



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Gary A. Pace - Overtime Pay - Emergency Traveltime
File: B-231718
Date: February 3, 1989

DIGEST

When an employee of the National Park Service is released from temporary duty assignment to return to his home park as soon as possible and be available for fire fighting duty or for backup duty resulting from forest fire emergency, the condition of immediate official necessity occasioned by an administratively uncontrollable event is properly met under 5 U.S.C. § 5542(b)(2)(B)(iv). His claim for overtime pay for traveltime on an off-duty day is allowed.

DECISION

Gary A. Pace appeals the May 5, 1988, settlement of our Claims Group (Z-2864074) denying his request for overtime compensation while in travel status. For the reasons set forth below, we reverse the settlement of the Claims Group and allow his claim.

BACKGROUND

Gary A. Pace, a North District Ranger (RM&VP) with the National Park Service (NPS), United States Department of the Interior, was assigned to temporary duty at Jefferson National Expansion Memorial, St. Louis, Missouri, on a Special Events Team (SET) assignment scheduled for July 3-8, 1985.^{1/} Mr. Pace states that his team was ordered to remain at Jefferson Memorial after July 8 to protect visitors and resources due to staff shortages and a threatened illegal encampment. Due to a fire emergency in the West, however, the SET team members were ordered to immediately return to their home parks on July 10, a scheduled day off. When he

^{1/} Mr. Pace was a General Schedule employee (GS-9) stationed at the Cuyahoga Valley National Recreation Area, Brecksville, Ohio. His position was exempt under the Fair Labor Standards Act (FLSA).

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arrived at Cuyahoga Valley about 6 p.m. that day, he called the Chief Ranger and was told to prepare for immediate fire dispatch if needed, but also, as the only remaining qualified fire training instructor, to prepare to test and train other employees in basic firefighting so they could be sent to the West.

Mr. Pace remained at Cuyahoga Valley and worked 15 hours overtime on July 11, his second scheduled day off, and also worked double shifts on July 12 and 13, due to the fire emergency. He was paid for those overtime hours worked, but not for the 7 hours of traveltime on July 10.

The overtime claim is supported by the Chief Ranger at the Jefferson Memorial. He says that on July 10, 1988, he received orders from the Midwest Region to release the SET team immediately; their schedule and flight reservations were changed, and the team was immediately released and ordered to return to their home parks.

The team leader of Mr. Pace's Special Events Team also supports the overtime claim. He says he was informed on July 10 that the team was released because of fire conditions in the West with orders to return home on the first available flights and to prepare for dispatch to fire staging areas or to augment staff shortages at home created by earlier fire dispatches. He believes that overtime pay is justifiable because the fire situation was uncontrollable.

The NPS Midwest Region denied the claim, stating that although the Regional Law Enforcement Specialist released the SET team "as early as possible to return to their home parks . . ." because of the fire emergency, he "did not order them to return post haste." (Emphasis in original.) The Region maintains that only the team leader was specifically ordered back to his home park for immediate fire dispatch and that Mr. Pace was not so ordered, although his prompt return did make him available for fire dispatch or to provide park backup.

The NPS Central Payroll Office agreed with the Region and forwarded the claim to our Claims Group recommending disallowance. The Claims Group disallowed the claim, stating that we will not substitute our judgment for the agency's judgment that Mr. Pace's return travel was administratively controllable.

OPINION

As a General Schedule employee, Mr. Pace's overtime entitlement is governed by 5 U.S.C. § 5542. Under section 5542(b)(2), time spent in a travel status is not hours of employment unless it occurs within regularly scheduled hours or, under subsection (B)(iv), "results from an event which could not be scheduled or controlled administratively, including travel by an employee to such an event and the return of such employee from such event to his or her official-duty station." (As amended by Pub. L. 98-473, Sec. 322, Oct. 12, 1984, 98 Stat. 1874.)

The above statutory authority has been interpreted to require the satisfaction of two conditions. First, the event requiring off-duty travel must indeed not be susceptible to administrative control. That is, there must be a "total lack of Government control" in the scheduling of the event.^{2/} Secondly, there must exist "an immediate official necessity" occasioned by the unscheduled and administratively uncontrollable event.^{3/}

It is clear that the claimant's sudden departure from St. Louis was administratively uncontrollable because his return travel was required by a forest fire emergency in the Western Region of the United States. As to the second condition, we find that the circumstances of the request for release of Mr. Pace from his travel assignment do satisfy the requirement of immediate official necessity. Although the NPS contends that Mr. Pace was not ordered to return immediately, the agency admits that the request passed through the chain of command was to release the SET team "as early as possible" in order to be available for potential fire duty or to serve as backup for those already dispatched to fires. The NPS also states that Mr. Pace's prompt return made him available for either fire dispatch or to provide backup as indeed he did. He was placed on emergency overtime duty the day after his evening return from St. Louis and worked overtime the following 2 days also. In view of this fact and the statements of the Chief Ranger at Jefferson Memorial and the SET team leader, we believe there is sufficient evidence to support our finding of immediate official necessity in connection with Mr. Pace's return travel on his off day.

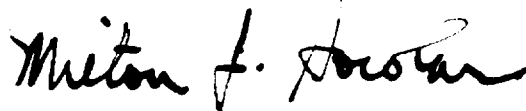
^{2/} Dr. L. Friedman, 65 Comp. Gen. 772 (1986), citing Barth v. United States, 568 F.2d 1329 (Ct. Cl. 1978).

^{3/} Thomas G. Hickey, B-207795, Feb. 6, 1985, citing John B. Schepman, et al., 60 Comp. Gen. 681 (1981).

Our resolution of the conflict over the circumstances surrounding the request for Mr. Pace's return is consistent with our decision in Charles S. Price, et al., B-222163, Aug. 22, 1986. In that case, due to shortage of manpower, three investigators of the Food and Drug Administration in the Cincinnati District traveled during off-duty hours on an "as soon as possible" basis to San Francisco in order to assist in emergency investigations of food contamination and poisoning. We sustained their overtime claims in spite of the fact that other Cincinnati investigators traveled the following day and in spite of the agency's contentions that, in fact, there was no need to travel that same evening. Thus, in allowing the claims we looked to the actual necessity for immediate travel, and the sense of urgency stemming from the request that assistance be provided as soon as possible. Similarly, Mr. Pace's travel satisfies the requirement of immediate official necessity in view of the NPS request that his team be released to return as soon as possible. Mr. Pace's as well as his immediate supervisor's impression of urgency very clearly stemmed from this agency request.^{4/}

Furthermore, the fact that Mr. Pace was requested to return to his home park to be available for potential as opposed to definite dispatch to a fire does not change the urgency of the circumstances of his travel. An emergency such as this is not confined to the fire itself, but extends to all duties relating to the event. The request for assistance on an "as soon as possible" basis was sufficient to satisfy the condition that there be an immediate official necessity for the travel in question, whether it resulted in actual dispatch to the fires or in serving as backup for those already dispatched.

In view of the fact that Mr. Pace's off-duty travel was required by an administratively uncontrollable event and there was immediate official necessity occasioned by the event, we reverse the settlement of our Claims Group and allow Mr. Pace's claim for overtime compensation.



Acting Comptroller General
of the United States

^{4/} See Gerald Rowell and Marvin Griffin, Jr., B-186005, Aug. 13, 1976.