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DECISION



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

Entitlement to Night Differential Pay for Hour Lost Due to Daylight Savings Time

FILE: B-199261

DATE: January 21, 1981

MATTER OF: Jack D. Cotterman - Night Differential -
Daylight Savings Time

DIGEST: FAA employee who normally worked between midnight and 8:00 a.m., but who remained on the job until 9:00 a.m. on the morning following the shift from standard to daylight savings time may not be compensated at the night differential rate for the extra hour worked between 8:00 a.m. and 9:00 a.m.

Employee is entitled to payment of night differential only for hours actually worked with statutory exceptions as noted. Since his rights are governed by statute, we need not consider his argument that the payment of premium pay to employees who elect to take an hour of annual leave is inequitable.

Mr. Paul E. Trayers, Assistant General Counsel, Federal Aviation Science and Technological Association, the designated representative of Mr. Jack D. Cotterman, has submitted for review the Settlement Certificate issued in response to his claim for night differential incident to his employment with the Federal Aviation Administration (FAA). The question we are asked to decide is whether night differential should be included in the claimant's rate of basic pay for the hour lost due to daylight savings time. The claim is denied for the following reasons.

Mr. Cotterman is an electronics technician employed by the FAA at the Air Route Traffic Control Center in Olathe, Kansas. The collective bargaining agreement which covers Mr. Cotterman provides that: "When changing to daylight savings time, employees shall be afforded an opportunity to remain on duty for eight (8) hours." On April 30, 1978, the change to daylight savings time was effected, and Mr. Cotterman worked an 8 hour shift between midnight and 9:00 a.m. Employees are paid a night differential for regularly scheduled

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work between the hours of 6:00 p.m. and 6:00 a.m. 5 U.S.C. § 5545(a) (1976). Mr. Cotterman was compensated at the night rate for his work between midnight and 2:00 a.m. and his work between 3:00 a.m. and 6:00 a.m., a total of 5 hours. He was not paid night differential for the hour which he worked between 8:00 a.m. and 9:00 a.m. Mr. Trayers argues that it is inequitable to deny Mr. Cotterman premium pay for that additional hour since other employees, who elected to take an hour of annual leave rather than work an extra hour, were compensated at the night rate for that hour.

When employees work the midnight to 8:00 a.m. shift on the night when clocks are advanced 1 hour, they are entitled to 5 hours pay at the night rate. Conversely, when the transition from daylight savings back to standard time is made in the fall, they would be entitled to compensation for 7 hours of night differential. 26 Comp. Gen. 921 (1947). Our decision, 26 Comp. Gen. 921 supra, noted that the daylight time statute involved did not affect the statutes pertaining to the hours of duty and pay of Federal employees. Therefore, it was held that employees should be paid only for the elapsed time that the employees were actually on duty. However, since that holding would result in a loss of 1 hour of pay for the employees on duty when the change to daylight savings time occurred, agencies were permitted to charge employees 1 hour of annual leave and pay them their regular compensation.

Consistent with the above decision and prior to the amendment of the Federal Employees Pay Act of 1945 by the passage of section 301(a) of Public Law 763, 68 Stat. 1110, September 1, 1954, night differential was payable only for hours actually worked. Public Law 763 continued that policy with the exception of absences due to holidays and of short periods of leave with pay during a pay period. 36 Comp. Gen. 734 (1957). The legislative history discloses that the underlying purpose of the

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continuance of night differential during a short period of leave is to eliminate the administrative costs occasioned by numerous minor payroll changes. 39 Comp. Gen. 733 (1957).

The statutory provisions and the same rationale have been continued to this day. Section 5545(a) of Title 5, United States Code provides:

"(a) ***nightwork is regularly scheduled work between the hours of 6:00 p.m. and 6:00 a.m., and includes-

* * * * *

"(2) periods of leave with pay during these hours if the periods of leave with pay during a pay period total less than 8 hours."

See also 5 C.F.R. § 550.122(b) (1980); 53 Comp. Gen. 292 (1973).

In 57 Comp. Gen. 429 (1978), this Office considered a case involving the effect of daylight savings time on employees with regularly scheduled night shifts who were charged 1 hour of annual leave as a regular agency policy. We held that, in the alternative, an agency may, by union agreement or agency policy, permit employees to work an additional hour on that day as a method of maintaining a regular 8 hour shift and normal pay. The FAA has apparently correctly applied that method here by a collective bargaining agreement. Thus, as indicated by the foregoing, Mr. Cotterman would be entitled to payment of a night differential only for the hours he actually worked, with the statutory exceptions as noted. Since his rights are governed by statute, we need not consider his argument that the payment of premium pay to employees who elect to take an hour of annual

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leave is inequitable. Mr. Trayers' claim that the agency ought to be required to pay Mr. Cotterman night differential for the extra hour worked between 8:00 a.m. and 9:00 a.m. is denied.

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

Comptroller General
of the United States