



The Comptroller General
of the United States

Washington, D.C. 20548

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Decision

Matter of: Herman J. Halper - Reemployed Annuitant -
Application of Pay Cap

File: B-230877

Date: May 24, 1988

DIGEST

Under special legislation, enacted in response to the air traffic controller strike, a retired air traffic controller who was reemployed part-time by the Federal Aviation Administration (FAA) is entitled to his entire combined salary and annuity payments per pay period as long as the aggregate amount does not exceed the gross amount authorized for level V of the Executive Schedule. The FAA's more stringent pay cap on an hourly basis is incorrect in view of the clear language of 5 U.S.C. § 8344, as amended, that provides for a cap on the aggregate rate of pay for a pay period.

DECISION

Mr. Herman J. Halper, a retired air traffic controller of the Federal Aviation Administration (FAA), requests additional compensation for the period of time he was reemployed part-time by the FAA in response to the air traffic controller strike. The FAA reduced Mr. Halper's salary when it calculated a statutory pay cap on combined payments of salary and annuity on an hourly rate. Mr. Halper argues that he is entitled to his entire combined salary and annuity payments so long as the aggregate amount did not exceed the gross amount authorized by statute for the pay period. For the reasons that follow, we conclude that Mr. Halper is correct and that he is entitled to the additional compensation.

BACKGROUND

Mr. Halper was a retired air traffic controller who was asked by the FAA to return to work after the air traffic controller strike in 1981. Mr. Halper returned to work on November 16, 1981, and, as a reemployed annuitant, his annuity was deducted from his salary. See 5 U.S.C. § 8344(2) (1976). However, as an incentive to increase the

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number of experienced air traffic controllers on duty, section 8344 was amended by Public Law 97-276, § 151(a), 96 Stat. 1200, October 2, 1982, 5 U.S.C. § 8344(h)(1) (1982), to allow retired controllers who were employed to retain both their salary and annuity.

Mr. Halper retained both his salary and annuity payments until Congress again amended 5 U.S.C. § 8344, by Public Law 99-88, 99 Stat. 351, August 15, 1985, which placed a cap on the aggregate amount that the employee could retain. The pertinent language in 5 U.S.C. § 8344(h)(1) (Supp. III 1985) reads as follows:

"Provided, however, That the amount such an annuitant may receive in pay, excluding premium pay, in any pay period when aggregated with the annuity payable during that same period shall not exceed the rate payable for level V of the Executive Schedule."

The rate payable for level V of the Executive Schedule at the time the amended statute became effective was \$68,700. See Exec. Order No. 12496, Dec. 28, 1984, 5 U.S.C. § 5332, note (Supp. III 1985). The FAA converted this figure to an hourly rate of \$32.92 on the basis of Federal Personnel Manual Supp. No. 831-1, S15-7c (Inst. 31, Sept. 21, 1981), which provided a formula for conversion of the annuity based on an annual equivalent of 2,080 hours.^{1/}

The FAA used the \$32.92 figure as the maximum amount that a reemployed annuitant could make per hour, regardless of the number of hours that the employee worked. This had the effect of reducing Mr. Halper's pay by \$4 per hour since his combined salary and annuity exceeded the \$32.92 maximum set by FAA by that amount.

Mr. Halper states that the FAA computation is incorrect since the cap should be computed on a pay period basis, and the gross salary for level V each pay period is \$2,642.31, based upon an annual salary of \$68,700. Since Mr. Halper was employed on a part-time basis of 48 hours a pay period, his aggregate pay at full salary and annuity would total \$2,138.86 per pay period, which is below the authorized maximum.

^{1/} This figure is now 2,087 hours. See 5 U.S.C. § 5504(b), as amended by Public Law 99-279, Apr. 7, 1986.

Mr. Halper claims that the FAA has undercompensated him by \$192 per pay period from September 28, 1985, to January 3, 1987 (34 pay periods). Thus, his total claim is for \$6,528, plus premium pay at 5 percent^{2/}, \$326.40, for a total of \$6,854.40.

OPINION

In response to a request from The Honorable Manuel Lujan, Jr., the Assistant Director for Retirement and Insurance, Office of Personnel Management (OPM), stated that FAA could not rely on the FPM instructions for reemployed annuitants since those instructions were not applicable to air traffic controllers in view of Public Law 97-276, which allowed former air traffic controllers to retain both their salary and annuity. Further, the OPM letter stated that an annuity is an annual income and reemployed annuitants paid on a daily or hourly basis must first have their wages converted to an annual basis before the annuity is deducted. Finally, the OPM letter stated that since Public Law 99-88 clearly refers to a salary capped "in any pay period," there does not appear to be a basis for capping a part-time employee's wages on an hourly basis.

We agree with the OPM's analysis. The statutory language is clear on its face and is similar to other statutory language that provides for a cap on the aggregate rate of pay on a pay period basis. See 5 U.S.C. § 5547 (1982). Thus, the statute specifically provides a limitation on the amount to be received for any one pay period rather than on any other basis, and this would include those employed temporarily or intermittently. See Military Reserve Technicians Pay, 65 Comp. Gen. 78 at 80 (1985); Lieutenant Colonel Robert C. McFarlane, USMC, 61 Comp. Gen. 221 at 223 (1982).

Since subsection 8344(h)(1) specifically refers to a salary limitation in any pay period, there is no authority for the FAA to further limit Mr. Halper's pay beyond that provided for by the statute. Therefore, the computation by the FAA of Mr. Halper's pay on a more restrictive basis was incorrect. See Jerome E. Hass, 58 Comp. Gen. 90 (1978),

^{2/} Air traffic controllers may be paid 5 percent premium pay. 5 U.S.C. § 5546a (1982).

where we held that an expert or consultant could work more than 10 days in a pay period so long as his total biweekly pay did not exceed the biweekly pay for level V of the Executive Schedule.

Accordingly, Mr. Halper's claim may be paid, if otherwise correct.

A handwritten signature in black ink, reading "Milton F. Fowler". The signature is written in a cursive style with a large initial "M".

Acting Comptroller General
of the United States