Text as published on gao.gov, https://www.gao.gov/products/b-159835, archived 2025-02-11. GAO published no original file for this decision. Rendered by Comptroller Desk.

B-159835, Mar 11, 1976

Number: B-159835

Date: 1976-03-11

B-159835, MAR 11, 1976

1. OVERTIME WORK TO BE COMPENSABLE FOR CIVILIAN EMPLOYEE ON MILITARY OR COURT LEAVE MUST HAVE BEEN REGULARLY SCHEDULED AND SUCH EMPLOYEE WOULD HAVE BEEN REQUIRED TO PERFORM THE OVERTIME DUTY DURING PERIOD INVOLVED. 2. EMPLOYEE OF UNITED STATES GOVERNMENT PRINTING OFFICE, ABSENT ON MILITARY AND COURT LEAVE, NOT ENTITLED TO OVERTIME COMPENSATION UNDER PROVISIONS OF 5 U.S.C. SECS. 6322 AND 6323 AS HE WOULD NOT HAVE WORKED OVERTIME IN HIS WORK UNIT HAD HE NOT BEEN ON MILITARY AND COURT LEAVE.

LEWIS E. KEITH, JR. - OVERTIME COMPENSATION:

THIS ACTION IS IN RESPONSE TO A REQUEST BY THE PUBLIC PRINTER, UNITED STATES GOVERNMENT PRINTING OFFICE (GPO), FOR OUR DECISION AS TO WHETHER HE HAS THE AUTHORITY TO AUTHORIZE PAYMENT OF OVERTIME COMPENSATION TO MR. LEWIS E. KEITH, JR., AN EMPLOYEE OF THE COMPOSING DIVISION, GPO, DURING PERIODS OF TIME WHEN MR. KEITH WAS ON MILITARY LEAVE FROM 1970 TO 1975 AND WHILE ON COURT LEAVE IN 1972.

THE RECORD DISCLOSES THAT MR. KEITH IS A MEMBER OF THE AIR FORCE RESERVE AND IS REQUIRED TO PERFORM ACTIVE DUTY TRAINING EVERY SUMMER FOR A PERIOD OF 2 WEEKS. THE CLAIMANT STATES THAT ANNUALLY, SINCE 1970, HE HAS "LOST" 40-45 HOURS OF OVERTIME COMPENSATION DURING HIS PERIODS OF ACTIVE MILITARY DUTY THAT HE WOULD HAVE EARNED HAD HE REMAINED ON DUTY IN THE COMPOSING DIVISION OF GPO. HE ALSO STATES THAT HE "LOST" OVERTIME PAY WHILE SERVING ON JURY DUTY IN 1972.

THE PUBLIC PRINTER STATES THAT EMPLOYEES IN THE COMPOSING DIVISION DID IN FACT WORK OVERTIME WHILE MR. KEITH WAS ON ACTIVE MILITARY DUTY. THE PUBLIC PRINTER ALSO REPORTS THAT ALTHOUGH OVERTIME WAS WORKED IN MR. KEITH'S PARTICULAR ORGANIZATION, SUCH OVERTIME WORK WAS NOT SCHEDULED NOR REQUIRED. HE STATES FURTHER THAT THE OVERTIME WORK WAS STRICTLY VOLUNTARY AND THAT ENOUGH VOLUNTEERS WERE OBTAINED TO PERFORM THE REQUIRED WORK. INFORMAL CONTACT WITH MANAGEMENT OFFICIALS OF GPO DISCLOSES THAT THE OVERTIME WORK IN QUESTION WAS OCCASIONAL AND IRREGULAR IN NATURE; WAS A "DAY-BY-DAY" PROPOSITION; WAS NOT SCHEDULED IN ADVANCE OF THE TIME WORKED; NO ADVANCE DUTY ROSTERS WERE MADE; AND THE WORK WAS PERFORMED ON AN "AS- REQUIRED" BASIS.

THE STATUTORY PROVISION PERTAINING TO FEDERAL EMPLOYEES ON MILITARY LEAVE AND ENGAGED IN TRAINING IN THE RESERVES AND NATIONAL GUARD IS FOUND IN SECTION 6323, TITLE 5, U.S.C. (1970), AND PROVIDES, IN PERTINENT PART, AS FOLLOWS:

"(A) AN EMPLOYEE AS DEFINED BY SECTION 2105 OF THIS TITLE *** OR AN INDIVIDUAL EMPLOYED BY THE GOVERNMENT OF THE DISTRICT OF COLUMBIA, PERMANENT OR TEMPORARY INDEFINITE, IS ENTITLED TO LEAVE WITHOUT LOSS OF PAY, TIME, OR PERFORMANCE OR

EFFICIENCY RATING FOR EACH DAY, NOT IN EXCESS OF 15 DAYS IN A CALENDAR YEAR, IN WHICH HE IS ON ACTIVE DUTY OR IS ENGAGED IN FIELD OR COAST DEFENSE TRAINING UNDER SECTIONS 502-505 OF TITLE 32 AS A RESERVE OF THE ARMED FORCES OR MEMBER OF THE NATIONAL GUARD."

