

13936 PLM-



DECISION

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

FILE: B-197428

Claim for

DATE: June 5, 1980

MATTER OF: George L. Kruchko - Severance Pay

DIGEST: Employee is not entitled to severance pay, since he was discharged for failure to report on temporary detail of 4 weeks. Although there is entitlement to severance pay if employee is separated because he declines "assignment to another commuting area," as provided in 5 C.F.R. § 550.705, the meaning of this term is a permanent change of station ordered by the employing agency and not a temporary detail.

Mr. George L. Kruchko, a former employee of the Forest Service, requests that we reconsider his claim for severance pay. Our Claims Division disallowed the claim by Settlement Certificate No. Z-2817701, November 28, 1979.

The issue is whether, for entitlement to severance pay, Mr. Kruchko was separated from employment with the Forest Service because he refused an order to report for "an assignment to another commuting area." This issue arises because one of the qualifications for severance pay is that the employee be "involuntarily separated from the service, not by removal for cause on charges of misconduct, delinquency, or inefficiency * * *." 5 U.S.C. § 5595(b)(2). The Office of Personnel Management has provided in section 550.705, title 5, Code of Federal Regulations (CFR), that an employee's separation for declining an "assignment to another commuting area" satisfies the requirement of this provision since the separation is an involuntary separation not by removal for cause on charges of misconduct, delinquency or inefficiency.

On May 10, 1979, the Regional Forester, Pacific Southwest Region, San Francisco, California, denied Mr. Kruchko's appeal of a decision to reassign him from the Klamath National Forest to the Tahoe National Forest. Mr. Kruchko believed he was needed in his existing position and relocation of his home and family would be a hardship. He filed a grievance against the proposed reassignment with the Director of Personnel, U.S. Forest Service, on May 24, 1979. The Regional Forester by letter of June 27, 1979, informed Mr. Kruchko:

"I am not willing to rescind your reassignment until the grievance you have initiated to the Washington

010957 AGO 0034

112462

B-197428

Office has been decided. However, I am willing to defer the effective date of your directed reassignment pending the Chief's decision.* * *

"As the Tahoe National Forest needs to fill their Assistant Forest Engineer Position now, this letter will serve as official notification that you are being detailed to the Tahoe National Forest beginning July 9, 1979. This detail will be for a period of four weeks, ending August 4, 1979." (Emphasis added.)

Mr. Kruchko objected to the temporary detail in a letter to the Regional Forester dated June 29, 1979. He acknowledged that the Tahoe National Forest was shorthanded. A newly selected GS-12 Assistant Forest Engineer was not due to report there until late August 1979, one GS-11 had recently resigned, and the wife of another GS-11 had a serious medical problem. He further observed that the Tahoe had plans to advertise a large contract in the next couple of weeks. Although he was aware both national forests had problems, he concluded that he could perform more ably for the Klamath National Forest. He also asked what charges would be brought against him if he did not report for the detail. On July 2, 1979, the Forest Supervisor, Klamath National Forest, explained to Mr. Kruchko that if he failed to report on detail to the Tahoe National Forest he would be placed on absence without leave. The Forest Supervisor reiterated to Mr. Kruchko the need for the detail because "[t]he Tahoe is short handed and has a lot to be done." On July 6 Mr. Kruchko requested a 30-day leave of absence in lieu of the detail. But the Forest Supervisor advised him that "a leave of absence would result in both the Tahoe and Klamath National Forest being short of help." Although the leave of absence was denied, Mr. Kruchko refused to report to the Tahoe National Forest for the detail. He was discharged from employment with the Forest Service on September 8, 1979, for refusal to accept a temporary detail and being absent without leave.

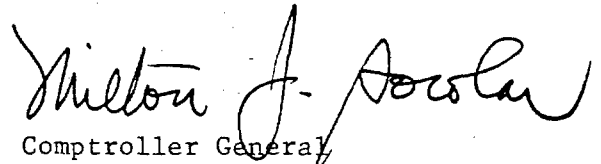
In Francis A. Dorn, B-184838, October 29, 1975, the employee vigorously pursued agency appeals against his permanent transfer and otherwise indicated his unwillingness to be transferred to another commuting area both before and after the date of the transfer. Although the employee had reported for duty at the new post and the agency had later discharged him for his unauthorized absence, we held that he

B-197428

was entitled to severance pay since the cause of his separation was refusal to accept reassignment to another commuting area within the meaning of 5 C.F.R. § 550.705. However, Francis A. Dorn did not involve separation for refusal to accept a temporary detail.

The expression "assignment to another commuting area" in 5 C.F.R. § 550.705 is limited to a permanent change of station directed by the employing agency. In discussing this provision, the Civil Service Commission referred to such assignments as "geographic transfers," thereby denoting a permanent change of station. See Federal Personnel Manual Letter 550-59, July 1, 1971. The hardship of relocating home and family can reasonably justify entitlement to severance pay when the employee is separated for declining to accept a permanent change of duty station at a distant location. The same cannot generally be said if the employee refuses an order to report on a temporary detail, such as in Mr. Kruchko's case. The record indicates that his 1-month detail was required because of an immediate need for his services in the Tahoe National Forest pending the outcome of his grievance contesting his permanent transfer.

Consequently, our Claims Division's disallowance of severance pay is sustained.



For the Comptroller General
of the United States