

U.S. Office of Personnel Management  
Office of Merit Systems Oversight and Effectiveness  
Classification Appeals and FLSA Programs



Dallas Oversight Division  
1100 Commerce Street, Room 4C22  
Dallas, TX 75242

**Fair Labor Standards Act Decision  
Under Section 4(f) of the Act as Amended**

**Claimant:** [claimants' name]

**Position:** Courier  
GS-084-08

**Organization:** Pantex Courier Section  
Transportation Management Branch  
Transportation Safeguards Division  
Office of Safeguards and Security  
Albuquerque Operations Center  
Department of Energy  
Albuquerque, New Mexico

**Claim:** Overtime is owed

**OPM decision:** Claim denied

**OPM decision number:** F-0084-08-01

/s/ Bonnie J. Brandon

Bonnie J. Brandon  
FLSA Claims Officer

10/4/99

Date

As provided in section 551.708 of title 5, Code of Federal Regulations (CFR), this decision is binding on all administrative, certifying, payroll, disbursing, and accounting officials of agencies for which OPM administers the Act. The agency should identify all similarly situated current and, to the extent possible, former employees, and ensure that they are treated in a manner consistent with this decision. There is no further right of administrative appeal. This decision is subject to discretionary review only under conditions specified in 5 CFR 551.708 (address provided in 5 CFR 551.710). The claimant has the right to bring action in the appropriate Federal court if dissatisfied with this decision.

**Decision sent to:**

[claimants' names and address]

Director  
Human Resources Division  
Albuquerque Operations Office  
Department of Energy  
PO Box 5400  
Albuquerque, NM 87185-5400

Deputy Assistant Secretary for Human Resources  
U.S. Department of Energy  
Washington, DC 20585

## **Introduction**

On March 19, 1998, the Dallas Oversight Division of the U.S. Office of Personnel Management (OPM) received a Fair Labor Standards Act (FLSA) claim from [the claimants]. This claim was originally filed with OPM's Office of General Counsel, who forwarded it to this office. Briefly, [the claimants] believe they should have been paid at an overtime rate beginning at 2:00 p.m. on June 10, 1997, instead of their regular rate of pay. The claimants are assigned to the Pantex Courier Section, Transportation Management Branch, Transportation Safeguards Division, Office of Safeguards and Security, at Department of Energy's Albuquerque Operations Office. The claimants' duty station is [city, state]. At the time of the claim, their position was classified as Courier, GS-084-08, and was determined to be covered by the FLSA. We have accepted and decided their claim under section 4(f) of the FLSA as amended.

In deciding the claim, we carefully considered all the written information in the record as well as information obtained in telephone contacts with officials from the Human Resources Division, Transportation Safety Division, and the claimants.

## ***Background***

The Transportation Safeguards Division is responsible for transporting nuclear weapons and other strategic quantities of special nuclear materials to military installations throughout the country and protecting those shipments while in progress. Shipments are primarily made by specialized motor vehicles, under intense security. Travel is arranged and performed to avoid notice or recognition of the mission. Travel schedules are irregular and, during those trips, hours are long. The couriers are basically on duty from the reporting time at the departure location until they are relieved of their shipment at a Rest Over Night (RON) location. During this time in travel status, a courier will drive for a four-hour period, operate the radios for four hours, and rest in the vehicle's sleeper for four hours. This rotation continues until the RON location is reached or they return to their point of origin.

For the trip in question, the claimants reported for duty at 6:30 a.m. on June 9, 1997. After departure, they traveled continuously until 1:50 a.m. on June 10, when they reached their RON location. They were released from duty and had orders to report back for duty at 2:00 p.m. to resume the trip. They reported at 2:00 p.m. on June 10 and were in travel status again until 11:15 p.m. on June 11, when they returned to the point of origin.

The claimants believe they were not properly notified in advance of the split in their workday on June 10. They believe the agency should have credited them with six hours and ten minutes of administrative leave to complete an 8-hour work day and that they should have been paid at an overtime rate beginning at 2:00 p.m. and continuing until completion of the workday.

## ***Evaluation***

As indicated previously, the claimants' request was forwarded to this office to resolve under its authority to administer the provisions of the FLSA, that is, section 551.102 of title 5, Code of

Federal Regulations (CFR). There is agreement that the claimants are nonexempt and, therefore, are covered by the provisions of the FLSA.

Under the FLSA regulations, 5 CFR 551.421, there is no requirement that a Federal employee have a regularly scheduled administrative workweek. 5 CFR part 610 requires the head of the agency to define the administrative workweek and work schedules for his or her employees in order to accomplish the mission of the agency. These regulations provide criteria for agency use in making these determinations. These regulations provide for exceptions to the criteria when the head of an agency determines that the agency would be seriously handicapped in carrying out its functions or that costs would be substantially increased.

The scheduling of work is a matter within the authority of the agency. The same is true for granting of administrative leave. Complaints pertaining to such matters must be resolved through agency processes; i.e., grievance procedures. The agency human resource office indicates that, although the claimants questioned circumstances of the trip in writing, formal grievance procedures were not invoked. OPM's authority to resolve FLSA complaints does not extend to issues related to the scheduling of work or granting of administrative leave.

The FLSA regulations define a workday as the period between the commencement of the principal activities that an employee is engaged to perform on a given day and the cessation of the principal activities for that day. All time spent by an employee in the performance of such activities is hours of work. The workday is not limited to a calendar day or any other 24-hour period.

During the trip in question, the claimants were in a continuous duty status for two periods of time. The first work period began at 6:30 a.m. on June 9, 1997, and continued until 1:50 a.m. on June 10, when the crew was released from duty at the RON location. The second work period began at 2:00 p.m. on June 10 and continued until 11:15 p.m. on June 11.

The FLSA provides that, with certain exceptions, an agency shall compensate a nonexempt employee for all hours of work in excess of 8 in a day or 40 in a workweek, at a rate of one and one-half times the hourly regular rate of pay. At the time of the claim, the agency calculated the couriers' overtime on the basis of the 8-hour per day criteria. Review of the agency duty time schedules for the trip in question shows the entire crew of seven in a paid work status for 11 hours and 50 minutes on June 10, with 12 hours and 10 minutes in an off-duty, RON status. Some crew members, including the claimants, were credited with up to 1 hour and 30 minutes of additional work time for physical fitness activities and/or vehicle sanitation.

As indicated previously, the entire crew was in a work status until 1:50 a.m. June 10, the conclusion of the first leg of the trip that began at 6:30 a.m. on June 9. The crew was then relieved of its shipment and was directed to report back for duty at 2:00 p.m. on June 10. Generally under the FLSA, periods where employees are completely relieved from duty and which are long enough to enable them to use the time effectively for their own purposes are not hours of work. 5 CFR 551 defines hours of work as meaning all time spent by an employee performing

an activity for the benefit of an agency and under the control or direction of the agency. The crew was released from duty for uninterrupted sleep, meals, physical fitness activity, or other activities of their choosing. We find this RON period is not considered hours of work under the FLSA.

The crew reported for duty and resumed travel status at 2:00 p.m. on June 10. That leg of the trip continued through the end of that calendar day and continued until 11:15 p.m. the following day, June 11. The claimants were compensated at their overtime rate for all hours in a work status that exceeded 8 hours within each workday.

**Conclusion**

Under the FLSA, the claimants may not be compensated for overtime until a total of 8 hours has actually been worked. As the RON time is not considered hours of work, their claim for overtime pay beginning at 2:00 p.m. on June 10, 1997, must be denied.