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DECISION

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

FILE: B-199998 DATE: February 26, 1982

MATTER OF: Linda A. Vaccariello - Backpay under provision of negotiated agreement - Temporary quarters subsistence expenses

DIGEST:

1. The question of whether the temporary promotion provisions in a collective bargaining agreement apply to unit employees temporarily serving in nonunit positions is an issue of contract interpretation which is customarily adjudicated solely under grievance-arbitration provisions, and is therefore not appropriate for resolution by GAO. Accordingly, this Office will defer to labor-management procedures established under 5 U.S.C. Chapter 71.

2. Claims involving matters of mutual concern to agencies and labor organizations submitted under 4 C.F.R. Part 31 are considered joint submissions where both parties to the agreement have notice of the submission to GAO and neither party objects to our consideration of the claim. See also 4 C.F.R. § 22.7(b)(1981).

3. Transferred employee reclaims amount of temporary quarters subsistence expenses administratively reduced to 50 percent pro-rata share based solely on the fact that the quarters were shared by another employee during period of TQSE claim. Since employee actually incurred the expense, and in the absence of any evidence that occupancy by a second person increased the rental cost or that the amount claimed was otherwise unreasonable, the full amount of the claim is allowable.

The first issue in this case is whether a negotiated agreement's provision for retroactive temporary promotions after details to a higher graded position of 31 days or more applies to unit employees temporarily serving in nonunit positions. We determine that the question presented is a

matter of contract interpretation which is more appropriately resolved pursuant to the labor-management procedures established under 5 U.S.C. Chapter 71.

The second issue involves the propriety of an agency's reduction of an employee's temporary quarters subsistence claim based solely on the fact that another employee shared the quarters during the period of the claim. We hold that the employee is entitled to reimbursement of the full amount claimed.

Ms. Linda A. Vaccariello presents a claim for retroactive temporary promotion and backpay arising under a provision of a negotiated agreement concluded by Social Security Administration Headquarters Bureaus and Offices in Baltimore, Maryland, and Local 1923, American Federation of Government Employees. Since both parties to the negotiated agreement have been provided with copies of Ms. Vaccariello's submission, and neither has objected to our consideration of the claim, the submission is considered a joint submission under 4 C.F.R. Part 31, and our jurisdictional analysis set out in Samuel R. Jones, B-200004, October 9, 1981, 61 Comp. Gen. ___, does not apply. Claims involving matters of mutual concern to agencies and labor organizations submitted under 4 C.F.R. Part 31 are considered joint submissions where both parties to the agreement have notice of the submission to GAO and neither party objects to our consideration of the claim. See also, 4 C.F.R. § 22.7(b) (1981). At the same time the agency has included for our consideration a reclaim voucher filed by Ms. Vaccariello for certain temporary quarters subsistence expenses. The claims arise and shall be treated independently here in order of presentation.

THE BACKPAY CLAIM

At the time this claim arose Ms. Vaccariello's position of record as an employee of the Social Security Administration, Department of Health Education and Welfare (now Department of Health and Human Services), was that of a GS-12, Quality Appraisal Analyst. Ms. Vaccariello contends that from September 2, 1977, to October 31, 1977, she was informally detailed to the position of Supervisory Quality Appraisal Analyst, GS-13. Ms. Vaccariello claims the salary of the higher grade position for the entire period of the

detail under the following provisions of Article 17, Subsection C3 of the Social Security Administration's applicable 1977 negotiated agreement with AFGE Local 1923:

> "Subsection 3. Any employee detailed to another position shall be given a job description or functional statement if such assignment is for 30 calendar days or more. Details in excess of 30 calendar days will be reported on Standard Form 52, 'Request for Personnel Action,' and maintained as a permanent record in the Official Personnel Folders. For details to higher positions of more than 10 consecutive workdays but less than 30 calendar days, the Administration shall provide the employee with a memorandum for his Official Personnel Folder. Employees detailed to higher grade positions for 31 calendar days or more shall be paid the appropriate higher rate from the first day of detail."

The agency counters this assertion by referring to Article 1, Section B of the agreement which provides as follows:

> "Section B. This Agreement covers all nonsupervisory General Schedule and Wage Grade employees of the Social Security Administration Headquarters Bureaus and Offices, including professionals, in the Baltimore SMSA, collectively making up the bargaining unit and hereinafter referred to as employees or group of employees, but excluding guards, supervisors, management officials, employees engaged in personnel work in other than a purely clerical capacity, and investigative personnel. Those employees excluded from the bargaining unit may join the Union."

