



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

Decision

Matter of: Retired D.C. Police Officers - Years of Service Credits - Library of Congress

File: B-256756

Date: April 11, 1995

DIGEST

1. Retired District of Columbia Police officers, whose District service began before October 1, 1987, and who retired under the District of Columbia Police and Firefighters Retirement and Disability Act, were thereafter employed by the Library of Congress. They may not be credited with their D.C. Police years of service to establish their annual leave accrual rate under 5 U.S.C. § 6303(a), as amended in 1992, because they may not withdraw their retirement contributions under the District system and deposit them into the Civil Service Retirement system.

2. Although a retired District of Columbia Police officer under the District of Columbia Police and Firefighters Retirement and Disability Act is authorized under section 4-629(c) of the D.C. Code to revocably waive receipt of his annuity payment for any period of time, such a waiver would not entitle him to be credited with his D.C. police years of service to establish an annual leave accrual rate under 5 U.S.C. § 6303(a) because he may not irrevocably waive his statutory right to an annuity unless specifically authorized by law.

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DECISION

This decision is in response to a request from the General Counsel, Library of Congress. The question is whether retired District of Columbia Police officers, who are thereafter employed by the Library, may be credited with their years of service as police officers for annual leave accrual rate purposes under 5 U.S.C. § 6303(a). We conclude that they may not be credited with those years of service.

BACKGROUND

The Library currently employs several retired D.C. Police officers who are receiving an annuity under the District of Columbia Police and Firefighters' Retirement and Disability

Act (D.C. Retirement Act).¹ At the time they entered on duty with the Library, they were each credited with their D.C. Police years of service, thus establishing a service computation date well before their respective first days of duty with the Library. The immediate effect of that crediting was to establish their annual leave accrual rate under 5 U.S.C. § 6303(a) (1988) at 8 hours a pay period.

Because of uncertainty as to the propriety of granting that credit, the Library's Human Resources Directorate in 1992 discussed the issue with the Office of Personnel Management (OPM). OPM informed the Directorate that those years of service were not creditable. The Library's Office of General Counsel agreed with the position taken by OPM. OPM's position was that, once the former D.C. Police officers began receiving an annuity, they could no longer withdraw their retirement contributions from the D.C. retirement system and redeposit them in either the Civil Service Retirement System (CSRS) or the Federal Employees Retirement System (FERS), and their D.C. Police years of service could not be credited for annual leave accrual purposes under 5 U.S.C. § 6303(a). Therefore, the Office of General Counsel advised that the service computation date of the affected employees must be recomputed to remove credit for their D.C. service, regardless of appointment date.

A year later, the Library sought confirmation of its position from OPM. By letter dated October 5, 1993, OPM confirmed that retired D.C. Police officers may not be credited with their police service for leave accrual purposes under 5 U.S.C. § 6303(a). In its letter, OPM stated that earlier guidance in Federal Personnel Manual (FPM) Supplement 296-33, under which the Library had granted leave credit to the D.C. Police retirees, was incorrect because those annuitants cannot withdraw their D.C. retirement contributions and deposit them into CSRS. As a result, OPM advised the Library that their service cannot be credited and that FPM Supplement 296-33 had been corrected to reflect this information.

In light of additional research on the question, the Library has asked our opinion on the matter.

OPINION

Although the D.C. Retirement Act was intended to provide benefits substantially similar to benefits provided by the 1956 amendments to the Civil Service Retirement Act, the system it establishes is not part of the federal retirement system. It is an independent retirement system covering D.C. Police officers, and is administered wholly by the District government, with all retirement deductions withheld from the pay of D.C. Police officers being deposited into that system.

¹Title 4, D.C. Code, §§ 4-601 to 4-634 (1994 Replacement Volume 3A).

Subchapter I, chapter 63, of title 5, United States Code (1988), governs the annual leave and sick leave benefits of federal employees. Section 6301(2)(B) of title 5, United States Code, defines "employee" to include "an individual first employed by the government of the District of Columbia before October 1, 1987." The issues raised by the Library involve retired D.C. Police officers whose service satisfies that definition and who thereafter were employed by the federal government.

