



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Susan E. Baity - Severance Pay

File: B-223115

Date: April 9, 1987

### DIGEST

An employee voluntarily sought and received a promotion from a permanent career service position in the Peace Corps to a time-limited appointment, also in the Peace Corps. By statute, the appointment was limited to 5 years and could not be extended. Upon completion of the 5 years, she was separated and claims entitlement to severance pay. The claim is allowed. Although 5 U.S.C. § 5595(a)(2)(ii) excludes employees serving under an appointment with a definite time limitation from entitlement to severance pay, the claimant comes within the statutory exception for one so appointed for full-time employment (without a break in service of more than 3 days) following service under an appointment without time limitation. Since she was separated at the end of the 5-year period without her consent, she is entitled to severance pay.

### DECISION

This decision is in response to a request concerning the entitlement of a former employee of the Peace Corps to receive severance pay. We conclude that the individual is so entitled for the following reasons.

### BACKGROUND

Ms. Susan E. Baity was initially appointed to a temporary position in ACTION as a clerk-typist, grade GS-4, on November 29, 1978. On May 20, 1979, that appointment was converted to a career-conditional appointment and she remained employed by ACTION until May 4, 1980.

As part of a program to make the Peace Corps, which had been a component of ACTION, eventually an autonomous agency within ACTION,<sup>1/</sup> a number of ACTION employees, including

<sup>1/</sup> Executive Order 12137, May 16, 1979.

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Ms. Baity, received offers to transfer from ACTION to the Peace Corps in their current positions and grades. On April 30, 1980, she accepted the offer and on May 4, 1980, was included in the mass transfer of personnel from ACTION to the Peace Corps. We understand that all career or career-conditional employees involved in that transfer retained their competitive employment status.<sup>2/</sup>

On December 8, 1980, Ms. Baity applied for the position of Staff Assistant, FSS-301-7/6, which was a time-limited Foreign Service appointment in the Peace Corps. Effective January 26, 1981, she was selected for promotion to that position in grade FP-6. Under authority of 22 U.S.C. § 2506(a)(2) (1976), once Ms. Baity accepted that position, she could not hold an appointment with the Peace Corps for more than a total of 5 years.<sup>3/</sup> On July 12, 1981, Ms. Baity was promoted to the excepted position of Country Desk Assistant, grade FP-7, not to exceed January 11, 1984.

Effective May 1, 1983, Ms. Baity's position was converted to a different excepted appointment, not to exceed October 31, 1985, and on September 2, 1984, it was converted to a different position, not to exceed January 25, 1986. On that latter date, Ms. Baity's 5-year time-limited appointment with the Peace Corps expired and her employment was terminated. -

Based on the above, the agency determined that Ms. Baity was not entitled to severance pay. Ms. Baity has challenged the validity of that determination, contending that her situation comes within the exception to the exclusion in 5 U.S.C. § 5595(a)(2)(ii).

#### OPINION

Section 5595 of title 5, United States Code, governs entitlement to severance pay and provides in part:

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<sup>2/</sup> 5 U.S.C. § 3503 (1982); 5 C.F.R. § 351.301 (1980).

<sup>3/</sup> The position which Ms. Baity left was a permanent civil service career position. Had she remained in that position she would have retained her career status by receiving a Foreign Service unlimited appointment when the Peace Corps became a fully separate agency on February 14, 1982.

"(b) Under regulations prescribed by the President or such officer or agency as he may designate, an employee who--

"(1) has been employed currently for a continuous period of at least 12 months; and

"(2) 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 in regular pay periods by the agency from which separated."

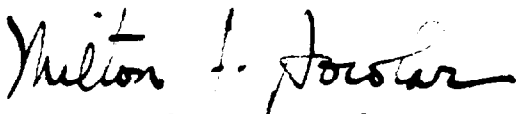
While the term "employee" is defined generally in section 5595(a)(2) to mean an individual who is employed in or under an agency, clause (a)(2)(ii) excludes from coverage an employee serving under a time-limited appointment, but makes an exception for any such employee who is "appointed for full-time employment without a break in service of more than 3 days following service under an appointment without time limitation."

Ms. Baity's situation comes squarely within the purview of the exception stated in 5 U.S.C. § 5595(a)(2)(ii). Here, Ms. Baity, who occupied a career-tenured position in the Peace Corps, transferred, without a break in service, to a time-limited appointment in the Peace Corps which was statutorily limited to 5 years. Hence, she clearly is an "employee" covered by the severance pay statute, 5 U.S.C. § 5595. See Sullivan v. United States, 4 Cl. Ct. 70 (1983), affirmed per curiam, 742 F.2d 628 (Fed. Cir. 1984).

The remaining question is whether Ms. Baity's separation was involuntary as required by section 5595(b)(2). In Sullivan, supra, the Claims Court said "That section is intended to be given a generous construction \* \* \*." 4 Cl. Ct. 70, at 74. In allowing severance pay to Ms. Sullivan, the Claims Court quoted with approval the Federal Personnel Manual statement that "'Normally, a separation resulting from expiration of the period for which a temporary or other time-limited appointment was made is involuntary for retirement purposes. However, if the employee resigns in advance of the appointment's expiration date, his or her separation is considered voluntary.'" The court added that "Neither statute nor logic require that 'involuntary separation' be defined otherwise for purposes of severance pay." 4 Cl. Ct. 70, at 75.

We agree with the Claims Court and, similarly to Sullivan, the record here clearly refutes any suggestion that Ms. Baity's separation was other than against her will and without her consent. There is no evidence to suggest that Ms. Baity could have stayed on or consented to be separated. In the absence of such evidence, the "generous construction" of the statute counseled by Sullivan impels us to conclude that Ms. Baity was "involuntarily separated from the service" within the meaning of 5 U.S.C. § 5595(b)(2). We are bound by the statute and any denial of severance pay based on the unique circumstances of Peace Corps employment would require an amendment to the statute.

Accordingly, we conclude that Ms. Baity was an "employee" within the meaning of 5 U.S.C. § 5595(a)(2)(ii) and that her separation from the Peace Corps was involuntary as required by 5 U.S.C. § 5595(b)(2). She is, therefore, entitled to receive severance pay.

*for*   
Comptroller General  
of the United States