



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: General Accounting Office Personnel Appeals
Board - Compensation of Members

File: B-258548

Date: October 14, 1994

DIGEST

The statute establishing a specified rate of basic pay of members of the General Accounting Office Personnel Appeals Board permits compensation on an hourly basis for time spent carrying out the duties of the Board. Federal Retirement Thrift Investment Board, B-230685, October 6, 1988, and related cases overruled.

DECISION

The Chairman of the General Accounting Office Personnel Appeals Board ("the Board") asks whether a member of the Board must be compensated for a full day while carrying out Board business regardless of the hours worked. The compensation for Board members is set out in 31 U.S.C. § 751(e), which states in pertinent part:

"While carrying out a member's duties (including travel), a member who is not an officer or employee of the United States Government is entitled to basic pay at a rate equal to the daily rate of basic pay payable for grade GS-18 of the General Schedule. . . ."

Board members currently are compensated at a rate equal to one-eighth of the daily rate for each hour that a member works on Board business.

In several decisions involving language similar to the compensation provision for Board members, we concluded that the board or commission members concerned were entitled to be paid a full day's pay for a partial day's work. The Chairman of the Personnel Appeals Board asks whether, in light of these decisions, the Board may continue its current practice of payment on an hourly basis. The Chairman explains that Board members often work only a few hours a

day and are free to pursue other business. Based on the language of the statute establishing the compensation rate

for Board members, we believe that the members may continue to be compensated on an hourly basis.

In a prior decision, 28 Comp. Gen. 211 (1948), the President of the Board of Commissioners of the District of Columbia asked for our opinion concerning a provision relating to per diem compensation to be paid to members of the District of Columbia Redevelopment Agency. The provision in question read in pertinent part:

"[T]he member shall receive no salary as such, but those members who hold no other salaried public position shall be paid a per diem of \$20 for each day of service at meetings or on the work of the Agency."

We were asked whether under this language the daily compensation should be paid irrespective of the number of hours actually spent on agency business. Although the language could be read to support either view, we held that the provision established a daily allowance which accrued to members for each day in which they worked regardless of the number of hours actually worked. We stated that it did not seem reasonable "to attribute to Congress an intent to require a proration of the stipulated per diem for service of less than 8 hours in any one day." 28 Comp. Gen. at 212. On several occasions since 1948, we have been asked whether members of commissions or boards paid in accordance with similar language must be paid for a full day's work irrespective of the amount of time actually worked. E.g., Federal Retirement Thrift Investment Board - Compensation of Members, B-230685, Oct. 6, 1988; Wiretap Commission, B-182851, Feb. 11, 1975; 45 Comp. Gen. 131 (1965). In each case we stated that the per diem compensation must be paid in full as long as the employee worked any part of the day, citing our 1948 decision.

The language governing compensation of Personnel Appeals Board members states only that they are "entitled to basic pay at a rate equal" to that of a GS-18. As was the case with the District of Columbia Redevelopment Agency in 1948, this statutory language is clearly broad enough to allow either daily compensation for Board members, who do not keep regular hours, or hourly-based compensation at the specified rate. We believe that, absent contrary direction in the applicable legislation, agencies with compensation authority similar to that applicable to the Personnel Appeals Board may compensate boards or commission members on an hourly or on a daily basis. As discussed below, this view reflects the previous change in our interpretation of similar statutory language applying to experts and consultants employed by the federal government under 5 U.S.C. § 3109.

It also recognizes the discretion evident in the authorizing language itself.

In a number of decisions prior to 1979, we held that temporary or intermittent employees appointed by federal agencies were "entitled, for each day of service, to the per diem rate prescribed in their contracts of employment regardless of the total number of hours worked or their daily rate of compensation." 28 Comp. Gen. 329, 330 (1948). See also, 46 Comp. Gen. 667 (1967); 58 Comp. Gen. 90 (1978). In construing similar language in 1979, however, we concluded that agencies had discretion to pay on either an hourly or daily basis. Land Commissioners, B-193584, Jan. 23, 1979.

In Land Commissioners, the commissioners concerned were appointed by the Federal District Courts under 5 U.S.C. § 3109, authorizing employment of experts and consultants. The act appropriating funds for their compensation stated that their pay "shall not exceed the daily equivalent of the [rate of a GS-18]." The Administrative Office of the United States Courts set the pay of the commissioners at the maximum amount, that is the daily rate for a GS-18, but decided to compensate the commissioners on an hourly basis because on some days they might spend only a few minutes or hours on commission work and were otherwise free to pursue other occupations. We recognized that neither the statute authorizing appointment nor the statute establishing the daily rate of pay required payment on a daily rate basis. Agencies, we concluded, had the discretion to pay on an hourly basis. In light of our statutory interpretation in Land Commissioners and the specific language governing pay of Personnel Appeals Board members, we conclude that Board members also may be paid on an hourly basis.

We note that there are statutes which evidence a clear intention that board members or commissioners are to be compensated for an entire day irrespective of the number of hours worked. For example, in Navajo and Hopi Relocation Commissioners, B-236241, Feb. 25, 1991, the applicable statute provided that:

"Each member of the Commission . . . shall receive an amount equal to the daily rate paid a GS-18 . . . for each day (including time in travel) or portion thereof during which each member is engaged in the actual performance of his duties. . . ." [Emphasis added.]

In that instance, we concluded that the Commissioners were entitled to a full day's pay for a "portion" of a day that they worked.

To the extent that this decision is inconsistent with prior decisions in cases such as Federal Retirement Thrift Investment Board, B-230685, Oct. 6, 1988, those cases are overruled.

/s/ Robert P. Murphy
for Comptroller General
of the United States