



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

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B-159779

October 30, 1973

The Honorable Dixy Lee Ray
Chairman, Atomic Energy Commission

Dear Dr. Ray:

This refers to letter of August 8, 1973, from the Acting Assistant General Manager, Controller, of your agency, requesting a decision from our Office concerning the propriety of paying an employee Sunday and night differential pay for the hour of annual leave with which he has been charged for the specific purpose of paying him for 8 hours when working on the shift during which standard time is advanced one hour in the spring.

The letter of August 8, 1973, states in part as follows:

"As the advance of one hour in standard time, generally referred to as 'changing to daylight saving time', occurs at 2:00 a.m. on the last Sunday in April, in accordance with 5 U.S.C. 5545(a)(2), employees regularly scheduled to work an 8 hour shift which includes 2:00 a.m. would lose an hour of work and pay on that shift except where the administrative arrangement for charging the employee with annual leave approved in 26 Comp. Gen. 921 (1947) is applied. The question of night differential for the hour of leave charged to the employee was not germane in 1947 as the Federal Employees Pay Act of 1945, as amended, did not then permit payment of night differential to an employee in paid leave status. Presently, however 5 U.S.C. 5545(a)(2) specifies that nightwork is regularly scheduled work between the hours of 6:00 p.m. and 6:00 a.m. and, for premium pay purposes, includes 'periods of leave with pay during these hours if the periods of leave with pay during a pay period total less than 8 hours.' Subject to the less than 8 hours during a pay period limitation above, it appears that employees whose regular work schedule includes 2:00 a.m. and is wholly within the 12 hour period specified in 5 U.S.C. 5545(a)(2) would be paid night differential for the hour of annual leave charged them in accordance with 26 Comp. Gen. 921. However, it is not clear whether we would be required to pay night differential in the case of employees whose regular work schedule included 2:00 a.m.

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but ended at some hour outside that 12 hour nightwork period, in view of the statement in 26 Comp. Gen. 921 that 'the exact hour of absence on leave need not be shown on the Standard Form No. 1130, "Time and Attendance Report",'. This statement appears to provide the option of considering the hour of annual leave as being within the employee's regular work schedule but outside the statutory nightwork period so as to avoid payment of night differential for that hour.

"As Sunday premium pay was not provided Federal employees until enactment of Public Law 89-504 of July 18, 1966, there was no need in the above decision relating to daylight saving and standard time matters to discuss application of Sunday premium pay to the hour of annual leave in question here. As stated in 46 Comp. Gen. 158 (1966), the general rule is that employees may not be paid Sunday premium compensation for a period of absence during their regularly scheduled 8 hour Sunday work period, as entitlement to this additional pay depends upon the actual performance of work on that day. This decision, however, does not make reference to the special situation discussed herein in which the annual leave is not requested by the employee in the usual manner for his own purposes (as implied in the questions answered by 46 Comp. Gen. 158) but is administratively charged to him as an adjustment for the regularly scheduled hour he is prevented from working because of agency compliance with 5 U.S.C. 260a. (a)."

The following questions are submitted:

- "1. Is it appropriate to pay Sunday premium pay for the hour of annual leave which must be charged to the employee under the special circumstances described above, in distinction to the general rule stated in 46 Comp. Gen. 158?
- "2. a. Because of present premium pay implications, is it necessary to designate the exact hour covered by the annual leave charged to the employee in this special circumstance, contrary to the advice contained in 26 Comp. Gen. 921?

"b. If so, is it the hour beginning at 2:00 a.m. so as to reflect the official time of advancing standard time which is specified in 15 U.S.C. 260a. (a).?"

"3. If the answer to question 2.a. is negative, is it required to pay night differential for the undesignated hour of leave to an employee whose regularly scheduled work ends at an hour outside the 12 hour nightwork period specified in 5 U.S.C. 5545(a)(2), and whose periods of pay with leave during the pay period concerned total less than 8 hours?"

"4. If the answer to question 1. is positive, would it be required to make payments of Sunday premium pay to employees concerned retroactive to the pay period commencing July 31, 1966, when the Sunday premium pay provision became effective?"

"5. If the answer to question 3. is negative, for what periods are we required to undertake collection of any past overpayment of night differential premium pay?"

Section 5546(a) of title 5, United States Code, reads as follows:

"(a) An employee who performs work during a regularly scheduled 8-hour period of service which is not overtime work as defined by section 5542(a) of this title a part of which is performed on Sunday is entitled to pay for the entire period of service at the rate of his basic pay, plus premium pay at a rate equal to 25 percent of his rate of basic pay."

In 5 CFR 550.103 of the Civil Service Commission's regulations "Sunday work" is defined as follows:

"(o) 'Sunday work' means all work during a regularly scheduled tour of duty within a basic workweek when any part of that work is performed on Sunday."

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Section 550.171 of the regulations authorizes pay for Sunday work as follows:

"An employee is entitled to pay at his rate of basic pay plus premium pay at a rate equal to 25 percent of his rate of basic pay for each hour of Sunday work which is not overtime work and which is not in excess of 8 hours for each regularly scheduled tour of duty which begins or ends on Sunday." (Underscoring added.)

While generally leave with pay is synonymous with duty insofar as entitlement to basic pay, where, as here, additional pay is authorized for services rendered on a certain day, entitlement to such additional pay would be dependent upon actual performance of work on such day, unless otherwise expressly provided by statute. Thus, since there is nothing in 5 U.S.C. 5546 providing for payment of Sunday premium pay to an employee who is in a leave status during any part of his regularly scheduled tour of duty on Sunday, question number 1 is answered in the negative. Cf. 5 U.S.C. 5545(a)(2).

In 26 Comp. Gen. 921 (1947) when we were considering payment of night differential pay we stated that whenever there is a change from standard time to daylight savings time leave is charged on that day on account of the reduction of the number of hours the employee is required to remain on duty, the exact hour of absence on leave need not be shown on the Standard Form No. 1130 "Time and Attendance Report" but an appropriate brief notation attributing the leave charge to the change from standard time to daylight savings time may be entered in the space provided for "Remarks." That would appear to be equally applicable to the case presented here. Question number 2a is answered in the negative. In view of our reply to question number 2a, no answer is required to question number 2b.

Section 5545(a) of title 5, United States Code, provides in pertinent part as follows:

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

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

5 CFR 550.122(b) of the Civil Service Commission's regulations concerning computation of night pay differential provides as follows:

"(b) Absence on leave. An employee is entitled to a night pay differential for a period of paid leave only when the total amount of that leave in a pay period, including both night and day hours, is less than 8 hours."

If an employee's leave taken from scheduled night duty aggregates less than eight hours during a pay period, under the above-quoted statute and regulation the employee is entitled to continuance of his night differential pay during those "less than 8 hours" leave. See 36 Comp. Gen. 734 (1957). In other words if an employee works the 12 midnight to 8 a.m. shift on the last Sunday of April when the standard time is advanced one hour he will be placed on annual leave for one hour and receive night differential for a total of six hours including the hour of annual leave. Question number 3 is answered in the affirmative.

In view of the answers to questions number 1 and 3, no reply to questions number 4 and 5 is required.

Sincerely yours,

R.F.KELLER

Deputy Comptroller General
of the United States