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Bruce Goddard
Civ. Pers.

DECISION



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

FILE: B-181347

DATE: March 2, 1977

MATTER OF: James G. Genius - Overtime
Compensation for Travel

DIGEST: Agricultural Marketing Services (AMS) grading inspector claims overtime compensation for travel under 5 U. S. C. § 5542(b)(2). Travel, in response to requests for grading services, to places adjacent to his permanent duty station, for which scheduling of requests cannot be controlled by AMS, is not compensable if response to such requests is included in employee's regularly scheduled duties. This is so since, although requests are not controllable by AMS, it schedules time of employee's travel. Moreover, travel to such regular duty assignments is normal commuting travel which is not compensable under 5 U. S. C. § 5542(b)(2).

This decision is at the request of Mr. John Balog, Chief, Fiscal Operations and Services Branch, Financial Services Division, Agricultural Marketing Service, Department of Agriculture, who believes instructions given AMS by our Claims Division by letter of October 29, 1974, Z-2506552-TEM-1, are inconsistent with decisions B-175608, June 19, 1972, and November 15, 1973. The matter discussed in letter Z-2506552-TEM-1, supra, is whether Mr. James G. Genius may be paid overtime compensation for time he spent in travel outside of his regular duty hours during the period September 23, 1970, through October 14, 1972, incident to his employment with the Grain Division of AMS.

The record shows that Mr. Genius' permanent duty station and residence are located in New Orleans, Louisiana. Mr. Genius' duties with the Grain Division include responding to requests of applicants for grading services at various locations in and around New Orleans outside his regular duty

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hours. He is claiming overtime compensation for all periods of time he spent traveling between various temporary duty locations and his residence outside his regular duty hours during the period September 23, 1970, through October 14, 1972. A portion of his claim for overtime compensation was allowed by AMS as the travel resulted from events which could not be scheduled or administratively controlled. However, a portion of Mr. Genius' claim was denied by AMS because the travel in question was performed within the New Orleans corporate city limits or locations within a 20-mile radius of his permanent duty station, and AMS Instruction 350-1, Travel Time Pay, November 15, 1973, did not allow the payment of overtime compensation for travel performed to such locations.

Section 5542(b)(2) of title 5, United States Code, sets out the circumstances under which a classified employee is entitled to overtime compensation for time spent in travel as follows:

"(2) time spent in a travel status away from the official-duty station of an employee is not hours of employment unless--

"(A) the time spent is within the days and hours of the regularly scheduled administrative workweek of the employee, including regularly scheduled overtime hours; or

"(B) 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."

The Civil Service Commission has defined official duty station in the Federal Personnel Manual (FPM) Supplement 090-2, Book 550, subchapter S1-3 as follows:

"By official duty station we mean the employee's designated post of duty, the limits of which will be the corporate limits of the city or town in which the employee is stationed, but if not stationed in an

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incorporated city or town, the official duty station is the reservation, station, or established area, or, for large reservations, the established subdivision thereof, having definite boundaries within which the designated post of duty is located. This use is the same use of this term as in the Standardized Government Travel Regulations."

Accordingly in our decisions B-175608, June 19, 1972, and 52 Comp. Gen. 48 (1973), we stated that it was not within an agency's discretion to redefine corporate limits or otherwise to limit entitlement to overtime compensation to travel performed beyond a particular radial distance.

In the Claims Division's letter, Z-2508552-TEM-1, above, it was noted that the AMS regulation which restricted overtime compensation for travel within a 20-mile radius of an official duty station, AMS Instruction 350-1, supra, was not in effect during the period of Mr. Genius' claim and that another AMS regulation, which did not contain the above restriction, was applicable. This apparently has led to confusion at AMS as to whether the Claims Division was now sanctioning the invalidated regulation. Mr. Balog states in his submission:

"We assume you are saying that whatever regulation we had in effect during the claim period governs Mr. Genius' entitlement to pay. However, we had received Comptroller General Decision B-175608, dated June 19, 1972, prior to taking action on Mr. Genius' claim. We thought that this Decision applied to all travel overtime payments, including retroactive ones, taking precedence over any conflicting agency regulations. We, therefore, request clarification on whether or not we may make payments for a period of time prior to a CG Decision when the payments would be in conflict with that Decision. (The conflict concerns whether or not travel overtime is proper for travel performed within the 'commuting area' of the official duty station.)"

