FLSA-250

December 7, 1977

This is in reply to your letter dated November 14, 1977, asking if the transportation of tools by an employee to the job site is considered as hours of work under the Fair Labor Standards Act.

You state that the *** has filed a grievance, on behalf of an employee, concerning such time. The subject employee clocked in and was assigned to another job, he transported his tools to that job area and then informed the foreman that he was ill, and went home without clocking out. In this regard, you mention a union contract clause, which states that "working less than four hours one day per month for employee's personal illness," constitutes an excused absence.

You state that the employer considered the transportation of tools to a job site as not compensable hours of work, unless the employee actually operates a machine and produces parts with that machine. Therefore, the employer has not paid the subject employee for the 5 minutes spent transporting the tools to the reassigned job site prior to his leaving. In this regard, the employer states that section 785.9 of the enclosed copy of 29 CFR Part 785, excuses them from paying the employee for this period of time. However, the union states that section 785.15, .24, .25, and .47 required the employer to compensate the employee for the 5 minutes he spent transporting his tools to the new job site.

Finally, you state that the union had previously filed a grievance on behalf of another employee, but conceded the payment as this employee had not even reported to the job at the start of the shift.

Based on the information provided in your letter, it would appear that the de minimis rule, as explained in section 785.47, may be applicable, since the failure of the employer to compensate an employee for time spent carrying tools to a job site was limited to this one occasion. In Goldberg v. Sullivan, 15 WH Cases 665, the court ruled that "three minutes spent by logging crew employees of (the) lumber company before beginning (their) daily work in lifting their saws from (the) truck and putting gas in (the) gas tank is not compensable under (the) FLSA since such period of time is insubstantial and insignificant and falls within (the) de minimis rule."

In Nardone v. General Motors, Inc., 15 WH Cases 508, the court ruled that "an outer limitation on the number of minutes is not of itself the proper application of the de minimis rule. It is a doctrine which must be applied with common sense to the facts before the court. An artificial time limit will not suffice. Here, in light of the uncertainty of how often the tasks were performed, or how long a period was required for their performance, and in the face of the punch card ceiling time, I would find that if the

plaintiffs indulged in any compensable activity at all (perhaps getting tools or other equipment from foremen) then such time was merely de minimis and not recoverable.

It would thus appear that situations where an employer fails to compensate employees for infrequent and inconsequential time periods would fall under the de minimis rule and need not be compensated. Of course, our response is based on the limited information you provided. However, if there is any additional information concerning this issue you may wish to contact our Area Office located at 105 East Jefferson Boulevard, Suite 428, Sherland Building, South Bend, Indiana 46601, telephone: (219) 234-4045. That office will be pleased to assist you in any way possible.

Sincerely,

Xavier M. Vela
Administrator

Enclosures