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DECISION

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

amplified by 56 Comp. Gen. ——
(B-180084, B-153[illegible], 8-1-77)

FILE: B-180084 DATE: MAY 17 1974

MATTER OF: Arbitration award relating to scheduling of travel on nonworkdays.

DIGEST: Two Navy employees remained at temporary duty station on Sunday, after completing assignment on Saturday, in order to perform return travel during regular workweek. Each was charged 8 hours leave and denied per diem in connection with the deferred travel. Navy may comply with arbitration award directing restoration of leave and payment of per diem since per diem costs for less than 2 days are considered reasonable for compliance with travel policy expressed at 5 U.S.C. 6101(b)(2) and Navy is, thus, not precluded under Executive Order 11491, §12, by applicable law or regulations, from accepting such award.

The Secretary of the Navy requested our opinion as to whether an advisory arbitration award directing recrediting of annual leave and the payment of per diem to two employees of the Long Beach Naval Shipyard may be accepted by the Department of the Navy.

The advisory award pertains to return travel by Messrs. Wilbur L. Kenney and Robert L. Riha from a temporary duty assignment at the Newport News Naval Shipyard under travel orders which scheduled temporary duty from Wednesday, October 14, 1970, to Wednesday, October 21, 1970. The work to be performed at the temporary duty location was in fact completed on the afternoon of Saturday, October 17, 1970, and both employees were instructed to return to Los Angeles the following day. Mr. Kenney delayed his return until Monday, October 19, because he wished to attend church rather than travel on Sunday and because he believed that under ARTICLE XXIII - TRAVEL, Section 1, of the Negotiated Agreement between the Naval Shipyard, Long Beach, and Local 174, American Federation of Technical Employees, AFL-CIO, dated July 7, 1970, and extended to July 2, 1972 (hereinafter referred to as the Agreement), he was not required to travel outside of his regular duty hours. Mr. Riha delayed his return travel until Tuesday, October 20, in order to pick up his suit at the cleaners on Monday and because of his belief that he was not required to perform official travel during nonduty hours. He took annual leave on Monday. Both employees were paid per diem for Sunday, October 18, but were denied per diem and charged 8 hours of annual leave for the day on which return travel was performed.

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The employees filed grievances seeking to regain the annual leave they had been charged. Prior to arbitration the Navy determined that the matter was not subject to arbitration and on behalf of Messrs. Riha and Kenney filed claims for per diem and recredit of annual leave with our Transportation and Claims Division. By Settlement Certificates dated September 28, 1971, the Transportation and Claims Division advised that, while the charging of leave in connection with temporary duty travel is a matter within administrative discretion, it is not within an agency's discretion to permit a traveler to delay his travel over a weekend so as to increase his entitlement to per diem in lieu of subsistance. Later the Assistant Secretary for Labor-Management Relations directed that the agency reinstate the arbitration hearing and the agency complied.

The arbitrator ruled that the travel vouchers of Messrs. Kenney and Riha should be revised to authorize travel on Monday, October 19, and Tuesday, October 20, respectively, and that the Shipyard should recredit each with 8 hours of annual leave and pay each an appropriate amount of per diem in connection with the travel performed. In concluding that the grievances should be allowed, the arbitrator relied on the policy regarding scheduling of Federal employees' travel as expressed at 5 U.S.C. 6101(b)(2) and ARTICLE XXIII - TRAVEL, Section 1, of the Agreement. Section 6101(b)(2) of title 5, United States Code, provides:

> "(2) To the maximum extent practicable, the head of an agency shall schedule the time to be spent by an employee in a travel status away from his official duty station within the regularly scheduled workweek of the employee."

In connection with the scheduling of travel, ARTICLE XXIII - TRAVEL, Section 1, of the Agreement similarly provides:

> "Section 1. The Employer agrees, whenever it is feasible to do so, within applicable regulations, to schedule travel during regular duty hours."

