



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## Decision

**Matter of:** Naval Undersea Warfare Engineering Station --  
Fair Labor Standards Act -- Traveltime as Overtime

**File:** B-233031

**Date:** July 11, 1989

### DIGEST

A nonexempt employee under the Fair Labor Standards Act (FLSA), who drives a government vehicle between a temporary duty site and lodgings during hours outside of the normal 40-hour workweek, is not entitled to overtime pay under the FLSA, even though the driver transports another employee, since use of the government vehicle cannot be considered a requirement of the employee's job.

### DECISION

This decision is in response to a joint request from the Naval Undersea Warfare Engineering Station, Department of the Navy, Keyport, Washington (agency) and the Bremerton Metal Trades Council (union). This request has been handled as a labor-relations matter under 4 C.F.R. Part 22 (1988).

The issue raised is whether the driver of a government vehicle, while driving between a temporary duty site and lodgings during hours outside of the normal 40-hour workweek, is entitled to overtime pay under the Fair Labor Standards Act (FLSA). We conclude that the driver's traveltime is not compensable hours of work under the FLSA.

### BACKGROUND

The agency tests and evaluates underwater weapon systems and their components, which involves the actual firing of weapons on various underwater ranges including a range site at Nanoose, British Columbia, Canada. The weapons which are tested on the Nanoose Range are transported from Washington State to British Columbia by government trucks operated by two employees, whose positions are WG-8 Motor Vehicle Operators. These employees are "nonexempt," i.e. covered by the Fair Labor Standards Act (FLSA).

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The motor vehicle operators have no duties at the Nanoose Range except when they are unloading or loading the weapons. Thus, the two employees remain at their motel in a temporary duty travel status while awaiting a return load. During this period, they are authorized to have a government vehicle for trips between their motel and the Nanoose Range.

When the motor vehicle operators travel between the Nanoose Range and their motel, one is designated as the driver and the other is a passenger. This travel often occurs outside of the employees' normal 40-hour workweek. Thus, the issue to be resolved is whether the driver of the government vehicle, while driving it between the Nanoose Range and the motel during hours outside of the normal workweek, is entitled to overtime pay under the FLSA.

#### OPINION

The FLSA is administered with respect to federal employees by the Office of Personnel Management (OPM). See 29 U.S.C. § 204(f) (1982). The OPM regulation relevant to this case is 5 C.F.R. § 551.422(a)(2) (1988), which provides:

"(a) Time spent traveling shall be considered hours of work if:

. . . . .

"(2) An employee is required to drive a vehicle or perform other work while traveling. . . ."

Additional guidance is found in the attachment to Federal Personnel Manual (FPM) Letter 551-11, at page 2 (Oct. 4, 1977), which states the general rule that an employee shall not be compensated for normal home to work travel and that the same rule applies to the commuting time of federal employees while assigned to a temporary duty station overnight. Therefore, the time spent commuting between a motel and the temporary duty station is considered home to work travel and is not working time under the FLSA, unless it meets one of the specific conditions discussed in the attachment and in table 1 of the attachment to FPM Letter 551-10 (Apr. 30, 1976). Table 1 in turn states that when the employee drives a government vehicle home as a requirement of the agency to transport other employees from home to work or a job site such traveltime is considered "hours of work" under FLSA.

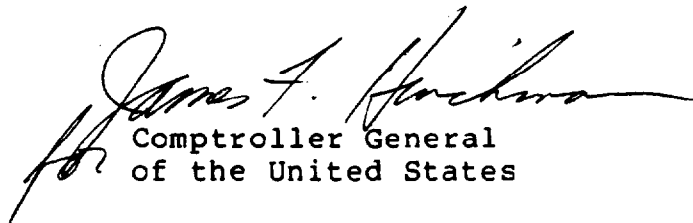
We obtained OPM's views on the application of the FPM Letters to the facts of this case. OPM advised us that, since one employee is required to drive a government vehicle

to transport the other employee between the motel and the temporary worksite and the latter is dependent upon the former to get to and from work, the traveltime of the driver is hours of work for which FLSA overtime is payable. OPM added that, if the passenger had a vehicle at his disposal, he would not be dependent upon the driver and they would both then be engaged in normal home to work travel which is not compensable under FLSA.

The agency maintains that a government vehicle is provided not as a requirement of the job but as an accommodation to the employees. It points out that the Nanoose Range is about 15 miles away from the town where most temporary duty employees stay and where taxis and rental cars are available. The alternative to providing a vehicle to these employees would be for them to rely upon taxis or to catch rides with other employees to their motel or to a rental car office. Therefore, the agency contends that the exception referred to by OPM does not apply and FLSA overtime is not payable.

We agree. The agency simply furnishes a government vehicle to temporary duty personnel as the most convenient and least costly means of transporting them between their worksite and motel. In our view, this arrangement bears little relevance to the provision in FPM Letter 551-10 for overtime when an employee is required to transport other employees between home and work. Clearly, the agency does not furnish a vehicle in order to require one employee to drive others since its reasons for providing the vehicle would apply regardless of whether one or more than one employee was involved. Indeed, we assume that on some occasions a driver makes the trip alone; when this happens, overtime would not be payable even under the FPM Letter. The only time the FPM Letter could apply is when the driver has a passenger, although the presence of a passenger would not add to the driver's time or effort in any way.

Under these circumstances, we conclude that the FPM Letter does not provide a basis for paying overtime.

  
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of the United States