



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Debra Ruth Wolin - Reimbursement for Compensatory  
Time - Separation - District Court Employee  
File: B-226173  
Date: August 20, 1987

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### DIGEST

A former employee of a United States District Court claims reimbursement for unused compensatory time upon separation on the basis of an agreement between herself and the Clerk of the Court. Her claim is denied. The employee was appointed by the Clerk of the Court under provisions of 28 U.S.C. § 751(b), to a position outside the competitive service, so that compensatory time and overtime provisions in title 5, United States Code, do not apply. Her compensation is fixed pursuant to statutory authority in 28 U.S.C. § 604(a)(5), and there is no provision for payment for overtime or accrued compensatory time in the statute or implementing regulations. Federal employment relationship is statutory, not contractual, and Government is not bound by the unauthorized acts of its agents.

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### DECISION

#### INTRODUCTION

This decision is the result of a joint request from the Administrative Office of the United States Courts and the United States Claims Court, based on an Order of the Court dated April 9, 1987, in the matter of Debra Ruth Wolin v. United States, No. 818-86C.1/ The subject matter is a claim of Ms. Wolin for reimbursement for accrued compensatory time and other relief. For the reasons that follow, Ms. Wolin's claim is denied.

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1/ This Office has a longstanding policy not to comment on a matter pending before a court of competent jurisdiction; however, all parties to this proceeding agree that the matter should be resolved by this Office.

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## BACKGROUND

Ms. Wolin was employed as a staff attorney in the pro se office of the United States District Court for the Southern District of New York from April 1981, until her resignation effective December 13, 1985. The record reflects the fact that Ms. Wolin worked long hours during this period in excess of her normal workweek, and she accumulated many hours of compensatory time during this period that, because of her extensive work schedule, she was never able to use. She now claims \$24,379.07 as reimbursement for her unused compensatory time.

Ms. Wolin bases her claim on an agreement that she made on April 25, 1982, with the Clerk of the Court. The agreement stated in part that:

"I would like to confirm our oral understanding that at such time as I leave this position I will be allowed to take my comp time, in addition to whatever accumulated leave time I have coming. That is, if I cease work in say April I would continue being paid until both my accumulated leave time and accumulated comp time is used up. Presumably this would be accomplished by means of an overlap.

"If this is an accurate description of our agreement, please so indicate by endorsing this memorandum at the bottom. \* \* \*"

The agreement contains the Clerk of the Court's signature.

In Ms. Wolin's resignation memorandum to the court dated November 28, 1985, she indicated that her last day of "active service" would be December 13, 1985, but pursuant to her agreement with the Clerk of the Court, she would remain on the payroll until her accumulated compensatory time was exhausted. Ms. Wolin, however, was not allowed to remain on the rolls of the District Court until her compensatory time was used up, and her subsequent claim for reimbursement was denied on the basis of advice from the Administrative Office of the United States Courts. The Chief Judge of the District Court issued an administrative report that concurred in the denial on three grounds: (1) it would constitute extra pay prohibited by 5 U.S.C. § 5536; (2) the agreement by its terms does not contemplate a cash payment after resignation because of its reference to an overlap; and (3) the agreement was unauthorized and ultra vires.

The Administrative Office of the United States Courts concurs in the Chief Judge's findings.

Ms. Wolin, in rebuttal, states that her claim should be allowed since: (1) there is nothing in the provisions of 5 U.S.C. § 5536 which prohibits the payment of monies to an employee on compensatory leave; (2) the agreement was not illegal; and (3) the claim is not based on estoppel as alleged by the court, but rather the basic principles of contract law apply.

