

DOCUMENT RESUME

03182 - [A2233342]

[Substitution of Leave without Pay for Annual Leave]. B-19A202.  
August 9, 1977. 4 pp.

Decision re: Sol L. Moses; by Robert F. Keller, Deputy  
Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation  
(305).

Contact: Office of the General Counsel: Civilian Personnel.

Budget Function: General Government: Central Personnel  
Management (805).

Organization Concerned: National Aeronautics and Space  
Administration.

Authority: F.P.M. Supplement 990-2, Subch. S12, Book 630. NASA  
Management Instruction, NMI 3630.3A. NASA Policy Directive,  
NPD 3630.3. B-101087 (1974). B-114063 (1953). B-182804  
(1976). 54 Comp. Gen. 1086. 38 Comp. Gen. 354.

A former temporary Federal employee appealed a  
settlement which disallowed his claim for substitution of leave  
without pay for 123 hours of annual leave used by him while  
employed. The request for retroactive conversion may not be  
granted after the employee properly requested, was granted, and  
used the annual leave. (Author/SC)

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**DECISION**



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

FILE: B-188242

DATE: August 9, 1977

MATTER OF: Sol L. Moses - Substitution of leave without  
pay for annual leave

DIGEST: Request for retroactive conversion of leave without pay for 123 hours annual leave by reemployed annuitant may not be granted after employee properly requested, was granted, and used the annual leave since employee elected to exercise a valuable statutory right and such right, having vested upon use of annual leave, the Government's obligation thereunder has been discharged and neither employee's vested right nor Government's obligation is subject to change unless law or regulation having force and effect of law expressly provides the-efor.

This action is in response to the appeal of Mr. Sol L. Moses, a former temporary employee of the National Aeronautics and Space Administration (NASA), Pasadena, California, from the settlement action of our Claims Division dated November 11, 1976, which disallowed his claim for substitution of leave without pay for 123 hours of annual leave used by him while employed by NASA.

The record discloses that Mr. Moses was hired by NASA as a reemployed annuitant and received a 1-year temporary appointment from June 3, 1974, to June 2, 1975. During this period he requested, was granted, and used annual leave totaling 123 hours. He was charged on each time and attendance report for the annual leave so applied for, approved, and used. Subsequently the claimant states that he became aware that it would have been to his financial advantage to have requested leave without pay rather than annual leave during his temporary appointment since at the end of such appointment, he could have received a lump-sum payment for unused annual leave at his full rate of pay rather than the reduced salary rate he received while working as a reemployed annuitant due to receipt of his civil service annuity.

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The main contention of Mr. Moses is that officials of NASA did not fully discharge their obligation to apprise him, at the outset, of all factors affecting the use of annual leave by reemployed annuitants. He points out and the record contains various written NASA documents containing the following pertinent remarks by agency officials: "Neither he nor I was aware that re-employed annuitants are paid upon separation for unused leave at their full base pay rate;" "he was not advised of the unusual leave arrangements available to him;" "However, in Mr. Moses' case, he had not been advised of the benefits of taking leave without pay;" and "lack of information concerning the fact that he could have requested leave without pay could be called a misunderstanding." Mr. Moses' supervisor states, in essence, that had he been aware of the financial advantage of granting leave without pay and in view of Mr. Moses' illness and resultant medical expenses during and following his employment at NASA, he would have granted the claimant leave without pay at the time of his original request to be absent from his job.

Federal Personnel Manual Supplement 990-2, Subchapter: S12, Book 630, defines leave without pay as a temporary nonpay status and absence from duty granted upon the employee's request. Paragraph S12-2 states that authorization of leave without pay is a matter of administrative discretion and that an employee cannot demand that he be granted leave without pay as a matter of right except in two instances not applicable here. In this regard it is noted that NASA Management Instruction, NMI 3630.3A dated November 25, 1974, and NASA Policy Directive, NPD 3630.3 dated March 11, 1969, provide that "Ordinarily, leave without pay will not be granted if an employee has annual leave to his credit." Hence, the granting of leave without pay to Mr. Moses is within the discretion of the agency unless in exercising such discretion, the agency violates statutory provisions or regulations and policies of the Civil Service Commission or NASA. While the aforesaid Instruction and Policy Directive provide that supervisors are expected to assist employees in planning and scheduling the use of annual leave on a year-round basis to provide for reasonable vacation periods and to insure that leave will not be forfeited, such agency officials must exercise their authority in accordance with applicable law, regulations, policies, and procedures. Irrespective of the statement by the claimant's supervisor that he would have authorized leave without pay to Mr. Moses, the stated agency policy is not to grant leave

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without pay if the employee has annual leave to his credit. As Mr. Moses did have annual leave in his leave account to cover the time off requested, there would appear to be no basis for the substitution of leave without pay for annual leave in this case.

The claimant contends there was administrative error on the part of the agency in not advising him of all factors affecting the use of annual leave by reemployed annuitants and that an obligation existed on the part of the agency to so advise him. We do not agree that such an obligation existed, and consequently there was no administrative error on the part of the involved NASA officials.

In Matter of William E. Hart, B-181087, June 21, 1974, we stated in pertinent part as follows:

" \* \* \* When an employee has accepted compensation for a period of absence from duty upon the basis of his approved application for annual leave, with a consequent charge against accrued annual leave, the employee must be regarded as having made his election, and the obligation of the United States having been discharged, such right and obligation are not subject to change unless a law or regulation having the force and effect of law expressly provides therefor."

Further, in the Hart Case, quoting from an earlier decision of this Office, B-114063, May 25, 1953, the reason for the above-quoted rule was explained thusly:

" \* \* \* to permit the substitution of annual leave for sick leave as here involved would lead to a policy of


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retroactively changing the type of leave originally recorded for a particular absence in any case where the employee might later decide that it would be more advantageous to have the absence charged upon a different basis. Obviously a policy which would encourage numerous revisions of the records of completed transactions would not be in keeping with sound administration. \* \* \*

See also Matter of Eugene W. Whitwam, 54 Comp. Gen. 1086 (1975); Whitwam, B-182804, March 29, 1976; and 38 Comp. Gen. 354 (1958).

Accordingly, since Mr. Moses accepted compensation for a period of absence from duty upon the basis of his approved application for annual leave, he made his election, the obligation of the United States was discharged, and may not be changed as we are unaware of a law or regulation providing therefor. Thus, on the record, there is no legal authority for substituting leave without pay for the annual leave granted in this case.

The settlement certificate of November 11, 1976, issued by our Claims Division disallowing substitution of leave without pay for annual leave, is sustained.

  
Deputy Comptroller General  
of the United States