

DOCUMENT RESUME

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[Overtime Compensation for Employees Who Were Denied Permission to Leave Worksites]. B-187181. October 17, 1977. 5 pp.

Decision re: Albert L. Spires; James P. Hanlon, Jr.; by Robert F. Keller, Acting Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation (305).

Contact: Office of the General Counsel: Civilian Personnel.

Budget Function: General Government: Central Personnel Management (805).

Organization Concerned: Department of the Air Force: F. E. Warren AFB.

Authority: Fair Labor Standards Act (29 U.S.C. 201 et seq. (Supp. IV)). 5 U.S.C. 5544 (Supp. II). 5 U.S.C. 5545(c)(1). 42 Comp. Gen. 195. 52 Comp. Gen. 794. F.P.M., ch. 610, subch. S1-3d.

Lt. W. A. Melvin, Accounting and Finance Officer, Air Force, requested an advance decision concerning claims for overtime compensation of employees who were denied permission to leave worksites after completion of work assignments because of adverse weather conditions. The employees were not entitled to overtime compensation because they did not perform work and were not on standby or on-call status. (HTW)

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DECISION



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

FILE: B-187181

DATE: October 17, 1977

MATTER OF: Albert L. Spires and James P.
Hanlon, Jr. - Overtime Compensation

DIGEST: Wage grade employees of Air Force who, due to adverse weather conditions, were denied permission to leave remote work-sites at end of workday are not entitled to overtime compensation for period they remained at site. Claimants did not satisfy provisions of 5 U.S.C. § 5544 (Supp. II, 1972) regarding entitlement to overtime compensation requiring that work be performed or that employee be on standby or on-call status. In addition, waiting time, in this particular instance is not compensable as overtime hours worked under Fair Labor Standards Act, 29 U.S.C. §§ 201 et seq. (Supp. IV, 1974).

This case involves a request for an advance decision by Lt. W. A. Melvin, accounting and finance officer, USAF, submitted to this Office on August 10, 1976, concerning the claim for overtime compensation of Messrs. Albert L. Spires and James P. Hanlon, Jr., wage grade employees, WG-10, of the Department of the Air Force. Messrs. Spires' and Hanlon's duties require them to work at various remote missile sites which are part of the F. E. Warren Air Force Base complex. These missile sites are subject to stringent security regulations and workers at the sites are not allowed to depart until they are released by the site managers. The record shows that the normal duty hours of each claimant are from 7:30 to 11:30 a.m. and from 12:30 to 4:30 p.m.

On May 24, 1976, each claimant arrived at his assigned remote missile site to perform work. Due to adverse weather conditions, claimants were denied permission by the respective site managers to leave the area upon completion of their work assignments. As a result, each claimant had to remain at the respective worksite upon completion of his regular tour of duty at 4:30 p.m. and neither was permitted to leave his remote worksite until after the beginning of the next workday.

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Both claimants claimed 7.5 hours of overtime for May 24, 1976, for the time they were required to remain at the worksite in excess of their 8-hour workday which ended at 4:30 p.m. The amount of overtime claimed by each was \$84.90, which represented the 7.5 hours at their WG-10 overtime rate of \$11.32 per hour. The record shows that Mr. Spires voluntarily worked for 3.5 hours of the 7.5 hour period in question and that overtime compensation for such actual work has been approved by the Air Force and paid Mr. Spires. Therefore, Mr. Spires' pending claim is for 4 hours of overtime compensation in the amount of \$45.28. Mr. Hanlon did not perform any actual work during the period for which he claims overtime compensation.