The arbitrator, in his Written Opinion, states:

> "* * * In the opinion of the Sole and Impartial Arbitrator, Chapter 61, Section 6101(b)(2), certainly gave the Commandant of the Long Beach Naval Shipyard authority and discretion to schedule Mr. Robert L. Riha's

travel time under his special circumstances as Tuesday, 20 October 1970, and to schedule Mr. Wilbur Kenney's travel date under his particular circumstances as Monday, 19 October 1970. * * * ARTICLE XXIII - TRAVEL, Section 1, of the Agreement of the Parties dated 7 July 1970 (extended to 2 July 1972) means what it says and places and placed an obligation on the Commandant of the Long Beach Naval Shipyard to give very special consideration to the facts of the cases of these two Grievants with respect to the scheduling of their travel time. This he did not do, and he did not do on the grounds of 'applicable regulations,' but in the opinion of the Sole and Impartial Arbitrator, the 'applicable regulations' gave him authority to take action, which he refused to take (although required to do so by ARTICLE XXIII - TRAVEL of the Agreement of the Parties).

"In the opinion of the Sole and Impartial Arbitrator, if regulations give authority to do something (to schedule travel time during regular duty hours) and (Commandant of the Long Beach Naval Shipyard) refuses to do so, although he has agreed to do so 'whenever it is feasible to do so,' then there is a violation of the Agreement of the Parties (as here), and the employees and the Union have a perfect right to grieve and object, and looking over all the language of the agreements in front of him, the Sole and Impartial Arbitrator simply has no other course but to advise the Commandant of the Long Beach Naval Shipyard that he must recommend that the parties' grievances be allowed.

"V. CONCLUSION

"Having found the Employer did violate the Agreement of the Parties by asking both of them to take eight hours' annual leave and by denying them per diem for the date actually traveled by them, the Sole and Impartial Arbitrator must recommend that their travel vouchers be revised, that their

eight hours' annual leave be reinstated, and that they be paid their appropriate per diem for the one day actually traveled by them."

The question presented is whether the advisory award may be accepted by the Shipyard under part VIII.E.1 of Department of Defense Directive 1426.1. That provision is the Department's implementation of section 12 of Executive Order 11491 which provides:

"SEC. 12. Basic provisions of agreements. Each agreement between an agency and a labor organization is subject to the following requirements—

"(a) in the administration of all matters covered by the agreement, officials and employees are governed by existing or future laws and the regulations of appropriate authorities, including policies set forth in the Federal Personnel Manual; by published agency policies and regulations in existence at the time the agreement was approved; and by subsequently published agency policies and regulations required by law or by the regulations of appropriate authorities, or authorized by the terms of a controlling agreement at a higher agency level;

"(b) management officials of the agency retain the right, in accordance with applicable laws and regulations—

"(1) to direct employees of the agency;

"(2) to hire, promote, transfer, assign, and retain employees in positions within the agency, and to suspend, demote, discharge, or take other disciplinary action against employees;

"(3) to relieve employees from duties because of lack of work or for other legitimate reasons;

"(4) to maintain the efficiency of the Government operations entrusted to them;

"(5) to determine the methods, means, and personnel by which such operations are to be conducted; and

"(6) to take whatever actions may be necessary to carry out the mission of the agency in situations of emergency; and

"(c) nothing in the agreement shall require an employee to become or to remain a member of a labor organization, or to pay money to the organization except pursuant to a voluntary, written authorization by a member for the payment of dues through payroll deductions.

The requirements of this section shall be expressly stated in the initial or basic agreement and apply to all supplemental, implementing, subsidiary, or informal agreements between the agency and the organization."

As required by section 12 of the Executive order, ARTICLE IV of the Agreement states that the terms of the Agreement are subject to the provisions of existing and future laws and regulations of appropriate authorities. By virtue of these authorities, the Department of the Navy doubts whether it may accept the arbitrator's award inasmuch as it does not comport with laws and regulations governing official travel as interpreted by our Transportation and Claims Division in the Settlement Certificates discussed above.

