



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Anthony J. Sarni, et al. - Administrative Leave -
Employees on Annual Leave when Agency Grants Early
Dismissal Due to Hurricane
File: B-226064
Date: August 10, 1987

DIGEST

Following a late evening return from a temporary duty assignment in Virginia, several employees of the Portsmouth, New Hampshire, Naval Shipyard took annual leave the next day. While these employees were on annual leave, most employees were dismissed at noon because of a hurricane and given 4 hours administrative leave. The employees on annual leave were charged annual leave for the entire day, but claim entitlement to 4 hours administrative leave on the basis that they had intended to schedule only 4 hours of annual leave and would have reported for duty but for the early dismissal. Since none of the employees on leave informed the agency that they would be reporting for duty at any time that day, the agency reasonably applied the leave regulations by placing the employees in an annual leave status for the entire shift.

DECISION

Mr. Rodney A. Bower, President of the International Federation of Professional and Technical Engineers (the union), Silver Spring, Maryland, has requested our decision regarding the entitlement to administrative leave of several members of his organization who are U.S. Navy civilian employees at the Portsmouth, New Hampshire, Naval Shipyard. The matter concerns entitlement to such leave when most employees at their duty station were dismissed from work at noon and those on a later shift were advised not to come to work due to severe weather conditions.^{1/} For the reasons to follow, the employees are not entitled to receive administrative leave.

^{1/} The matter was submitted to us pursuant to Title 4, Code of Federal Regulations, Part 22, which regulations govern requests for Comptroller General decisions on appropriated fund expenditures which are of mutual concern to agencies and labor organizations.

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BACKGROUND

According to the union, Mr. Anthony J. Sarni and several other employees of the Portsmouth Naval Shipyard in Portsmouth, New Hampshire, were directed to perform temporary duty in Norfolk, Virginia, from September 16 to 27, 1985. On September 26, 1985, due to an approaching hurricane, the employees were told by their temporary duty supervisor to return to their official duty station and to report for duty on September 27, 1985, at their usual time of 7:50 a.m. The employees left Norfolk at 5:50 p.m. on September 26 and arrived in Portsmouth at about 9 p.m. that night.

On the morning of September 27, 1985, Hurricane Gloria created severe storm conditions in the Portsmouth area. Consequently, Navy officials dismissed all nonessential personnel at 12 noon and advised all nonessential second shift employees not to report for work. Any individuals who were dismissed from work at 12 noon were placed on administrative leave for 4 hours, if they were in a work status immediately preceding their regularly scheduled lunch period. However, any employees who were in a non-duty status, such as annual leave, immediately preceding their regularly scheduled lunch period were charged the appropriate leave for the full 8 hours of their shift. Similarly, all second shift employees scheduled to be in a duty status received 8 hours of administrative leave whereas individuals on annual leave were charged 8 hours of annual leave.

The issue before us arises because on September 27, Mr. Sarni and several others of the employees who had returned to Portsmouth from Norfolk had not reported for work at the beginning of their tour of duty scheduled to begin at 7:50 a.m. The union apprises us that due to the late hour of their arrival the previous night and the imminency of the hurricane in the Portsmouth area, these employees had decided to take 4 hours of annual leave and then report for duty for the final 4 hours of their shift. They then did not report for duty because they became aware of the early dismissal of nonessential employees. The agency, however, states that the employees in question had been advised that they were to report for work on September 27 or be in a leave status. The agency then states that "[n]o employee requested leave for less than 8 hours on 27 September and none called the shipyard to advise their supervisor that they would be in to work late."

DISCUSSION

Preliminarily, we note that the decision whether to close a Federal facility and excuse employees without charge to leave is within the discretion of the agency involved. Federal Personnel Manual, Supp. 990-2, Book 610, S3-1 (Inst. 20, September 23, 1966 (Revised July 1969), and Appendix A (Inst. 62, September 30, 1980)). We will not overturn an agency's exercise of its discretion in this regard unless it is arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law. See B-219232, September 26, 1986, and cases cited therein. If a Federal facility is partially closed due to an emergency situation, such as inclement weather, then employees on leave are charged for the leave they scheduled although employees not on leave may be excused for part or all of the entire day. See Appendix A, *supra*, para. A-4a. See also Michael J. Johnson, B-194432, October 16, 1980. Accordingly, the employees in this case would be entitled to the claimed administrative leave if they had properly scheduled only 4 hours of annual leave for the first part of their work shift and would have reported for duty for the latter part of the shift but for the early dismissal.

We have examined the case record and considered the statements presented by the union and agency officials. The evidence establishes that the employees had been notified on the 26th that they were to report to work at the usual time on the 27th or be in a leave status. No evidence has been presented to show that they scheduled leave for less than 8 hours.^{2/} Under these circumstances, the agency's decision to treat those employees on leave as of 12 noon as being on leave for the entire 8-hour shift was a reasonable application of the leave regulations.

While the union suggests that the employees should prevail because they may rely on the presumption of honesty and fair dealing we afford claimants, as indicated in our decision 57 Comp. Gen. 664 (1978), our decision herein is not intended in any way to question the honesty and good faith of these employees in making this claim.

Accordingly, we conclude that the agency's determination not to place the employees on administrative leave and to charge

^{2/} See 4 C.F.R. § 31.7 (1985).

them 8 hours of annual leave on September 27, 1985, was a reasonable application of the leave regulations.

for *Shelton J. Fowler*
Comptroller General
of the United States