A SIMILAR PROVISION PERTAINING TO FEDERAL EMPLOYEES ON COURT LEAVE AND PERFORMING JURY SERVICE APPEARS IN SECTION 6322 OF TITLE 5 OF THE U.S.C. (1970) AND PROVIDES IN PERTINENT PART, AS FOLLOWS:

"(A) AN EMPLOYEE AS DEFINED BY SECTION 2105 OF THIS TITLE (EXCEPT AN INDIVIDUAL WHOSE PAY IS DISBURSED BY THE SECRETARY OF THE SENATE OR THE CLERK OF THE HOUSE OF REPRESENTATIVES) OR AN INDIVIDUAL EMPLOYED BY THE GOVERNMENT OF THE DISTRICT OF COLUMBIA IS ENTITLED TO LEAVE, WITHOUT LOSS OF, OR REDUCTION IN, PAY, LEAVE TO WHICH HE OTHERWISE IS ENTITLED, CREDIT FOR TIME OR SERVICE, OR PERFORMANCE OF EFFICIENCY RATING, DURING A PERIOD OF ABSENCE WITH RESPECT TO WHICH HE IS SUMMONED, IN CONNECTION WITH A JUDICIAL PROCEEDING, BY A COURT OR AUTHORITY RESPONSIBLE FOR THE CONDUCT OF THAT PROCEEDING, TO SERVE -

"(1) AS A JUROR; ***

* * * * * IN THE DISTRICT OF COLUMBIA, A STATE, TERRITORY, OR POSSESSION OF THE UNITED STATES INCLUDING THE COMMON-WEALTH OF PUERTO RICO, THE CANAL ZONE, OR THE TRUST TERRITORY OF THE PACIFIC ISLANDS. FOR THE PURPOSE OF THIS SUBSECTION, 'JUDICIAL PROCEEDING' MEANS ANY ACTION, SUIT, OR OTHER JUDICIAL PROCEEDING, INCLUDING ANY CONDEMNATION, PRELIMINARY, INFORMATIONAL, OR OTHER PROCEEDING OF A JUDICIAL NATURE, BUT DOES NOT INCLUDE AN ADMINISTRATIVE PROCEEDING."

THE REQUIREMENT MADE IN EACH OF THE RESPECTIVE STATUTORY PROVISIONS REGARDING MILITARY AND COURT LEAVE, STATED BROADLY, IS THAT THE EMPLOYEE SHALL RECEIVE THE SAME COMPENSATION HE OTHERWISE WOULD HAVE RECEIVED BUT FOR THE FACT THAT HE WAS ABSENT ON MILITARY OR COURT LEAVE. 27 COMP.GEN. 353, 357 (1947).

IN OUR DECISION 31 COMP.GEN. 173, 175 (1951), IN DETERMINING WHETHER OVERTIME COMPENSATION SHOULD BE PAID UNDER THE AFOREMENTIONED CIRCUMSTANCES, WE CONCLUDED THAT:

"*** THE TEST, AS IT WERE, CONCERNS THE AMOUNT OF COMPENSATION THE EMPLOYEE WOULD HAVE RECEIVED HAD HE RENDERED SERVICE IN HIS CIVILIAN POSITION ON THE DAYS OTHERWISE REQUIRED TO BE ABSENT ON COURT LEAVE OR MILITARY TRAINING DUTY. WHILE THE TWO DECISIONS ABOVE REFERRED TO RELATE TO OVERTIME SERVICE RENDERED ON THE SIXTH DAY OF THE WEEK, THEY WERE CONCERNED WITH THE FACTS REPORTED IN THOSE CASES AND WERE NOT INTENDED AS CONFINING OVERTIME COMPENSATION TO THE SIXTH DAY OF THE WEEK. IF AS STATED, ALL THE EMPLOYEES IN THE PARTICULAR ORGANIZATION IN WHICH THEY WERE WORKING WERE REQUIRED TO RENDER OVERTIME SERVICE EVERY WORK DAY IN THE INVOLVED PERIOD FOR WHICH OVERTIME COMPENSATION WAS PAYABLE FOR THE EXCESS OVER 40 HOURS A WEEK IT FOLLOWS, IN LINE WITH THE DECISIONS, SUPRA, THAT THE EMPLOYEES ABSENT ON COURT LEAVE OR MILITARY TRAINING DUTY LIKEWISE ARE ENTITLED TO SUCH OVERTIME COMPENSATION UPON THE SAME BASIS."

IN ORDER FOR OVERTIME WORK TO BE COMPENSABLE WITH RESPECT TO AN EMPLOYEE ON MILITARY OR COURT LEAVE, THE OVERTIME DUTY MUST HAVE BEEN REGULARLY SCHEDULED WHICH WOULD HAVE REQUIRED THE EMPLOYEE CONCERNED TO WORK OVERTIME HAD HE NOT BEEN AWAY ON MILITARY LEAVE OR JURY DUTY. 49 COMP. GEN. 233 (1969); 31 ID. 173 (1951); AND 27 ID. 353 (1947).

IN THE INSTANT CASE, THE PUBLIC PRINTER STATES THAT THE OVERTIME WORK PERFORMED IN MR. KEITH'S WORK UNIT WAS NOT REGULARLY SCHEDULED NOR WAS SUCH OVERTIME WORK REQUIRED. THE OVERTIME DUTY WAS PERFORMED ON A VOLUNTARY BASIS AND A SUFFICIENT NUMBER OF VOLUNTEERS WERE OBTAINED TO PERFORM THE WORK. THE RECORD CONTAINS NO EVIDENCE TO THE CONTRARY. THEREFORE, IT IS CONCLUDED THAT MR. KEITH IS NOT ENTITLED TO OVERTIME COMPENSATION SINCE THERE WAS NO REGULARLY SCHEDULED OVERTIME WHICH HE WOULD HAVE BEEN REQUIRED TO WORK HAD HE NOT BEEN ON MILITARY AND COURT LEAVE. B-133972, JULY 16, 1975.