We have reviewed the Settlement Certificates issued to Messrs. Kenney and Riha and find that the interpretation therein of controlling law and regulations is partly incorrect as it applies to the particular circumstances of their travel. Relying upon regulatory provisions such as section 1.2 of the Standardized Government Travel Regulations, Office of Management and Budget Circular No. A-7, March 1, 1965, in effect on the dates of the employees' travel, we have held that in performing official travel an employee is required to proceed as expeditiously as he would if traveling on personal business. Prior to the enactment of 5 U.S.C. 6101(b)(2) it was considered that by virtue of his obligation of expeditious travel an employee should not delay travel simply to avoid traveling on nonworkdays. However, the policy set

forth at 5 U.S.C. 6101(b)(2)—that to the maximum extent practicable an employee should not be required to perform travel outside of his regular duty hours—has modified the requirement for expeditious travel. We have now recognized that, insofar as permitted by work requirements, travel may be delayed to permit an employee to travel during his regular duty hours and that payment of up to 2 days additional per diem for that purpose is not unreasonable.

In B-168855, March 24, 1970, we considered an agency's contention that an employee who completed his temporary duty assignment at 4:45 p.m., remained overnight, and returned the following day, was limited to the amount of per diem that would have been payable had he returned the prior evening. By reason of the travel policy expressed in 5 U.S.C. 6101(b)(2) we stated:

> "In the absence of any indication that Mr. Thomas was required to be at his headquarters duty station on the morning of October 2, it does not appear unreasonable for him, in light of the cited regulations, to have left Fresno on the morning of October 2 rather than at the close of business October 1 to obviate at least 3 hours of travel during off-duty hours. * * *
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> "The constructive cost of Mr. Thomas' travel may be recomputed on the basis of his leaving Fresno by common carrier on the morning of October 2 (with appropriate adjustment in his leave record), and we would not be required to object to payment on that basis."

Similarly, in B-160258, January 2, 1970, we held that payment of an additional 1 days per diem was not unreasonable to permit an employee to travel during regular duty hours. However, additional per diem costs for 2 days for the purpose of facilitating an employee's travel during regular duty hours are not considered reasonable. 46 Comp. Gen. 425 (1966) and B-165339, November 18, 1968. In this connection it has been held that travel may be scheduled on nonworkdays and overtime paid to avoid the payment of 2 days per diem. 50 Comp. Gen. 674, 676 (1971); 51 id. 727, 732 (1972); B-169078, April 22, 1970.

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In any case since the delay in return travel by Messrs. Kenney and Riha until it could be performed during regular duty hours involved only 1 additional day of per diem, it was within the Shipyard's discretion to allow the employees to travel on Monday and Tuesday, respectively, and to pay them the attendant per diem costs. Similarly, as advised by our Transportation and Claims Division, it was within the Shipyard's discretion not to require the employees to take annual leave in connection with the travel.

We wish to stress, however, that 5 U.S.C. 6101(b)(2) is not an absolute mandate as to the scheduling of travel. Travel need be scheduled within an employee's regular duty hours only "to the maximum extent practicable." When an agency determines that it is necessary for an employee to perform travel during nonduty hours and the employee may not be paid overtime, the reasons therefore shall be recorded and, upon request, furnished to the employee. 5 CFR 610.123. See also B-179503, January 21, 1974. Regarding the effect of labor management agreements which may be in force, in view of the rights retained by management officials under section 12(b) of Executive Order 11491, quoted above, to direct employees, to maintain the efficiency of Government operations, and to determine the methods, means and personnel by which such operations are to be conducted, the determination of whether it is or is not practicable to permit an employee to defer or accelerate travel until it can be performed during regular duty hours would appear to be reserved to the agency.

In the case of travel by Messrs. Kenney and Riha, the record contains no suggestion that there was any official necessity for their return to the Long Beach Naval Shipyard on Sunday, October 18. To the contrary, it appears that the employees were ordered to return on that day solely because of the belief on the part of Shipyard officials that there was no authority to delay travel. Thus, since there is no indication that work requirements of the agency would not permit Messrs. Kenney and Riha to perform return travel on Monday and Tuesday, respectively, we know of nothing that would preclude acceptance of the arbitrator's award by the Department of the Navy.

R.F.KELLER

Acting Comptroller General
of the United States