#### OPINION

Employees such as Ms. Wolin are appointed by the Clerk of the Court under the provisions of 28 U.S.C. § 751(b) (1982). As such her position was in the excepted, not the competitive service, since employees of the courts are appointed without regard to competitive civil service requirements under the authority of 28 U.S.C. § 751(b), which also provides that such employees are subject to removal by the Clerk with the approval of the court. See 5 U.S.C. § 2103(a) (1982). See also Williams v. McClellan, 569 F.2d 1031 (8th Cir. 1978). Since Ms. Wolin was an employee of a district court, the ordinary principles pertaining to compensatory time and overtime in title 5 of the United States Code are not applicable. An "employee" for the purposes of the payment of overtime under 5 U.S.C. § 5542 or compensatory time under 5 U.S.C. § 5543 is defined in 5 U.S.C. § 5541(2)(C) (1982), as "an employee in or under the judicial branch \* \* \* who occupies a position subject to chapter 51 and subchapter 53 of this title." The definition of agency in chapter 51 and subchapter III of chapter 53 includes the Administrative Office of the United States Courts, but does not include the courts themselves. 5 U.S.C. §§ 5102(a)(1)(B) and 5331(a).

Similarly, she is not entitled to overtime compensation under the Fair Labor Standards Act since the act applies to judicial branch employees only to the extent that they hold a position in the competitive service. 29 U.S.C. § 203(e)(A)(iii) (1982).

Ms. Wolin's official position with the court was that of Deputy Clerk and her salary was set under a judicial system pay plan under the authority of 28 U.S.C. § 604(a)(5) (1982). That provision provides the Administrative Office of the United States Courts with authority to fix the compensation of employees of the courts whose compensation is not otherwise fixed by law. This authority is under the supervision and direction of the Judicial Conference of the

United States. Ms. Wolin's other benefits stem from a Personnel Policy and Orientation Manual published by the Clerk of the Court. Page 32 of the Manual provides that compensatory leave and overtime statutes do not apply to employees of the judiciary; however, compensatory leave may be granted at the discretion of the Clerk for overtime or extra duty properly ordered in advance. The Manual does not contain any other references to compensatory time, nor does it provide for lump-sum payment or terminal leave for unused compensatory time at separation.

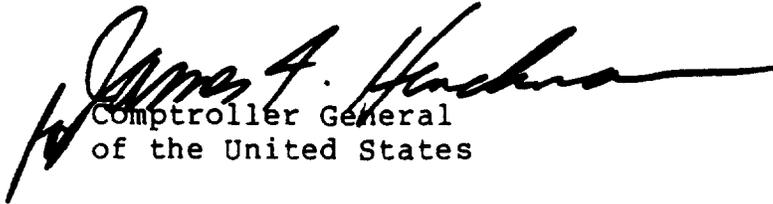
Since there is no authority to pay overtime to Ms. Wolin, nor any other specific authority to make a lump-sum payment to her upon separation for unused compensatory time, as explained above, there is no authority under which we may authorize payment of her claim.<sup>2/</sup> Ms. Wolin's argument that her rights are contractual based on an agreement between herself and the Clerk of the Court likewise must fail. It is well established that the federal employment relationship is statutory not contractual. Danoff v. United States, 2 Cl. Ct. 729 (1983); Shaw v. United States, 640 F.2d 1254 (Ct. Cl. 1981). Federal workers serve by appointment, and their rights are therefore a matter of legal status even where compacts are made. Kania v. United States, 650 F.2d 264 (Ct. Cl. 1981), cert. denied, 454 U.S. 895 (1981). Government employees' entitlement to pay and other benefits must be determined by reference to the statutes and regulations governing compensation rather than to ordinary contract principles. See Kizas v. Webster, 707 F.2d 524 (D. C. Cir. 1983), cert. denied, 104 S. Ct. 709 (1984).

Not only did the agreement not make provisions for a lump-sum payment for compensatory time after Ms. Wolin was separated, the Chief Judge's administrative report states that the Clerk of the Court did not have the authority to enter into such an agreement. It is well settled that the Government is not bound by the unauthorized acts of its agents. Federal Crop Insurance v. Merrill, 332 U.S. 380 (1947); Goldberg v. Weinberger, 546 F.2d 477 (2nd Cir. 1976), cert. denied, 431 U.S. 937 (1977). See also United States v. 18.16 Acres of Land, 598 F. Supp. 282 (E.D.N.C. 1984), at 289.

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<sup>2/</sup> In view of our conclusion, we find it unnecessary to decide whether the claim is barred by 5 U.S.C. § 5536 (1982).

Accordingly, Ms. Wolin's claim for compensatory time or other relief is denied.

  
Comptroller General  
of the United States