The agency denied Ms. Vaccariello's claim reasoning that, although her position of record at the time of the detail was in the bargaining unit for purposes of Article 17, Subsection C3, the position to which she was detailed was not. It is the agency's view that Article 17, Subsection C3, did not cover details to supervisory positions. According to the agency, details to supervisory positions

were covered instead by provisions of the agency's promotion plan. Thus, in accordance with Part III(d)(3) of the Social Security Administration Headquarters Promotion Plan in effect at the time in question, an employee could be detailed to a higher graded position for up to 60 days. Since Ms. Vaccariello's detail did not exceed the prescribed 60-day limit, the agency denied her claim.

The question of whether the temporary promotion provision in the collective bargaining agreement applies to unit employees temporarily serving in nonunit positions is an issue of interpretation of the collective bargaining agreement which is customarily adjudicated solely under grievance-arbitration procedures. While GAO frequently considers the type of overlong detail issue presented in this case, the issue of whether the collective bargaining agreement covers details to supervisory positions is not appropriate for resolution by GAO. Such labor-management issues are best resolved pursuant to procedures available under 5 U.S.C. Chapter 71, the Federal Service Labor-Management Relations Statute. Schoen and Dadant, B-199999, October 9, 1981, 61 Comp. Gen. ___. Accordingly as a matter of policy, we will not take jurisdiction of Ms. Vaccariello's claim.

In so deciding we are aware of the fact that Ms. Vaccariello's claim pre-dates the enactment of Title VII of the Civil Service Reform Act of 1978 (Pub. L. 95-454). However, even under Executive Order No. 11491, as amended, 3 C.F.R. 254, entitled "Labor Management Relations in the Federal Service," we believe resolution of this issue is a matter more appropriately addressed by labor-management authorities.

THE TEMPORARY QUARTERS SUBSISTENCE EXPENSES CLAIM

Ms. Vaccariello has also presented a separate claim for additional reimbursement for temporary quarters subsistence expenses in connection with her transfer from Boston, Massachusetts, to Baltimore, Maryland, in June 1976.

Ms. Vaccariello's original travel voucher reflects that she occupied temporary quarters in a monthly rental apartment in Columbia, Maryland. The quarters were shared

with another employee of the Social Security Administration. This second employee, while not receiving any subsistence expenses during the period of Ms. Vaccariello's claim, had in fact been reimbursed for 30 days of temporary quarters subsistence expenses at the same address prior to Ms. Vaccariello's arrival.

The agency advised Ms. Vaccariello that, since temporary quarters were shared with another employee, lodging costs had been approved on a 50 percent pro-rata basis of the monthly rental. Ms. Vaccariello disputes both the logic and the amount of this item of reimbursement, pointing out that she paid the entire rental amount on the subject apartment for the period in question, and she has provided a photostated copy of her cancelled personal check in support of her contention. There is no suggestion in the record that the amount of rent was higher because the apartment was occupied by two individuals, that the cost of the apartment was otherwise unreasonable or excessive, or that the two individuals actually shared the rental expense.

Under 5 U.S.C. § 5724a(a)(3) an employee for whom the Government pays expenses of travel and tranportation under 5 U.S.C. § 5724(a) may be reimbursed subsistence expense for himself and his immediate family for a period of up to 30 days while occupying temporary quarters. The regulations implementing 5 U.S.C. § 5724a(a)(3) are contained at Part 2-5 of the Federal Travel Regulations (FTR) (FPMR 101-7, May 1973). Paragraph 2-5.2(c) of the FTR defines temporary quarters as "any lodging obtained from private or commercial sources to be occupied temporarily by employee or members of his immediate family who have vacated the residence quarters in which they were residing at the time the transfer was authorized." Moreover, under provisions contained in paragraph 2-5.4 of the FTR, while lodging represents an allowable subsistence expense, reimbursement shall be only for actual subsistence expenses incurred provided these are incident to occupancy of temporary quarters, and are reasonable as to amount.

Regarding the reasonableness of amounts claimed, it is the responsibility of the employing agency to determine what is reasonable. However, the agency may not make such a

determination without adequate information to justify the amount arrived at. Richard W. Metzler, B-191673, December 5, 1978, and cases cited therein. The evaluation of reasonableness must be made on the basis of the facts in each case. 52 Comp. Gen. 78 (1972).

In Ms. Vaccariello's case the agency's determination to reduce her entitlement to lodging expenses was based solely on the fact that the quarters were also used by another employee who was not a member of Ms. Vaccariello's immediate family. Since there is no evidence that occupancy by a second person increased the rental cost, that the amount claimed was otherwise unreasonable, or that the two individuals actually shared the rental expense, we do not believe there is an adequate basis for denial of the full amount claimed.

Accordingly, on the basis of the information provided in the record before us, Ms. Vaccariello's claim for the total amount of the monthly rental payment for temporary quarters in connection with her official transfer is allowable.

for Milton J. Socolar
Comptroller General
of the United States