

DECISION



17869 Mrs. Diamond
**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

Entitlement to

FILE: B-201590

DATE: April 22, 1981

MATTER OF: Nora Ashe - Leave of Absence for Jury Duty

DIGEST: When it appears that an employee will be expected to perform jury duty for a substantial part of the day on the date stated in the summons commencing jury service, the employee is not required to report to work that same day. Once summoned by a court for jury duty an employee's primary responsibility is to the court. When it is apparent that an employee will be required to perform jury duty for less than a substantial part of the day, and when it is reasonable to do so, the employee's agency may require the employee to report for work prior to reporting for or after being excused from jury duty.

This action is in response to a request, dated December 17, 1980, by Gordon E. Grainger, President, Local 977, National Federation of Federal Employees, concerning entitlement to court leave of Nora Ashe, and other employees at George Air Force Base (AFB), when called to report for jury duty. A decision is being rendered pursuant to 4 C.F.R. Part 21 (1980). As amended August 21, 1980, Part 21 contains the provisions under which this Office settles issues on the legality of appropriated fund expenditures that arise in the Federal Labor-Management Relations program. See 45 F.R. 55689. The issue presented was initially the subject of a grievance. The grievance has been withdrawn in favor of a joint request for decision pursuant to 4 C.F.R. § 21.7(b).

The issue concerns the propriety of the Air Force's action in charging Mrs. Ashe 3 hours of annual leave because she did not report to work prior to reporting for jury duty on the first day of her term of jury service. This procedure has not been consistent throughout George AFB; some supervisors have required employees to report to work prior to jury duty and some have not. We understand that all employees are presently required

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to report to work before they are given court leave to report for jury duty. The union questions this requirement in view of the instructions in Federal Personnel Manual (FPM), Supplement 990-2, Book 630, subchapter S10-2e, and our decisions at 20 Comp. Gen. 131 and id. 181, which indicate that employees on jury duty are assigned to the court and are to be given court leave for all hours until they are released by the court. The union feels it is unreasonable to expect employees to report to work for a very brief period and then report to the court.

Under 5 U.S.C. § 6322 (1976), an employee is entitled to leave of absence without loss of or reduction in the leave to which he is otherwise entitled, during a period of absence when he is summoned by a court to serve as a juror. That statute, derived from the act of June 29, 1940, Chapter 446, 54 Stat. 689, states the long-standing policy of the Congress that Government employees should be permitted to perform jury service without loss of compensation or leave.

In 20 Comp. Gen. 131 (1940) we held that an employee properly summoned by a State or Federal Court to serve on a jury is under the jurisdiction and control of the court for the term of jury service. As defined in that decision the term of jury service runs from the date stated in the summons on which he is required to report to the court until the employee is discharged by the court.

Although an employee is not strictly under the jurisdiction and control of his employing agency during the term of jury service, we have nonetheless recognized the employing agency's authority to require an employee to return to duty during periods that he is excused from jury duty. In 20 Comp. Gen. 181 (1940) we held that an employee excused or discharged by the court either for an indefinite period subject to call or for a definite period in excess of one day is not entitled to court leave for such days but must report to duty or have his absence charged to the otherwise appropriate leave account. That holding was amplified in 26 Comp. Gen. 413 (1946) in which we discussed the scope of an agency's discretion to

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require an employee who has been excused from jury duty for one day or less to return to his regular duties. We there stated:

"* * * in cases where no hardship would result, it would be within administrative discretion to inform a prospective juror that, if excused from jury duty for one day or even a substantial portion thereof, he would be expected to return to duty or suffer a charge against his annual leave to the extent that he failed so to do. * * *"

The determination of whether to require an employee to report to work during the term of jury service is a matter of administrative discretion to be exercised in a reasonable fashion in light of the particular circumstances. B-158954, April 25, 1966.

The decisions discussed involve employees excused or discharged after beginning their terms of jury service. However, the principle involved is applicable to the commencement of jury duty. An employee who is not required to report for jury duty until late in the day stated in the summons may be required to report to his/her regular duties if it would not pose a hardship.

However, an employee's primary responsibility once summoned by a court for jury duty is to the court. Thus, if it appears that an employee is or may be required to perform jury duty for a substantial part of the day, on the first day of duty or on any day thereafter, then the employee should not be required to report to work that same day. However, when it is apparent that the employee will be required to perform jury duty for less than a substantial part of the day and when it is reasonable to do so, that employee may be required to report for work prior to reporting for jury duty. The employee's duty schedule, the commuting time involved, and the employee's need for rest should be considered in making this determination. See B-70371, August 5, 1975, and 54 Comp. Gen. 147 (1974).

We have not been furnished the particular facts in Mrs. Ashe's case. Therefore, we do not have sufficient

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information to determine whether the Air Force exercised its discretion reasonably in charging her 3 hours of annual leave on her first day of jury duty. If it was anticipated that Mrs. Ashe would perform jury duty for a substantial part of the day on which she was summoned, her absence from work for 3 hours prior to reporting for jury duty should not have been charged to annual leave. Thus, if she was required to report in the morning, with the possibility of serving on active jury service for a substantial part of a working day, she should not have been charged leave. This is so even if her normal work hours began early, such as 6 or 7 a.m., whereas jury service was not scheduled to begin until 9 or 10 a.m. To charge her annual leave in such circumstances would be an unreasonable burden and thus an unreasonable exercise of discretion on the part of the agency.

Milton J. Fowler

Acting Comptroller General
of the United States