

DOCUMENT RESUME

08031 - [C3468576]

**[Restoration of Forfeited Annual Leave for a Special Agent].
B-191540. December 8, 1978. 2 pp.**

**Decision re: Federal Bureau of Investigation; by Robert F.
Keller, Deputy Comptroller General.**

**Contact: Office of the General Counsel; Personnel Law Matters I.
Authority: 5 U.S.C. 6304(d). -5 C.F.R. 630. 56 Comp. Gen. 470.
B-191379 (1978).**

**A decision was requested as to whether annual leave
forfeited by a special agent at the end of 1977 leave year
because of an undercover assignment may be restored to him. The
leave may not be restored since it was not scheduled in writing
in advance, and this statutory scheduling requirement may not be
waived even in extenuating circumstances. (NFW)**

DECISION

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

PLM F
8574

FILE: B-191540**DATE: December 8, 1978****MATTER OF: FBI Special Agent - Restoration of Forfeited Annual Leave**

DIRECT: Annual leave was forfeited at the end of the 1977 leave year by an FBI Special Agent. Although the Special Agent could not use the leave because of an undercover assignment, it may not be restored since it was not scheduled in writing in advance as required by 5 U.S.C. 6304 (d)(1) and 5 C.F.R. 630.308. Since the scheduling requirement is imposed by statute all employees are charged with notice of it and it may not be waived ever in extenuating circumstances.

The Federal Bureau of Investigation requests a decision as to whether annual leave forfeited by a Special Agent at the end of the 1977 leave year because of an undercover assignment may be restored to him.

On Friday, September 30, 1977, the Special Agent was directed to report on the next work day, Monday, October 3, 1977, to a city in another state for an undercover assignment which was expected to last approximately 90 days. He was aware that he had annual leave to use before the end of the leave year to avoid forfeiture, but he did not schedule any for use prior to his departure because of the uncertain nature of his assignment.

A notice dated October 18, 1977, was issued to all FBI employees advising them that forfeited annual leave must have been scheduled and approved before the start of the third biweekly pay period prior to the end of the leave year, i.e., not later than November 20, 1977, to be considered for restoration if it was forfeited because it could not be taken because of sickness or exigencies of the service. However, because of the nature of his assignment, the Special Agent did not report to an FBI office and had only irregular contacts with other agents during this period. It is, therefore, doubtful whether this notice ever came to his attention. In any event he did not schedule any leave within the prescribed time limit and because of his assignment he was unable to use 59 hours of leave and forfeited it.

B-191540

The law governing the restoration of forfeited annual leave, 5 U.S.C. 6304 (d)(1) (1976), provides in pertinent part that annual leave which is lost by operation of that section because of exigencies of the public business when the annual leave was scheduled in advance shall be restored to the employee.

The pertinent regulation implementing this statute, 5 C.F.R. 630.308 (1977), provides as follows:

"Beginning with the 1974 leave year, before annual leave forfeited under section 6304 of title 5, United States Code, may be considered for restoration under that section, use of the annual leave must have been scheduled in writing before the start of the third biweekly pay period prior to the end of the leave year."

In construing these authorities we have consistently held that since the advance scheduling requirement for the restoration of forfeited annual leave is imposed by statute, all employees are charged with notice of it and it may not be waived even in extenuating circumstances. 56 Comp. Gen. 470 (1977); Matter of Carl J. Ronollo, B-191379, September 28, 1978.

Therefore, because the Special Agent here involved did not comply with this mandatory requirement, the annual leave he forfeited at the end of the 1977 leave year may not be restored.

Acting  Comptroller General
of the United States