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The reason our Claims Division mentioned AMS Instruction 350-1, supra, was to state that it was not effective for the period of the claim and therefore its applicability to the claim or its propriety need not be discussed. It is not to be construed as implying that that portion of AMS Instruction 350-1, supra, which restricted overtime compensation for travel within a 20-mile radius of an official duty station, should be applied to any claim. Rather, the rule stated in decisions B-175608, June 19, 1972, and 52 Comp. Gen. 446 (1973), supra, is applicable to all claims for overtime compensation for travel, whether prior to or after the effective date of AMS Instruction 350-1, supra.

Our Claims Division instructed AMS in letter Z-2506552-TEM-1, supra, that if it was determined that the time spent by Mr. Genius traveling to locations outside the corporate limits of New Orleans, meets the criteria set out in 5 U. S. C. § 5542(b)(2)(B), supra, he should be compensated for such time, regardless of whether the travel was to points within a 20-mile radius of his permanent duty station.

Mr. Balog believes this instruction is inconsistent with our prior decisions. He states:

"While the 20-mile radius specified in our AMS Instruction 350-1, dated November 15, 1973, was ruled to be incorrect in CG Decision B-175608 * * * this Decision did provide that:

'Where an employee's regularly scheduled duties involve assignments to which he commutes daily from his headquarters or residence, we do not regard his travel from home and back to perform those regularly scheduled duties as an imposition upon his private life significantly different than the travel required of an employee in reporting to his permanent duty station. For this reason we do not regard Mr. Gamble's travel as overtime hours of work within the meaning of 5 U. S. C. 5542 (b)(2).'

'We applied the above ruling to the travel time claimed by Mr. Genius which fit the category of

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'commuting daily from his headquarters or residence' and disallowed payment for such hours.

"We believe that the ruling given us on this matter in your claim decision PA-Z-2506552-TEM-1 is not consistent with the above-quoted Decision B-175608. We, therefore, request further clarification of this point."

In our decision 52 Comp. Gen. 446 (1973) above, in which we interpreted 5 U. S. C. § 5542(b)(2)(B)(iv), we considered the overtime compensation entitlement of an employee assigned on a rotational basis for 90-day periods to provide grading services at various plant locations in and around his duty station. The length of the employee's assignments as well as the hours of his work were established by his agency for reasons of sound management. These plant assignments were his regular duties and he only occasionally performed administrative functions at headquarters. We stated as follows:

"Where an employee's regularly scheduled duties involve assignments to which he commutes daily from his headquarters or residence, we do not regard his travel from home and back to perform those regularly scheduled duties as an imposition upon his private life significantly different than the travel required of an employee in reporting to his permanent duty station. For this reason we do not regard Mr. Gamble's travel as overtime hours of work within the meaning of 5 U. S. C. 5542(b)(2). Moreover as indicated in our decision of June 19, 1972, such travel was subject to control (scheduling) even though the event giving rise thereto resulted from an event which was not controllable. 50 Comp. Gen. 674 (1971)."

