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DECISION



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

FILE: B-199152

DATE: November 28, 1980

MATTER OF: Paul G. Abendroth, et al. - Overtime claim for travel

- DIGEST:
1. Three Navy employees who are nonexempt under Fair Labor Standards Act (FLSA) are entitled to overtime under FLSA for return travel from Scotland. "Foreign exemption" under FLSA is construed narrowly, and hours of work in covered area during same workweek will defeat "foreign exemption."
 2. Three Navy employees completed temporary duty in Scotland on Friday, the last day of their "regularly scheduled administrative workweek," and returned to United States on Saturday, a nonworkday. Travel on nonworkday which is within 7-day workweek is compensable under Fair Labor Standards Act. "Regularly scheduled administrative workweek" is a concept under title 5, United States Code, and has no application to the FLSA.
 3. Three Navy employees who performed temporary duty in Scotland returned to United States on Saturday, a nonworkday. Traveltime is not compensable as overtime under title 5, United States Code, under these circumstances.

The issue in this decision is whether employees who are nonexempt under the Fair Labor Standards Act (FLSA) are entitled to overtime compensation for travel where they are returning from temporary duty at an overseas location. We hold that although they are not eligible for overtime under title 5, United States Code, they are entitled to overtime under the FLSA since the return travel within the same workweek defeats the "foreign exemption" under the FLSA.

This decision is in response to a request from A. W. Countryman, Chief Steward, Federal Employees Metal Trades Council, Portsmouth Naval Shipyard, Portsmouth, New Hampshire. The request has been handled as a labor-management relations matter under our procedures

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contained in 4 C.F.R. Part 21 (1980). We have received comments on this matter from the Commander, Portsmouth Naval Shipyard, and we have requested and received a report from the Office of Personnel Management (OPM) on the issue of overtime entitlement under the FLSA.

BACKGROUND

In October 1979, 29 Pipefitters at the Portsmouth Naval Shipyard were assigned to temporary duty at the Shipyard's worksite in Holy Loch, Scotland. Work was due to be completed on Friday, October 12, but due to unforeseen circumstances, three Pipefitters, Paul G. Abendroth, Fred R. Bragdon, and Paul W. Dubois, were selected and assigned to work on Friday and return home on Saturday, October 13. These three employees were paid for 8 hours of overtime while in travel status on Saturday although their return travel involved 12 hours of traveltime. However, the Shipyard subsequently collected back the overtime payments from the employees on the basis that overtime could not be paid for this travel under either title 5, United States Code, or the FLSA.

The union argues that although work in a foreign area is exempt from coverage under the FLSA, the three employees in this case returned to the United States on Saturday, October 13, and thereby performed "hours of work" within their administrative workweek in an area covered by the FLSA. The Shipyard argues, however, that these three employees did not perform work in the United States within their "regularly scheduled administrative workweek" and, therefore, the time spent in travel status is not compensable under the FLSA.

OVERTIME UNDER TITLE 5

Under the provisions of 5 U.S.C. § 5544(a) (1976), a prevailing rate employee may not be compensated for time spent in travel status away from the official duty station unless the travel:

- "(i) involves the performance of work while traveling,
- "(ii) is incident to travel that involves the performance of work while traveling,

"(iii) is carried out under arduous conditions, or

"(iv) results from an event which could not be scheduled or controlled administratively."

Neither the union nor the Shipyard claims that these three employees are entitled to overtime compensation under this section. That is consistent with our decisions holding that such travel is not considered hours of work for the purposes of title 5, United States Code. See, for example, 49 Comp. Gen. 209 (1969).

OVERTIME UNDER FLSA

The remaining question is whether these nonexempt employees are entitled to overtime under the FLSA. In view of the authority of the Office of Personnel Management under 29 U.S.C. § 204(f) (1976), to administer the FLSA with respect to Federal employees, we requested OPM's views of this matter.

The report from OPM states that the "foreign exemption" contained in 29 U.S.C. § 213(f), and 5 C.F.R. § 551.204, exempts from the overtime provisions of the FLSA any employee whose services during the workweek are performed in a workplace within a foreign country or certain territories. However, it is OPM's view that exemption criteria, including the foreign exemption, are to be narrowly construed. After reviewing the legislative history of section 213(f), OPM believes that the purpose of the exemption is to exclude the application of the FLSA only to an employee who is an integral part of the foreign economy. Thus, since the FLSA is a workweek law, OPM concludes the exemption is applicable on a workweek basis to an employee on temporary duty if the employee spends the entire workweek in the foreign area. Where the employee performs any compensable work in a "covered" area (the United States or certain territories or possessions) in any workweek, OPM believes it would not be appropriate to apply the foreign exemption. Thus, since travel is considered "hours of work" under the FLSA, OPM concludes that an employee who is permanently stationed in a covered area and who performs compensable travel to or from an exempt area will not be subject to the foreign exemption for that workweek. See also Federal Personnel Manual (FPM) Letter 551-7, para. 2.a.

The Shipyard argues that since these three employees performed all their work within the "regularly scheduled administrative workweek" (presumably Monday through Friday) in Scotland, a foreign area, their travel on Saturday to a covered area does not fall within this workweek and is therefore not compensable.

Although there does not appear in the OPM regulations any definition of the term "workweek", we believe for the purposes of the FLSA that an employee's workweek cannot be limited to his "regularly scheduled administrative workweek," which is a term used for purposes of compensation under title 5, United States Code. See 5 U.S.C. §§ 6101 and 5544. We note, for example, that under the Department of Labor's regulations governing FLSA in the private sector, a workweek is defined as a fixed and regularly recurring period of 168 hours, seven consecutive 24-hour periods. See 29 C.F.R. § 778.105 (1979). In addition, in determining what constitutes "hours worked," the regulations issued by OPM cite the following example in FPM Letter 551-1, Attachment 4:

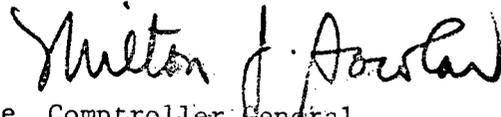
"Time spent traveling (but not other time in travel status) away from his official duty station is 'hours worked' when it cuts across the employee's workday. The time is not only 'hours worked' on regular workdays during normal work hours but also during the corresponding hours on nonwork days. Thus, if an employee regularly works from 8:30 a.m. to 5:00 p.m. from Monday through Friday, the time spent traveling during these hours is worktime on Saturday and Sunday as well as on the other days."

Therefore, we conclude that time spent traveling need not be limited to the employee's "regularly scheduled administrative workweek" in order to be compensable under the FLSA.

Applying these principles to the facts of this case, we assume that these three employees' regular workdays were Monday through Friday and that their workweek for the purposes of the FLSA was Sunday through Saturday. The travel they performed on Saturday was "hours worked" under the FLSA during the workweek. Therefore, the foreign exemption would not be applicable due to the performance of compensable work (travel) in the covered area during that workweek.

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Accordingly, these employees are entitled to overtime compensation under the FLSA for the hours of travel on Saturday that corresponded to their normal working hours.

A handwritten signature in cursive script, appearing to read "Milton J. Aorstar".

For the Comptroller General
of the United States