



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

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7-158549

January 22, 1974

The Honorable Arthur F. Sampson  
Administrator  
General Services Administration

Dear Mr. Sampson:

We have for consideration the claims of Messrs. Jacob H. Amstutz, James A. Boyer, Moses Brown, Clarence A. Delaine, Fred L. Jones, William W. Jones, Enal Jordan, Milton Joseph Simon, James S. Smallwood, William R. Smith and Melvin H. Streets. Those 11 individuals, all past or present members of the Federal Protective Service, GSA, Region III, have [claims of overtime compensation] in accordance with the holding by the Court of Claims in Eugie L. Baylor et al. v. United States, 198 C. Cls. 331 (1972).

Finding that the overtime activities involved had been officially ordered and approved by appropriate Region III officials, the Court held that each of the 33 plaintiffs who testified and presented evidence was entitled to recover insofar as he had substantiated his claim. The Trial Commissioner, whose opinion with modifications was adopted by the Court, stated:

"Preliminary to outlining the pertinent facts, one matter relating to the prosecution of this case by plaintiffs and the evidence introduced herein by them should be briefly mentioned at this point. An average time required each workday for the plaintiffs to comply with the guard force regulations and alleged work 'orders' is not claimed by them. Rather, each of the plaintiffs who testified in this case claims entitlement to compensation for different amounts of preshift and postshift overtime assertedly necessarily performed by him. The difference in the amounts of overtime claimed by each plaintiff guard is largely attributable to the variations in the individual's situation with respect to the location of his assigned locker, gun issue point, and duty post during the claim period. In view of the foregoing and other circumstances presented here, it was considered essential that each of the 47 plaintiffs still in this case should testify concerning his own individual situation in support of the claim advanced by him. Under the ground rules established for the conduct of the trial held herein, it was contemplated

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that each plaintiff would have to stand on, and be bound by, his own proof; that separate findings would be proposed and made as to each plaintiff with respect to the amount of time it necessarily took him to perform the various preshift and postshift activities required of him, and the total overtime, if any, he worked for which he was entitled to compensation; and that the petition would be dismissed as to all plaintiffs who did not appear and present testimony at the trial. Thirty-three plaintiffs testified, but the other 14 of them did not do so. The findings requested by plaintiffs included separate ones with respect to each of the plaintiffs who testified but not as to the others. Defendant did not submit requested findings as to each plaintiff."

Under the decision the particular circumstances of an individual guard's assignments determine, in large part, the amount of additional compensation to which he is entitled. The particular functions for which the Court held compensation due included changing into and out of uniform prior to February 28, 1966, obtaining and replacing firearms where required, walking between locker location, gun control point where applicable, and post or posts of duty, and, in the case of supervisory officers, performing preliminary and postliminary supervisory responsibilities.

Thus, with the exception of compensation due for the time involved in uniform changing, allowance of an individual claim depends upon whether the particular guard was required to carry a gun, the location of his locker, control point, if any, and post or posts of duty, the reasonable walking or travel time between those points, and, in the case of supervisors, the particular functions he was required to perform.

The above information provided by each of the 11 claimants here involved is included as parts "a" of Enclosures 1 through 11. Those 11 enclosures, one for each claimant, contain at parts "b" an analysis of the number of minutes overtime performed by each, and at parts "c" a computation of the amount due each. Enclosure 1 contains a detailed discussion of the method used in computing the amount due and is made a part of this decision by incorporation. By this decision we are authorizing GSA to pay the claims of the 11 individuals here involved to the extent indicated in those enclosures in accordance generally with the holding in the Baylor case, with the exceptions and in line with the preliminary comments hereinafter contained.

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The Court of Claims found the 33 claimants involved in the Baylor case entitled to compensation up to February 28, 1966, as of which date guards were no longer required to change into and out of uniform after reporting to their assigned locker areas. The Court did not however consider the entitlement of guards to overtime compensation for other preliminary and postliminary activities which they performed during subsequent periods. Insofar as the amount of time involved in activities other than changing uniform may have involved in excess of 10 minutes per day after set off of duty-free lunch periods, payment of overtime subsequent to February 28, 1966, is hereby authorized. The reasonable travel time between the various points has been determined by GSA by on-site timing. We have allowed travel time to the extent the time claimed does not exceed the amount determined by GSA. Five of the 11 claimants now before this Office, Messrs. Royer, Brown, Jordan, Simon and Streets, have been determined to have performed compensable overtime work and we have thus held them entitled to compensation therefor up to the date on which their claims were filed with our Transportation and Claims Division. In this connection we point out that insofar as their assignments may continue as they had up to dates of filing those officers may be entitled to overtime compensation on a continuing basis. Overtime is generally payable after February 28, 1966, for the time required to travel between gun control point and post(s) of duty, and to obtain and replace a firearm where a guard is required to obtain a firearm at a location other than his post. In the case of supervisors, overtime is payable where preliminary and postliminary supervisory responsibilities are required.

