

Hertzman



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Yukio Fujikawa - Request for Additional
Compensation - Reemployment Rights
File: B-231927
Date: February 3, 1989

DIGEST

An employee, who exercised his reemployment rights under 10 U.S.C. § 1586 (1982), accepted a demotion and returned from overseas to his prior position in Hawaii. He is not entitled to additional compensation on the basis that the agency erroneously set his pay upon his return since he was granted saved pay under applicable statute and regulations and since this was the greater benefit available to him at that time.

DECISION

Mr. Yukio Fujikawa, a former employee of the Department of the Navy, has appealed our Claims Group settlement, Z-2865541, May 20, 1988, which denied his claim for additional compensation. Mr. Fujikawa alleges that his salary was erroneously set by the Navy upon his return from an overseas assignment in 1974.^{1/} For the reasons that follow, we affirm our Claims Group's determination.

BACKGROUND

Mr. Fujikawa was employed by the Navy at the Pearl Harbor Naval Shipyard in Hawaii in 1966 as an engineer, grade GS-11, step 7, where he received a special rate of pay established for engineers under the provisions of 5 U.S.C. § 5303 (1970).

In July 1966, Mr. Fujikawa transferred to a position in Yokohama, Japan. Under the provisions of Public Law 86-585, 74 Stat. 325, July 5, 1960, 10 U.S.C. § 1586 (1982), a

^{1/} That portion of Mr. Fujikawa's claim which accrued prior to December 29, 1981, is barred by the statutory limitation in 31 U.S.C. § 3702(b)(1) (1982).

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Department of Defense civilian employee who transfers overseas is granted the right to return to a position in the United States without a reduction in seniority, status, and tenure held by the employee before his assignment outside the United States. In addition, the statute provides that an employee who returns to a position from overseas shall be paid at a rate of basic pay which is not less than the rate of basic pay to which he would have been entitled if he had not been assigned to duty outside the United States. 10 U.S.C. § 1586(d) (1982). The agency regulations implementing this statute also refer to the comparison between rates of basic pay, and the regulations state that "additionally," the employee will be entitled to salary or pay retention benefits, if otherwise qualified. CMMI 352.7, Nov. 23, 1973.

Mr. Fujikawa was promoted while in Japan and was a grade GS-12, step 7, when he exercised his reemployment rights at Pearl Harbor in June 1974, and accepted a demotion to grade GS-11. Since Mr. Fujikawa's salary at that time (\$21,578 per annum) exceeded the basic pay of a grade GS-11, step 10, he was granted saved pay at that salary rate for 2 years under the provisions of 5 U.S.C. § 5337 (1970).

Mr. Fujikawa contends that he was not granted his rights under 10 U.S.C. § 1586 since his rate of basic pay upon reemployment at Pearl Harbor was less than the rate of basic pay to which he would have been entitled if he had not been assigned to duty outside the United States. The special pay rate for GS-11 engineers was discontinued effective February 7, 1971.^{2/} Thus, engineers subject to the special pay rate in Pearl Harbor were given saved pay and placed in the corresponding regular rate range for their grade. 5 C.F.R. § 530.306 (1971). Mr. Fujikawa states that several colleagues who did not transfer overseas were receiving a higher level of pay than he was upon reemployment.

Mr. Fujikawa also states that, after the expiration of 2 years of saved pay in 1976, he should have been granted additional rights under the discontinued special rate provisions for engineers.^{3/} He bases his contention that he is entitled to consecutive pay computations on the use of the word "additionally" in the Navy regulations, CMMI 352.7, supra.

^{2/} Federal Personnel Manual Letter 530-157, Feb. 2, 1971.

^{3/} Although the record in this case is voluminous, Mr. Fujikawa has not presented exact figures in support of his claim.

The Navy and our Claims Group both denied Mr. Fujikawa's claim on the basis that he received saved pay at his highest retained rate at the time of his reemployment in 1974 in accordance with regulations in effect at that time, and that this fulfilled his entitlements.

OPINION

The statutory authority in 10 U.S.C. § 1586(d) refers to an employee's rate of basic pay. Rate of basic pay has been defined by the Office of Personnel Management (OPM) to mean the rate of pay fixed by law or administrative action for the position held by an employee before any deductions and exclusive of additional pay of any kind.^{4/} This definition precludes the use of the special rates of pay for engineers in determining the maximum amount the agency would have to guarantee an employee who returns from an overseas assignment since the employee's basic pay referred to and fixed by law would be his General Schedule grade and step prior to his overseas assignment. The employee would, of course, be entitled to any step increases he would have attained if he had not gone overseas. 10 U.S.C. § 1586(c) (1982).

This interpretation of the employee's entitlements seems consistent with the legislative intent of Public Law 86-585, which enacted 10 U.S.C. § 1586. The House Committee Report states that:

"The general effect of the legislation is to insure that employees who accept assignments to duty outside the United States will be restored, upon their return to this country, at least to their status quo with respect to position, tenure, and salary, existing immediately prior to such assignment to the maximum practicable extent consistent with the efficient operation of the department concerned.

"The authority contained in this legislation would supplement, not replace, existing provisions of law governing job rights, assignment and reassignment of employees, reductions in force, and related matters. It would operate independently, but in full recognition of other laws granting employee rights, such as . . .

^{4/} Administrative action refers to implementation of annual comparability pay increases. 5 U.S.C. § 5307 (1982).

Public Law 85-737 [5 U.S.C. § 5337], granting certain salary protection to employees whose positions are reduced in grade through no fault of their own"

See H.R. Rep. No. 1469, 86th Cong., 2d Sess. 1 (1960).

The legislative history refers to the salary existing prior to the overseas assignment as the criterion to be used in establishing the employee's salary. Thus, it is clear from the legislative history that the agency's only obligation under the statute is to grant an employee reemployment at his previous grade and step prior to overseas assignment, plus any step increases that he may be entitled to. The interpretation is consistent with other statutory authority granting reemployment rights. See, e.g., 5 U.S.C. § 3597 (1982).

The legislative history also specifically refers to the saved pay statute, Public Law 85-737, 5 U.S.C. § 5337 (now codified at 5 U.S.C. § 5363 (1982)), as authority that exists separately from the authority granted in 10 U.S.C. § 1586. Thus, the legislative history supports the use of the word "additionally" by the Navy in its regulations as providing for a separate entitlement for the employee, if applicable, and not concurrent authority as urged by Mr. Fujikawa.

We also note that, under Civil Service Commission regulations in effect at the time Mr. Fujikawa exercised his reemployment rights in 1974, he would not be entitled to the special rate of pay for engineers. The special rates were discontinued in 1971 while Mr. Fujikawa was overseas, and the regulations provide, with exceptions not pertinent to his situation, that all other actions of promotion, demotion, transfer, or reassignment are governed by the pay-fixing rules established for the appropriate pay system to which, or in which, the personnel action is taken. 5 C.F.R. § 530.305(b)(4) (1974). Thus, Mr. Fujikawa would only be entitled to the salary of the applicable grade in the pay system to which he was transferred to in Pearl Harbor, in this case grade GS-11. However, since Mr. Fujikawa was demoted he was entitled by statute to the basic pay at the rate to which he was entitled immediately before his reduction in grade. 5 U.S.C. § 5337(a) (1970). This was the action taken by the Navy.

Accordingly, Mr. Fujikawa's claim for additional pay is denied, and our Claims Group settlement is hereby sustained.

Milton J. Auster

Acting Comptroller General
of the United States