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DECISION



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

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FILE: B-193913

DATE: April 6, 1979

MATTER OF: Leo C. Nichols - [Claim for Severance Pay]

DIGEST:

Claim for severance pay is disallowed where employee resigned without receiving prior general or specific notice that his position would be abolished. Memoranda setting forth in general terms proposal for abolishing employee's position do not satisfy specific requirements of general or specific notice under applicable provisions of Code of Federal Regulations and agency reorganization plan was not definite at time of employee's resignation.

This is in response to a request from Leo C. Nichols that we review Claims Division Settlement No. Z-2804801, October 30, 1978, which denied his claim for severance pay. Mr. Nichols contends that the settlement is erroneous because he was provided with notice by means of office memoranda that he was to be involuntarily separated from his position at the Internal Revenue Service (IRS) and that he resigned on the basis of that notice. For the reasons set forth below, we find that Mr. Nichols is not entitled to severance pay because he received neither general nor specific notice that he was to be involuntarily separated from his position before he tendered his resignation and, therefore, his resignation was voluntary.

The record indicates that a task force was commissioned in 1977 to study a means for streamlining operations at IRS. In February 1978 the IRS announced a contemplated reorganization of its agency which included a streamlining of 12 of the smaller IRS districts, including the Albuquerque, New Mexico, District. At that time Mr. Nichols was Chief of the Collection and Taxpayer Service Division at the Albuquerque Office. The report called for the possible abolition of a number of intermediate management positions.

In a memorandum dated March 30, 1978, IRS Commissioner Jerome Kurtz informed all Regional Commissioners and District

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Directors of developments which had occurred in implementation of the report recommendations. He advised that certain positions would be abolished if the plan of implementation were adopted. Mr. Nichols' position was one of those earmarked for abolition. The memorandum of March 30 also advised that such positions would have to be vacated no later than February 28, 1979, if the plan were adopted and that the Commissioner hoped to have all individuals adversely affected by the streamlining placed in other positions by that date.

Several months later, by memorandum dated August 9, 1978, the Commissioner stated in part:

"* * * Unfortunately, I can not predict with accuracy, when we will be in a position to implement the streamlining proposal. As you know, the Senate Finance Committee has adopted a Resolution in opposition to our streamlining proposal. The full Senate has yet to act on the Resolution. * * * Directors in streamlined districts should contact all affected non-bargaining unit employees and explain the status of the streamlining proposal * * * and management's desire to minimize any adverse impact on employees and to accommodate their assignment preferences within practical limitations. The attached list of controlled vacancies should be made available to any affected employee who expresses an interest or willingness to accept a lateral reassignment if the streamlining proposal is implemented * * * If an employee does not give a preference for placement choices now, he or she will be offered a position at the time of implementation, if the plan is implemented, in whatever position for which he or she is qualified and that is available." (Emphasis supplied).

The record indicates that Mr. Nichols' address was changed from Albuquerque, New Mexico, to Waco, Texas, between August 9 and August 22, 1978, and we assume from this fact that he resigned during this period. The exact date of his resignation is not known.

Title 5 of the United States Code, section 5595(b)(2), provides that an individual involuntarily separated from service, not removed for cause or on charges of misconduct, delinquency, or inefficiency, is entitled to receive severance pay. Title 5 of the Code of Federal Regulations (CFR) section 550.706 provides that an individual who is separated because of resignation is deemed to be involuntarily separated after receipt of a general notice of a reduction in force by his agency which announces that all positions in his competitive area will be abolished or transferred to another commuting area. That regulation also provides that an employee is entitled to severance pay when he resigns after receipt of a specific notice in writing by his agency that he is to be involuntarily separated not by removal for cause on charges of misconduct, delinquency, or inefficiency. In this connection we point out that 5 C.F.R. §351.801 provides that an employee who is to be released as a part of a reduction in force shall receive written notification of this fact. If an individual's resignation is unrelated to receipt of a specific or general notice as provided in 5 C.F.R. §550.706(a), the separation is voluntary. 5 C.F.R. §550.706(b).

The notice required by 5 C.F.R. §351.801 is generally a specific notice. However, in certain cases 5 C.F.R. §351.803 permits a general notice. The contents of a specific notice are stated in 5 C.F.R. §351.802 which provides:

"Except as provided in §351.803, the notice required by §351.801 shall state specifically the action to be taken and its effective date; the employee's competitive area, competitive level, subgroup, and service date; the place where the employee may inspect the regulations and records pertinent to this case; the reasons for retaining a lower-standing employee in the same competitive level under §351.607; the reasons for retaining a lower-standing employee in the same competitive level for more than 30 days under §351.608; and the employee's appeal rights, including the time limit for appeal and the location of the Commission office to which an appeal should be sent."

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The contents of a general notice are set out in 5 C.F.R. §351.804 which provides:

"A general notice shall inform the employee that action under this part may be necessary but that the agency has determined no specific action in his case. The notice shall state that as soon as the agency determines what action, if any, will be taken under this part the employee will receive specific notice of the action to be taken. The general notice shall state that it will expire as stated therein unless, on or before the expiration date, it is renewed or supplemented by a specific notice. A general notice shall inform the employee that he should not appeal to the Commission before he receives a specific notice, and it may include any other information specified in §351.802."

In the instant case, the memoranda discussed above neither separately nor together contained the information necessary to elevate the general information contained therein to the status of a specific or general notice. 45 Comp. Gen. 784 (1966); 54 id. 154 (1974). The information in the memoranda did not definitely announce that all positions in Mr. Nichols' area would be abolished or transferred to another commuting area nor did the memoranda state that he was to be involuntarily separated not by removal for cause on charges of misconduct, delinquency, or inefficiency, as required by C.F.R. 550.706. Further, while it appears from the memoranda that the proposal was being seriously considered, the August 9, 1978, memorandum casts a reasonable doubt on whether the proposal was going to receive Senate approval. In view of this it cannot be stated that as of August 9, 1978, Mr. Nichols was going to be involuntarily separated. In this connection the record now shows that the streamlining decision was not definite until November 9, 1978, when a memorandum was issued by IRS Commissioner Kurtz which stated in pertinent part as follows:

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"We have now decided, after much delay, to proceed with the streamlining portion of the Internal Revenue Service reorganization. This action affects 12 District Offices (* * * Albuquerque * * *)."

Accordingly, the disallowance of Mr. Nichols' claim by the Claims Division is affirmed.


Deputy Comptroller General
of the United States