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DECISION



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

FILE: B-215923

DATE: January 8, 1985

MATTER OF: Christine Thompson and B. J. Serna - Stay-in-School Program - Compensation for Work Performed Outside Regular Schedules

DIGEST:

1. Ms. Thompson, a Stay-in-School employee, worked outside her normal tour of duty with advance permission of her supervisor in order to accommodate her college examination schedule. The goals of the Stay-in-School Program require agencies to make reasonable accommodations to students' examination schedules. Therefore, she is entitled to compensation for the hours worked outside her normal tour of duty and to restoration of the annual leave erroneously charged her.
2. Mr. Serna, a Stay-in-School employee, was asked to work on Saturday, May 4, 1984. This caused him to work 1 1/2 hours beyond 20-hour limit applicable to such employees during the school year. He is entitled to compensation for the work performed even though it exceeded 20 hours that week. The limitation is not a bar to compensation for work performed under occasional special circumstances.

This decision concerns two college students, Christine Thompson and B. J. Serna, employed under the Stay-in-School Program by the Forest Service, Department of Agriculture.^{1/} Both performed work outside their regular tours of duty with permission from their supervisors. Both were denied full compensation for the time they worked. For the reasons given below, we hold that: (1) Ms. Thompson is entitled to full compensation for the hours she actually worked, as well as restoration of the

^{1/} The decision was requested by Mr. W. D. Moorman, an authorized certifying officer at the National Finance Center, Department of Agriculture (reference A-2 WDM).

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annual leave she was erroneously charged; and (2) Mr. Serna is entitled to be paid for the 1 1/2 hours of work he performed in excess of 20 hours.

BACKGROUND

Pursuant to 5 C.F.R. § 213.3102(w), Federal agencies are authorized to make excepted appointments (Schedule A) to part-time or intermittent positions up to the GS-4 level of difficulty or equivalent, when filled by bona fide students appointed under the Stay-in-School Program. Students in high school or college may be appointed if they need the earnings to continue in school or if they are mentally retarded or severely physically handicapped, and if they meet the other specified conditions. Subsection (w)(2) of 5 C.F.R. § 213.3102 provides that such "[e]mployment does not exceed 20 hours in any calendar week * * *," except that students may work full-time whenever school is officially closed and during school vacation periods.

The Federal Personnel Manual (FPM) in chapter 308, subchapter 9, provides instructions and guidelines for employment under the Stay-in-School Program. According to the FPM, the program "has as its major objective the employment of needy students, giving them a chance to work in Federal agencies so that they can resume or continue their educations without interruptions caused by financial pressures." FPM ch. 308, § 9-1 (Inst. 276, January 29, 1982).

As to the 20-hour per week limitation, section 9-6(d) of FPM chapter 308 explains that students may work part-time, up to 20 hours per week, while school is in session and may work full-time at other times. It further provides that "[i]ntermittent schedules may be arranged for those students who are unable to work under a fixed part-time schedule." In addition, section 9-6(e) of that chapter provides the following:

"e. OVERTIME WORK. Since the purpose of the Stay-in-School Program is to provide productive work for as many students as possible, regular scheduling of overtime is not fully consistent with the nature of this program. While school is in session, students may not exceed the 20-hour per week limitation. * * *"

Section 9-6(e) goes on to say that during vacation periods when students are working full-time, overtime is limited to emergencies or occasional special circumstances. Beyond that, agencies are instructed to select additional students for the program.

With this background in mind, we will turn to the specific circumstances of each claim.

CHRISTINE THOMPSON

On April 16, 1984, Ms. Thompson made a request to her supervisor to work outside her regular 20-hour tour of duty for the pay period April 29, 1984, through May 12, 1984. This request, which was granted, was made to enable her to schedule her work hours around her final examinations at the University of New Mexico. Under her revised schedule she worked only 24 hours during the 2-week period, 11 hours of which were outside the hours of her regular schedule. The regional personnel office, however, took exception to this action. When it submitted Ms. Thompson's time and attendance report to the National Finance Center for payment, it charged her annual leave for the hours she did not work during her regular tour of duty and denied her payment for the 11 hours she worked outside her regular tour of duty. As a result she was paid only for 13 hours of work and was charged 27 hours of annual leave (out of 29 hours then available to her).

Ms. Thompson has protested this action. She requests payment for the 11 hours she actually worked outside her regular tour of duty and restoration of the annual leave charged against her for those hours. We believe that she is entitled to the relief she requests. The purpose of the Stay-in-School Program is served by requiring agencies to accommodate the student's examination schedule to the maximum extent possible. Moreover, as shown above, the Federal Personnel Manual instructs agencies to arrange intermittent schedules for those students who are unable to work a fixed part-time schedule.

We recognize that Ms. Thompson had a regular part-time schedule and not an intermittent schedule. Nevertheless, it appears that her immediate supervisor

approved the revised schedule as a reasonable accommodation to Ms. Thompson's college examination schedule. We believe this approval was valid and should be given effect. Accordingly, Ms. Thompson is entitled to be paid for the 11 hours she worked outside her regular tour of duty and to a corresponding credit of 11 hours to her annual leave account.

B. J. SERNA

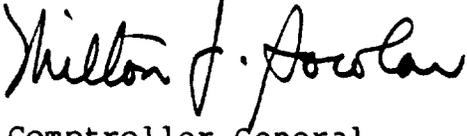
On May 3, 1984, Mr. Serna was asked by his supervisor to work overtime on Saturday, May 5, 1984. The request was made for the purpose of moving furniture due to a reorganization. He consented, and along with several other employees, he worked 6 hours on that Saturday. Several days later, the regional personnel office informed him that he would only be paid for 4 1/2 hours since the additional 1 1/2 hours worked caused him to exceed his 20-hour per week limitation under the program. Mr. Serna requests payment for the 1 1/2 hours, stating that he was never counseled that he was limited to 20 hours and that he performed the work in good faith.

We hold that he is entitled to be paid. The 20-hour per week limitation must be construed in light of the purposes of the program and the need for occasional extra work on the part of the student employees. This is clearly shown by the language of section 9-6(e) of FPM chapter 308, quoted above. The purpose of the limitation in that section is not only to protect each student from an excessive work schedule, but also to provide productive work for as many students as possible. Thus, regular scheduling of overtime is proscribed. However, section 9-6(e) also states that, during vacation periods when students are working full-time, overtime may be scheduled to meet emergency conditions or under occasional special circumstances. We believe this language is equally applicable to the occasional use of overtime during school sessions. We see no evidence that the 20-hour provision was intended to be an absolute prohibition of compensation for work over 20 hours under such specified conditions.

Here, the extra work was performed by Mr. Serna at the request of his supervisor to meet the immediate need to move office furniture on that particular day. In our

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view, this is the type of occasional special circumstance contemplated by the FPM. Hence, Mr. Serna is entitled to be paid for the 1 1/2 hours of time.

for 
Comptroller General
of the United States