DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548 26311

FILE: B-212723 DATE: September 20, 1983

MATTER OF: Daniel L. Fisher - Settlement of Discrimination Complaint - Lump-Sum Monetary Award

DIGEST:

Employee filed discrimination complaint when he was not selected for a promotion. Informal settlement of complaint without any admission of discrimination contained lump-sum monetary award to employee. Since the award is related to backpay and is less than the maximum amount recoverable if discrimination had been found, the settlement may be implemented. See B-206014, March 7, 1983, 62 Comp. Gen._____. Only taxes and other mandatory deductions are required to be withheld from this award.

This issue in this decision concerns a lump-sum monetary award which was negotiated in settlement of an employee's discrimination complaint under Title VII of the Civil Rights Act of 1964, as amended. We hold that since the award is reasonably related to backpay and is less than the maximum amount of backpay which could have been received if discrimination had been found, the informal settlement may be implemented.

This decision is in response to a request from R.G. Bordley, Chief, Accounting and Finance Division, Defense Logistics Agency (DLA), concerning a negotiated settlement agreement reached with Mr. Daniel L. Fisher, a DLA employee.

Mr. Fisher filed a discrimination complaint in March 1982, when he was not selected for promotion to a grade GS-13 supervisory position. Although the agency investigation found no support for his allegations of discrimination, the agency agreed to a negotiated settlement agreement dated June 15, 1983. In consideration for Mr. Fisher withdrawing his complaint and not filing suit under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-16

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(Supp. IV, 1980), DLA agreed, (1) not to take reprisal action and (2) to pay Mr. Fisher $595 in "full and final settlement" of his complaint. The agreement states that the lump-sum monetary award, "reflects the negotiated difference between GS-12 and GS-13 pay" during Mr. Fisher's temporary detail of nearly 3 months to the higher level position prior to the selection of someone else for the permanent promotion. The agreement also states that the agency does not admit to any discrimination in this matter.

The agency questions payment of the monetary award even though the amount is considerably less than would have been due in a backpay award if discrimination had been found. The agency also questions what deductions should be made from the award.

In a recent decision, B-206014, March 7, 1983, 62 Comp. Gen. _____, we held that Federal agencies have the authority to informally settle discrimination complaints filed under Title VII of the Civil Rights Act of 1964, as amended, and to make awards of backpay, attorney's fees or costs, without a corresponding personnel action and without a finding of discrimination. However, we also held that the amount of the award agreed upon must be related to backpay and may not exceed the maximum amount that would be recoverable under Title VII if a finding of discrimination had been made. Finally, we stated that no compensatory or punitive damages would be allowed since they are not permitted under Title VII.

In the present case, the award to Mr. Fisher appears reasonably related to backpay since it approximates a temporary promotion to the higher level position during the period Mr. Fisher was detailed to that higher level position. In addition, the agency has indicated that the amount is considerably less than the maximum amount that would have been recoverable under Title VII if a finding of discrimination had been made. Therefore, we conclude that the negotiated settlement may be implemented.

As to the agency's question concerning appropriate deductions from this award, we note that under regulations promulgated by the Equal Employment Opportunity Commission, 29 C.F.R. § 1613.271, an award of backpay under Title VII, if there has been a finding of discrimination, is to be computed in the same manner as backpay under the Back Pay Act. See 5 C.F.R. § 550.805 (1983). However, this informal settlement of Mr. Fisher's complaint does not involve any finding or admission of discrimination, and the monetary award is related to but does not precisely correspond to a calculation of backpay under the Back Pay Act. As stated above, we have determined that this award is less than an award of backpay under a finding of discrimination, including the usual deductions pertaining to a backpay award. Accordingly, we conclude that the only deductions which should be made from the award would be for taxes or other mandatory deductions as might be made from, for example, incentive or performance awards.

for Milton J. Socolar
Comptroller General
of the United States