

DECISION



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

FILE: B-217578

DATE: February 27, 1986

MATTER OF: Saint Lawrence Seaway Development Corporation - Paid Lunch Period

DIGEST: 1. The Saint Lawrence Seaway Development Corporation proposes an 8-hour shift for its maintenance and marine employees including a 15-minute rest break at 9 a.m. and a paid 20-minute combination rest/meal period at 1 p.m. A noncompensable lunch period may not be extended or shortened by a paid rest period because there exists a legal distinction in both origin and effect between a rest and a meal period. Time for a meal period is not compensable if the employees are not required to perform substantial duties. On the other hand, time for brief rest periods may be authorized without decrease in compensation.

2. A proposal to establish an 8-hour shift with a paid 20-minute combination rest/meal period may not be implemented. It is clear that the purpose of this period is to provide the employees with a duty-free period for the purpose of eating, and there is no indication of any need for a change from the current situation in which the employees are not required to perform substantial duties during the meal period. Accordingly, the employees may not be compensated for the rest/meal period.

The Saint Lawrence Seaway Development Corporation (Seaway Corporation) asks whether it may agree to provide its wage grade maintenance and marine employees with an 8-hour workday which includes a paid 15-minute rest break at 9 a.m. and a paid 20-minute combination rest/meal break at

1 p.m. We conclude that the Seaway Corporation may provide a brief paid rest break, but may not provide a paid lunch period.^{1/}

Background

The issues involved in this case arose out of labor contract negotiations between the employees' exclusive bargaining representative, the American Federation of Government Employees, Local 1968, and the Seaway Corporation. During these negotiations, Local 1968 proposed that wage grade maintenance and marine personnel work an 8-hour day with a paid 15-minute rest break at 9 a.m. and a paid 20-minute rest/meal period at 1 p.m. The parties agreed to submit the matter to us for a decision concerning the legality of the proposal. See Article 13b of the "Memorandum of Agreement, Saint Lawrence Seaway Development Corporation and Local No. 1968, American Federation of Government Employees," approved by the parties on September 7, 1984.

Currently, the maintenance and marine employees' basic workweek is Monday through Friday, 7:30 a.m. to 4 p.m. Included is a 10-minute rest break in the morning, an unpaid 30-minute meal break from 12 to 12:30 p.m., and a 10-minute rest break in the afternoon. The Seaway Corporation states that due to the nature of the work done by these employees, rest and meal periods can be scheduled. The proposal would establish an 8-hour workday from 7:30 a.m. to 3:30 p.m. Employees would be provided a 15-minute rest break between

^{1/} This is a request for a decision concerning the legality of an expenditure of appropriated funds on a matter of mutual concern to an agency and to a labor organization. Jurisdiction arises under 4 C.F.R. Part 22 (1985). The American Federation of Government Employees, Local 1968 was furnished a copy of the request for a Comptroller General decision on February 6, 1985, as required by 4 C.F.R. § 22.4 (1985) and has not objected to the submission of this matter to this Office. Although the Seaway Corporation pays all its expenses, including employee salaries, out of the tolls it collects, these funds are considered appropriated funds. See B-193573, January 8, 1978.

9 and 9:30 a.m. and a 20-minute combination rest/meal period between 1 and 1:30 p.m. Both of these periods would be included as hours of work.

The Seaway Corporation asks whether such periods would be compensable, thus enabling the maintenance and marine personnel to work an 8-hour shift. If the answer to this question is in the affirmative, the Seaway Corporation asks whether this same arrangement may be extended to General Schedule personnel.

Analysis

Although the authority of the head of an agency to schedule a basic 40-hour workweek and to establish lunch breaks and rest periods is well established,^{2/} that authority is not unlimited, and such schedules may be reviewed by this Office where the expenditure of public funds is involved. B-190011, December 30, 1977. Also, see Federal Personnel Manual, chapter 610, paragraph 1-1c.

There is a clear distinction between lunch breaks and rest periods. A lunch break is a period of time set aside for the purpose of eating. Unless required by the work performed an employee is off duty and in a nonpay status during an authorized lunch period. Generally he is free to depart his place of work and use such time as he or she desires. A lunch period may be compensable work time only if the employee is required to perform substantial official duties during that period. 42 Comp. Gen. 195 (1969); B-190011, supra; see also B-166304, April 7, 1969, and the cases cited therein. Under 5 U.S.C. § 6101(a)(3), such breaks in working hours in excess of 1 hour may be scheduled only if the agency head determines that a longer break is necessary for the limited reasons specified therein.

On the other hand, an employee may be compensated for authorized rest periods. The purpose of a rest period is to provide a brief period of time for a respite from the work routine, perhaps in order for the employees to recharge

^{2/} National Broiler Council, Inc. v. Federal Labor Relations Council, 382 F. Supp. 322 (E.D.Va. 1974); B-166304, April 7, 1969.

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themselves before continuing with their duties. It has been recognized that rest breaks promote the efficiency of the employee. See 29 C.F.R. § 785.18 (1985). An agency head may grant brief rest periods when he or she determines that this would be beneficial or essential to the efficiency of the Federal service. B-166304, April 7, 1969. Hence, such rest periods are considered to be part of the employee's day and are compensated.

The general authority of heads of agencies to regulate the conduct of employees, as contained in 5 U.S.C. § 301, has been cited as the basic authority for the allowance of brief lunch periods. A primary test for establishing a bona fide meal period is whether the employees are required to perform substantial duties and thus are not completely relieved from duty for the purpose of eating. 25 Comp. Gen. 315 (1945); B-190011, December 30, 1977; and B-56940, May 1, 1946. This rule holds true for employees covered by the Fair Labor Standards Act, 29 U.S.C. §§ 201-219 (1982), and is applied even though the break is shorter than 30 minutes. Blain v. General Electric Co., 371 F. Supp. 857 (W.D.Ky. 1971).

It appears to us that the proposal presented by the Seaway Corporation attempts to avoid the prohibition against compensating employees for lunch breaks by shortening the lunch break, attaching the afternoon rest period to it, and renaming the result a "combination rest/meal period." It is clear that since this period is scheduled near the normal lunch period and is described as a "combination rest/meal period," its primary purpose is to provide time for employees to eat. To permit employees to be compensated for this time would be to ignore not only the legal distinction between lunch and rest periods, but also the purpose underlying each.

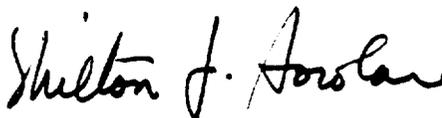
Conclusion

Since the purpose of the 20-minute rest/meal break is to permit employees to take their noonday meal and since it is stated that the employees are not required to work during work breaks, the rule applicable to meal periods rather than rest breaks must be applied. That is, any period set aside for the purpose of permitting employees to eat where the employees are not required to do substantial duties is

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not compensable, regardless of the name used to describe it. As indicated above, the fact that the employee is free from job requirements to take a meal, not the length of time involved, governs the treatment of such a period. Blain v. General Electric Co., supra.

Accordingly, since there is no requirement that work be performed during the meal/rest break proposed there is no authority to include that break as compensable time. This conclusion applies equally to General Schedule employees and wage grade employees.

for 
Comptroller General
of the United States