

DECISION

24104
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-208341**DATE:** February 1, 1983**MATTER OF:** Ivan Orton, et al. - Severance Pay**DIGEST:**

Federal Trade Commission (FTC) announced that it was closing several regional offices, and employees of these offices were given specific notice that their jobs would be abolished pursuant to a reduction-in-force (RIF). After several employees submitted written resignations, the FTC reversed its decision, did not close the regional offices, and canceled the RIF. The employees separated from service after the RIF was canceled. Hence, they are not entitled to severance pay since their resignations were voluntary and could have been withdrawn. Civil Service Regulations state that employees are not eligible for severance pay if at the date of separation they decline an offer of an equivalent position in their commuting area, and the option to remain in the same position is equally preclusive. 5 C.F.R. § 550.701(b)(2) (1982).

John H. Carley, General Counsel, of the Federal Trade Commission (FTC), requests our opinion concerning the entitlement to severance pay of several former employees of the FTC. The issue presented is whether employees who give notice of their intent to resign while under specific notice of a reduction-in-force (RIF), but whose resignations are not effective until after these RIF notices have been canceled, are entitled to severance pay. Our holding is that under these circumstances, the employees are not entitled to severance pay.

On April 16, 1982, the FTC decided to close four of its ten regional offices. On April 19 and 21, 1982, employees in the regional offices to be closed were given specific

120473
224512

notice that their jobs would be abolished effective July 15, 1982. These employees were offered equivalent positions in Washington, D.C., and asked to accept or decline these offers within 30 days.

On May 27, 1982, the Senate passed H.R. 5922 a supplemental appropriation bill for 1982 which included language prohibiting the FTC from reducing the number of its regional offices. 128 Cong. Rec. S6342 (Daily ed. May 17, 1982, Part II). As a result of this congressional action, the reductions-in-force were canceled on May 28, 1982, and affected employees were notified through supervisory channels. It should be noted that, after Senate passage, the language prohibiting closure of FTC regional offices was deleted in the Conference Committee, with the specific notation that the FTC had agreed that the regional office reorganization would be delayed until fiscal year 1983 to allow fuller consideration by the Congress. H.R. Rep. No. 605, p. 24, 97th Cong., 2d Sess., June 10, 1982. Ultimately this bill was vetoed by the President on June 24, 1982.

Six employees of the FTC had given notice prior to the cancellation of the RIF of their intent to resign on effective dates after the cancellation of the RIF. Another employee accepted non-Federal employment while the notices were in effect, but did not give notice of his intent to resign until after the cancellation. Each of these seven employees cited the RIF notices as the reason for seeking and accepting other employment. Two of the affected employees, Mr. Ivan Orton and Mr. Donald S. Copper, submitted letters to us setting forth their reasons for leaving the Government after receipt of the RIF notice. Also submitted was a memorandum from James C. Miller III, Chairman of the FTC, to the Commission concerning the suspension of the plan to close the affected regional offices. Based on this memorandum, the two employees argue that the cancellation of the RIF was procedurally improper.

Payment of severance pay is authorized by 5 U.S.C. § 5595 (1976), which provides that an employee who has been employed currently for a continuous period of at least 12 months, and is involuntarily separated from the service, not by removal for cause on charges of misconduct, delinquency,

or inefficiency, is entitled to be paid severance pay. The issue then is whether the resignations of the seven employees from the FTC are to be considered involuntary separations.

The severance pay regulations, specifically 5 C.F.R. § 550.706 (1982), set forth situations in which an employee's separation by resignation is deemed to be an involuntary separation. A resignation after receiving a RIF notice would be an involuntary separation under this regulation. However, 5 C.F.R. § 550.701(b)(2), provides that:

"This subpart [severance pay] does not apply to an employee who at the time of separation from the service, is offered and declines to accept an equivalent position in his agency in the same commuting area, including an agency to which the employee with his function is transferred in a transfer of functions between agencies. For purposes of this paragraph, an equivalent position is a position of like seniority tenure, and pay other than a retained rate."

It should be noted that the regulations do not specifically address the situation here in which a RIF was canceled, and employees were allowed to remain in the same positions they were holding when the RIF was first proposed. It also should be noted that the regulation specifically refers to, "the time of separation," as the key time for the offer of an equivalent position.

In this case, Mr. Orton and the other individuals involved, could have retained their positions, instead of separating from the agency, after the RIF was canceled. It is clear under the regulations that if the FTC had offered them equivalent positions in the same commuting area, and the RIF had taken place, they would not have been entitled to severance pay.

It is equally clear that since the employees, following the cancellation of the RIF, were allowed to remain in the same positions, in the same offices, at the same grades and pay, they were also ineligible to receive severance pay

under the statute. That is, the option to remain in the same position rendered their subsequent separation a voluntary one and precludes payment of severance pay.

The argument that the entitlement to severance pay vests on the date a written resignation is submitted, instead of the date of separation, is not persuasive. Under the provisions of the Federal Personnel Manual, Chapter 715, Subchapter 2, a resignation is a voluntary action by an employee, and an agency may permit an employee to withdraw the resignation at any time before it has become effective, except when the agency has a valid reason to deny the withdrawal. FPM Chapter 715, S2-3. In this case each of the seven employees could have withdrawn his resignation following the cancellation of the RIF, but each chose not to do so.

The two employees who wrote letters to us raise several arguments in support of their claims for severance pay. First, they argue that they resigned from their positions in reliance on the proposed actions of the agency, that is abolition of their jobs. Also, they allege that the FTC promised to pay them severance pay even if the RIF was canceled. Since they relied on these actions to their detriment, they argue that the Government should be estopped from denying them severance pay.

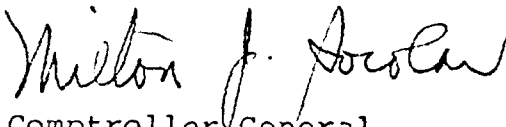
We must disagree with the two employees. The doctrine of estoppel is not applicable here because the relationship between the Government and its employees is not contractual, but appointive, and is governed strictly in accordance with statutes and regulations. William J. Elder and Stephen M. Owen, 56 Comp. Gen. 85 (1976).

Next, one of the employees argues that he had already given his personal commitment to start new employment before the RIF was canceled. He alleges that his professional reputation would be tarnished if he withdrew that commitment. He also states that he could have left the FTC immediately while the RIF was still in effect, but that he chose not to do so since he was in the midst of handling important cases for the FTC. He states that if he had resigned immediately, his files and cases could not have

been transferred to other employees in an orderly manner. We believe that the employee's actions were in accord with the highest professional standards of Federal attorneys. However, we have no choice but to decide the severance pay issue in strict accordance with the applicable statute and regulations.

Finally, both employees allege that there may have been procedural irregularities in the cancellation of the RIF. Mr. Cooper has submitted the memorandum from Chairman Miller as evidence of the alleged procedural irregularities. However, our Office does not decide such questions and that issue is more properly addressed to the Merit Systems Protection Board. We do not rule in any way on the procedural propriety of the FTC's proposed RIF or its cancellation thereof, but hold only that the statute and regulations preclude payments of severance pay when employees are separated from the service by resignation after a proposed RIF has been canceled.

Accordingly, our decision is that the seven employees in question are not entitled to severance pay.

for 
Comptroller General
of the United States