Decision 52 Comp. Gen. 446, *supra*, distinguished the situation there from that in 50 Comp. Gen. 519 (1971), where we considered the situation (fourth case, page 525), of an agricultural commodity grader with the Livestock Division, Consumer and Marketing Service, who was required, on two specific occasions, to travel

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on Sunday in order to perform meat grading services at 6 a. m. Monday morning. It was indicated by the Assistant Secretary for Administration in the submission of 50 Comp. Gen. 519, supra, that applicants request grading services at specific hours and that in view of the inspection obligation placed upon the Department of Agriculture by statute it has been the policy of the department to meet their requests even though doing so requires travel by employees outside their regular hours of work. Thus, the situation related to the occurrence on two specific occasions of an administratively uncontrollable event which required the travel to be scheduled outside the employee's regular working hours. We there stated that where the specific needs of applicants are such that services must be provided when requested and to the extent that on this account an employee's travel cannot be scheduled during his regular duty hours his travel is compensable at overtime rates. We indicated that under the circumstances there related we viewed the needs of applicants for inspection and grading services as an event over which the agency has no administrative control, giving rise to an official necessity for the travel.

We further discussed the rule in B-175608, December 28, 1973, as follows:

"Thus, while the general rule is that an employee otherwise qualifying under 5 U. S. C. § 5542(b)(2) is entitled to overtime compensation for time in a travel status outside the corporate limits of his official station, such rule does not have universal application. For instance overtime compensation for travel time should be denied when work at the temporary duty point is performed outside of the corporate limits but in the vicinity of a duty station and such work may be characterized as the employee's regularly scheduled duties. A case in point would involve an employee whose assignment would include rotations of 90 days duration to various points in the vicinity of his duty station. In any event, without taking into account the nature of its employee's assignments, an agency may not prescribe a distance from the employee's duty point within which overtime compensation for travel time may not be paid."

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It is evident from the above rules and the facts before us that Mr. Genius may not be paid overtime compensation for commuting to his regularly scheduled duty assignments.

Mr. Balog has also questioned our Claims Division's instructions concerning Mr. Genius' entitlement to overtime compensation for the travel performed back to his home after an assignment. The instructions are as follows:

"* * * in decisions, such as 50 Comp. Gen. 674 (1971), where there is no showing of an official necessity for the employee's immediate return, and the employee chooses to return outside of regular duty hours rather than wait and return during regular duty hours the following day, travel time may not be considered hours of work. Likewise, in the absence of an official necessity for the employee's immediate return, an employee required to perform temporary duty at a location for more than one day should not be paid overtime if he returns home each day and it would have been feasible for him to remain overnight. However, where lodging facilities are not available at the temporary location, and it is reasonable for the employee to return to his residence rather than seek lodging at some other location, such travel results from an event which could not be administratively controlled and is compensable. Moreover, when the travel time is minimal, such as approximately an hour or less, it would not appear realistic to require an employee to remain overnight. This would be particularly so if the employee would be required to locate a lodging and incur per diem costs. Furthermore, where the requests of applicants for grading services at the same location are not known in advance, and such requests result in the grader returning to the same temporary duty location on consecutive days, and he returns home at the end of each day, outside of regular duty hours in order to be available to receive assignments the following day, such travel results from an official necessity for the employee's immediate return and is compensable."

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Mr. Balog states:

"We did not regard Mr. Genius' travel time to his home as significantly different from commuting travel required of an employee returning home from his permanent duty station. Therefore, we question whether payment of travel overtime would be proper even if the lack of lodging were considered 'an event which could not be administratively controlled.'

* * * * *

"We have always followed the criteria that each leg of a trip must result from an event that could not be controlled administratively. Only when an actual 'event' occurs, such as a request for inspection service at a specific time, have we authorized overtime compensation for return travel. Your ruling would result in our paying overtime for most, if not all, return travel, because returns 'to be available to receive assignments the following day' are the rule and not the exception. Thus, even if the following day's assignment were at the permanent duty station on work we could schedule and control, the employee would receive travel overtime for his trip home. We would like further consideration of this point."

We agree with Mr. Balog that return-home travel from assignments in the circumstances stated by him is not compensable at overtime rates. The Claims Division instructions to the extent in conflict with such views, are hereby modified.

Action should be taken on Mr. Genius' claim consistent with the above.

R. F. K. 11/14
Acting Comptroller General
of the United States