With the exception of the 11 individuals here involved, we are unaware that any of the individuals who have filed claims with our Transportation and Claims Division have presented the evidence necessary to support their claims except insofar as they may be entitled to overtime compensation for the time involved in changing uniforms. Most have submitted merely a statement that they claim overtime compensation for having performed a certain number of minutes of overtime per day consisting of any or all of the above-mentioned preliminary and postliminary activities. Under the Court of Claim's holding and in the opinion of this Office, those claims are insufficient except insofar as the claimants are entitled to overtime compensation for the time involved in changing into and out of uniform.

In the 11 cases here involved, the individuals were given notice of the insufficiency of their claims and were provided forms by means

of which they have now supplied the necessary additional information. Our Transportation and Claims Division will notify those individuals whose claims are here recorded of the insufficiency of their claims and will apprise them of the nature of additional information they must provide to further pursue their claims for amounts due in excess of that owing for uniform changing time. When the requested information is received, or after a suitable period has elapsed and it is determined no additional information will be received, the claims will be forwarded to GSA for processing as indicated below. You will note that as a part of the evidence in the 11 cases here discussed we have required verification of the nature of the guards' duties and the locations of lockers, control points and posts of duty by a supervisory officer familiar with the individual guards' assignments and responsibilities. Except insofar as your office may ratify the contents of an individual's claim, payment may not be made on the basis of his affidavit alone without the necessary verification by a supervisor or, where a supervisory officer cannot be located, such other personnel as you may deem appropriate.

The overtime hours otherwise creditable to each individual involved should be reduced by the aggregate free lunch time granted such individual. Prior to payment those individuals who have presented no evidence supporting their claims for preliminary and postliminary duties should be advised that because they have not submitted additional information their claims have been considered for uniform changing time only and that it has been determined that they are due an amount certain which will be paid to them upon their return of a release of any claim arising out of performance of additional preliminary and postliminary duties commencing from the point in time 10 years prior to the date upon which their claims were received by our Transportation and Claims Division. In this connection we point out that we do not generally favor the use of releases. However, we feel that the large number of claims and the tremendous amount of administrative effort involved in settlement warrant their use to insure that claimants present their claims in full at one time and do not later claim additional amounts.

In each of the 11 cases here involved it will be noted that a maximum of 15 minutes per day has been allowed for the time involved in changing into and out of uniform and that a maximum of 4 minutes has been allowed for the time involved in obtaining and replacing a firearm at a control point that was not the same as a guard's post of duty. The Court in the Baylor case allowed a maximum of 20 and 6 minutes respectively for those activities based upon averaging of the amounts claimed by each of the 33 plaintiffs in accordance with the following statement of the Commissioner:

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"Upon consideration of the testimony of all the plaintiffs and witnesses, and after making allowances and adjustments in some time figures deemed incredible as being exaggerated and excessively high, it is found that the reasonable maximum average times required of the plaintiffs each workday to change from civilian clothes into their uniforms and make themselves presentable for duty after arriving at their lockers was 10 minutes; that 10 minutes were also required to change from their uniforms back into their civilian clothes; and that 3 minutes were required to draw their weapons and the same amount of time was required to turn them back in at the conclusion of the duty shift. Where weapons were merely exchanged on post, usually no time is specifically found and allowed, such time generally being included in that allowed each guard for travel between his locker and post. Also, with respect to the time allowed plaintiffs to change clothes, this time includes an allowance for performing miscellaneous duties such as maintaining their lockers in a neat and orderly condition and standing inspections.

"Since under the ground rules of the trial each plaintiff necessarily stood on his own proof, those plaintiffs who testified that they required more than the reasonable maximum times established for them to change clothes or to draw and turn back in their guns have been allowed only the reasonable maximum, while those plaintiffs who testified that it required them less than the maximum logically are allowed only the highest amount of time they testified it actually took them to perform these particular functions."

GSA reports that based upon tests which it has conducted, the amounts determined by the Court are excessive and recommends payment based upon a maximum of 15 minutes uniform changing time and 4 minutes gun time. The basis now presented by GSA for reducing the amounts of time involved does not appear to have been presented or considered by the Court. Also, we do not believe the Court opinion requires the use of the averaging technique for determining the amounts of time necessary for particular activities where other evidence is available. In view

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of this and since the times certified by GSA are based on actual experience,  
we have adopted the recommendation of GSA.

Sincerely yours,

R.F.KELLER

Deputy . Comptroller General  
of the United States