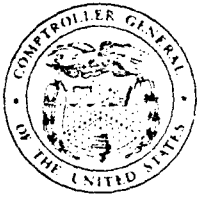


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**DECISION**



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

cel: 340  
98685

FILE: B-180813

DATE: AUG 13 1976

MATTER OF:

VA Hospital, Montrose, New York -  
Rescheduling of workweek for jury duty

DIGEST:

Employee of Veterans Administration Hospital was required to work or perform jury duty on 19 consecutive days. Union requests ruling requiring agencies to permit employees called for jury duty to be absent on weekends without charge to annual leave or loss of premium pay normally received by them for work on Saturdays and Sundays. Decision in 54 Comp. Gen. 147 (1974) is reaffirmed that agencies are permitted but not required to reschedule the work schedules of employees called for jury duty.

The National President of the American Federation of Government Employees (AFGE), by letter of July 16, 1975, requests a ruling that an agency must reschedule the work schedules of employees called for jury duty so as to permit those employees to be absent on weekends without charge to annual leave and without loss of premium pay normally received by them for weekend work.

The AFGE letter specifically describes the situation encountered by an employee of the Veterans Administration Hospital in Montrose, New York, who was required to work 19 consecutive days on either jury duty or his regular job.

On January 2, 1975, the employee advised his superiors that he had been summoned for jury duty for the period January 13 to January 24, 1975. The Supervisory Cook who made up the employee's work schedule was cognizant of the employee's jury duty requirement and thus scheduled him to work Monday through Friday which would coincide with his jury duty service and give him Saturday and Sunday as his days off. However, the Service Chief, who was the Supervisory Cook's superior, interceded and rearranged the schedule. She ordered the employee's schedule changed so that his days off would be Monday and Tuesday, and he would be required to work Saturday and Sunday. This scheduling required that the employee, for the 19 consecutive days from January 8 to January 26, either work or perform jury service.

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In general, each Federal department and agency is responsible for fixing the hours of work of its employees subject to applicable laws and regulations. The General Accounting Office reviews actions of departments and agencies in fixing hours of work only to determine that expenditures for salary and wages are authorized under the law. See 21 Comp. Gen. 965 (1942); 17 Comp. Gen. 3 (1937).

Section 6322 of title 5 of the United States Code (1970) provides that the pay of a Government employee "may not be reduced during a period of absence for jury service in a State court or a court of the United States because of the absence. The period of absence for jury service is without deduction from other leave of absence authorized by statute." The purpose of the statute is to make Federal employees available for jury service without loss of the total compensation they would have received had they remained on duty in their civilian positions. See 23 Comp. Gen. 904, 906-7 (1944).

In 54 Comp. Gen. 147 (1974), we held that an agency may establish a policy to permit employees called for jury duty to be given court leave on weekends without charge to annual leave even though their scheduled workweek includes weekends. Furthermore, we held that the agency could pay the employees premium pay normally received by them for work on Saturdays and Sundays.

AFGE has requested a ruling that not only may an agency reschedule an employee's workweek when he is called for jury duty, but the agency must so reschedule the workweek for those employees whose workweek includes weekends.

Our holding in 54 Comp. Gen. 147 (1974) that an agency has the discretion to permit such employees to be absent on weekends without charge to annual leave is consistent with our holdings that we will not question an agency action as to work schedules unless it is contrary to law. In that case we permitted the agency's discretionary action since it was not contrary to law. In order for us to hold that the agency must rearrange work schedules so as to allow employees called for jury duty to have weekends off, it would be necessary for us to find that such rescheduling is required by law.

5 U. S. C. § 6322 (1970) states only that an employee's pay may not be reduced as a result of his performance of jury duty. It does

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not specify that an employee may not lose his days off as a result of his performance of jury duty. Consequently, the statute does not directly restrict the agency's discretion to determine how best to reduce the negative effects of an employee's performance of jury duty, so long as the agency does not reduce the employee's pay.

The AFGE submitted a letter dated June 27, 1975, it received from Thomas J. Fitzgerald, Acting Director of Field Operations in Region 1, Veterans Administration, indicating that the Montrose Hospital has been advised to substitute periods of jury service on nonduty time for duty time, if the employee so requests. Consequently, it appears that in future instances, employees who work on weekends will have the opportunity to take days off without a loss of pay for the period which they are performing jury service.

Accordingly, we affirm the decision reported at 54 Comp. Gen. 147 (1974) which holds that it is discretionary with the agencies to permit employees assigned to jury duty to be absent on weekends.

R. F. KELLER

Deputy Comptroller General  
of the United States