The statutory authority for overtime compensation for wage grade employees is 5 U.S.C. § 5544 (Supp. II, 1972) which provides in pertinent part:

"(a) An employee whose pay is fixed and adjusted from time to time in accordance with prevailing rates under section 5343 or 5349 of this title, or by a wage board or similar administrative authority serving the same purpose, is entitled to overtime pay for overtime work in excess of 8 hours a day or 40 hours a week. However, an employee subject to this subsection who regularly is required to remain at or within the confines of his post of duty in excess of 8 hours a day in a standby or on-call status is entitled to overtime pay only for hours of duty, exclusive of eating and sleeping time, in excess of 40 a week. * * *"

This Office has held that the terms "on call" and "standby" when read in conjunction with the language "required to remain at or within the confines of their post of duty" contained in 5 U.S.C. § 5544(a) should be construed in the same manner as the comparable language of 5 U.S.C. § 5545(c)(1). See 42 Comp. Gen. 195 (1962) at 201.

The definition of standby duty under 5 U.S.C. § 5545, which definition would also be applicable to standby duty

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compensable under 5 U.S.C. § 5544, is set forth at Federal Personnel Manual chapter 610, subchapter Si-3d as follows:

"(2) Standby time

"(a) Standby time consists of periods in which an employee is ordered to remain at or within the confines of his station, not performing actual work but holding himself in readiness to perform actual work when the need arises or when he is called."

There is nothing in the record to indicate that either claimant performed any work during the period for which overtime is here claimed. In addition, claimants were restricted to their respective worksites solely due to adverse weather conditions and not so that they would be available to perform additional work. Since claimants were not required to hold themselves in readiness to perform work they are not entitled to overtime compensation under 5 U.S.C. § 5544 for the period during which they were detained but did not perform actual work. See 52 Comp. Gen. 794 (1973).

Under the provisions of 29 U.S.C. § 204(f) (Supp. IV, 1974) the Civil Service Commission is authorized to administer the provisions of the Fair Labor Standards Act (FLSA). The following is quoted from a determination by the Chief of the Commission's Pay Policy Division with respect to the claimant's entitlement under the FLSA overtime compensation provisions:

"Under the FLSA certain principles must be considered in determining whether waiting time is 'hours of work.' An employee who is waiting because he or she has been detained at the worksite is either on duty or off duty during this period.

"An employee is on duty while waiting, if waiting is an integral part of his job. His time belongs to, and is controlled by the employer. Such time is

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predominantly for the benefit of the employer, and thus the employee is 'engaged to wait.'

"On the other hand, an employee is off duty if he is completely relieved from duty for a period which is long enough to enable him to use the time effectively for his own purposes. He is not completely relieved from duty unless he is definitely told in advance that he may leave his job and that he will not have to commence work until a definitely specified hour has arrived. Waiting is not an integral part of his job and the employee is detained for reasons beyond the control of the employer. There is no expectation that he perform work, or be available to perform work. Such time is predominately for the benefit of the employee, and he is 'waiting to be engaged.'

"Because of stringent security regulations, the two employees in question were not permitted to leave their respective job sites on any day without the permission of the site manager. The weather conditions were dangerous, and the employees would have been forced to drive long distances over treacherous roads had they been permitted to leave. The agency obviously had no control over the weather or the road conditions and acted reasonably in detaining these two employees. Since neither of the employees was expected to perform work, or to be available to perform work, the time that they spent waiting was not primarily for the benefit of the agency.

"Under normal circumstances these employees would have been permitted to go home at the end of the work day. Waiting is not an

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integral part of their jobs. They were detained on this particular day, but they were completely relieved from duty, and they were not expected to perform work, or to be available to perform work, until the following morning. * * * the waiting time belonged to the employees and was not under the control of the agency. Thus these employees were 'waiting to be engaged' and, therefore, off duty. Consequently, the time that these two employees were detained meets none of the conditions that would make this time 'hours of work' under the FLSA."

Consistent with the Commission's report we find that the waiting time on which Messrs. Spires' and Hanlon's claims are based is not compensable under the FLSA, 29 U.S.C. §§ 201 et seq. (Supp. IV, 1974). Accordingly, since claimants have not satisfied the requirements of either 5 U.S.C. § 5544 (Supp. II, 1972) or 29 U.S.C. §§ 201 et seq. (Supp. IV, 1974) for payment of overtime compensation, their claims may not be allowed.


Acting Comptroller General
of the United States