



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Robert L. Moore, Jr.

File: B-239097

Date: September 17, 1990

DECISION

The issue to be decided is the entitlement of Mr. Robert L. Moore, Jr., to receive overtime compensation under the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201 et seq. (1928), for travel performed outside normal duty hours when traveling to and from an administratively uncontrollable event.^{1/}

Mr. Moore, who was employed by the Forest Service in Montana as a Civil Engineering Technician, was also qualified to serve in a number of capacities in fighting forest fires. During the period August 30-September 12, 1987, he was dispatched with others for emergency firefighting duties in California. Since he was a non-exempt employee, he was entitled to be paid for that duty either under title 5, United States Code, or under the FLSA, whichever provision gave him the greater benefit.

Since Mr. Moore's travel outside normal duty hours was caused by a firefighting emergency which could not be scheduled or controlled administratively, the time he spent in a travel status going to and returning from the emergency was included in the computation of his title 5 overtime, pursuant to 5 U.S.C. § 5542(b)(2)(B)(iv), as amended.^{2/} The Forest Service did not include that traveltime in computing his overtime under the FLSA, since only hours actually worked are compensable under the FLSA and no provision was made to include after hours traveltime as compensable overtime hours worked.

^{1/} Decision requested by Mr. James Arthur, Acting Director, Personnel Management, Forest Service.

^{2/} Section 101(c) of Public Law 98-473, October 12, 1984, 98 Stat. 1874, amended the statute to include time spent traveling to and returning from an uncontrollable event as hours of employment for purposes of title 5 overtime.

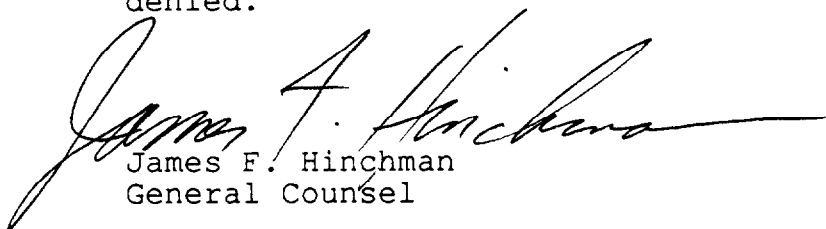
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Mr. Moore disagrees and claims the additional amount he would receive if the traveltime were counted under when FLSA. He contends that the 1984 amendment made to 5 U.S.C. § 5542(b)(2)(B)(iv) was intended to apply under both title 5 and the FLSA for travel performed outside normal duty hours when that travel results from an administratively uncontrollable event.

We agree with the agency's position regarding the application of the amendment. The overtime pay provisions of title 5 and FLSA are separate and distinct from each other. In those circumstances where an employee is entitled to both types of overtime, the regulations state that the employee shall be paid under whichever authority provides the greater entitlement. 5 C.F.R. § 551.513 (1990).

The language used in Public Law 98-473 to amend 5 U.S.C. § 5542(b)(2)(B)(iv) makes no reference to the FLSA, nor is there anything in the legislative history of that amendment to suggest that it was intended to amend any provision of law other than 5 U.S.C. § 5542(b)(2)(B)(iv). See 130 Cong. Rec. S12681 (daily ed., Oct. 2, 1984) (statement of Senator Melcher).

Accordingly, we conclude that the Forest Service correctly calculated Mr. Moore's overtime entitlements, and his claim is denied.


James F. Hinchman
General Counsel