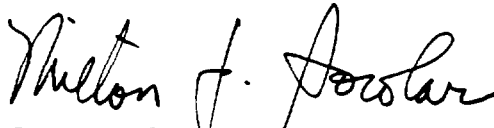
"An employee may be paid premium pay under sections 5542 [overtime rates], 5545 (a)-(c) [night, standby, and irregular overtime differentials], and 5546(a), (b) [Sunday and holiday pay] of this title only to the extent that the payment does not cause his aggregate rate of pay for any pay period to exceed the maximum rate for GS-15."

Under 5 U.S.C. § 5547 an employee may receive premium pay, including overtime pay as provided in 5 U.S.C. § 5542, "only to the extent that the payment does not cause his aggregate rate of pay for any pay period to exceed the maximum rate for GS-15." The maximum GS-15 rate to be considered in applying 5 U.S.C. § 5547 is that in effect for the pay period(s) when the overtime is earned. Robert J. Otto, B-194740, Aug. 24, 1979. Section 5547 is a limitation on aggregate pay (basic pay plus premium pay) prescribed in terms of basic pay (maximum rate of GS-15). 60 Comp. Gen. 198 (1981).

In 26 Comp. Gen. 750 (1947), we held that the restriction placed upon the aggregate compensation which may be paid federal employees by the derivative section of 5 U.S.C. § 5547 precludes an employee from receiving overtime compensation if the amount so received would increase his or her aggregate compensation above the limit set by that section. Further, we held that an employee could not be authorized compensatory time off as a result of overtime work if the limitation on aggregate compensation prevented the employee from being paid for such work. We have followed this position in subsequent decisions. Department of the Army Civilian Payroll System, B-211286, Oct. 2, 1984, and cases cited therein.

Section 5547 does not contain any exclusions or exceptions that would permit a waiver of the limitation, even where the total cost of the program requiring the overtime work is fully reimbursed by a foreign government.

Accordingly, the maximum aggregate biweekly basic and premium pay allowable under 5 U.S.C. § 5547 is the maximum biweekly rate payable for GS-15 at the time in question and claims for amounts in excess thereof may not be allowed.

for 
Comptroller General
of the United States