The provisions of 5 U.S.C. § 6303(a) relating to determinations of years of service for annual leave accrual which were in effect prior to 1986,² provided that,

"(a) . . . an employee is entitled to credit for all service creditable under section 8332 of this title [listing categories of service that employees of the federal government may use in the computation of an annuity under the Civil Service Retirement System] for the purpose of an annuity under this title [referring to the Civil Service Retirement System annuity] . . ."

In 1992, this language was amended by section 2(52) of the Technical and Miscellaneous Civil Service Amendments Act.³ Section 6303(a) of title 5, United States Code now reads in part:

"(a) . . . In determining years of service, an employee is entitled to credit for all service of a type that would be creditable under section 8332, regardless of whether or not the employee is covered by subchapter III of chapter 83 [governing the Civil Service Retirement System]. . . ."

The question presented is whether the change made by the 1992 amendment to 5 U.S.C. § 6303(a) would permit retired D.C. Police officers to be credited with their D.C. Police years of service for annual leave accrual purposes when they enter federal service. In other words, is their D.C. Police service "of a type that would be creditable" under CSRS "regardless of whether or not the employee is covered by" CSRS? The legislative history provides no guidance as to the meaning of the quoted language.

Because OPM is responsible for administering the statute, we asked OPM for its views. By letter of January 19, 1995, OPM informed us that this amendment was enacted as a result of its recommendation on an issue unrelated to the question presented. The letter

²In 1986, the provisions of 5 U.S.C. § 6303(a) were expanded with enactment of FERS (Pub. L. No. 99-335, Title II, § 207(d), June 6, 1986, 100 Stat. 595), to make those provisions equally applicable to employees who retire under the FERS as well.

³Pub. L. No. 102-378, October 2, 1992, 106 Stat. 1346, 1353.

explained that the new language was intended to provide leave coverage for those federal employees serving under temporary appointments of less than one year or on intermittent work schedules who had been unintentionally excluded from such coverage when the FERS statute was enacted. Further, the language used was not intended to sever the link between entitlement to service credit for annual leave and entitlement to service credit for federal retirement purposes. The OPM letter states:

"It is our position that, under the current language of 5 U.S.C. § 6303(a), an employee may obtain annual leave credit for a period of prior service if that service can be used for purposes of service credit under the Civil Service Retirement System (CSRS), 5 U.S.C. 8331 et seq." (Emphasis in original.)

Under OPM's interpretation, because a retired D.C. Police officer who receives an annuity under the D.C. system cannot obtain a refund of his deductions under that system, he cannot deposit them in the CSRS. Therefore, the employee's prior service is not "of a type that would be creditable" under CSRS.⁴

There is another possible reading of the statute, which is that because the former D.C. Police officers could have elected to credit their service to CSRS, although they cannot do so now that they receive an annuity under the D.C. system, their former service is "of a type that would be creditable" under CSRS even though they are not actually covered by CSRS.

Since OPM is authorized to prescribe regulations governing the administration of annual and sick leave for federal employees,⁵ and is authorized to administer and to prescribe regulations for the CSRS⁶ and the FERS,⁷ OPM's interpretation concerning this matter is entitled to deference.⁸ We have carefully reviewed OPM's letter of January 19, 1995, and conclude that OPM's view is reasonable and, consequently, is one to which we would defer. Accordingly, we conclude that 5 U.S.C. § 6303(a), as amended in 1992, does not

⁴OPM's operating manual entitled "The Guide to Processing Personnel Actions" (June 1994), which replaced the Federal Personnel Manual Supplement 296-33, further explains OPM's position in paragraph 1-5 of chapter 6 thereof. As to retired D.C. Police officers, see the footnote to item 3 of Figure 6-4 thereof.

⁵5 U.S.C. § 6311 (1988).

⁶5 U.S.C. § 8347 (1988).

⁷5 U.S.C. § 8461 (1988).

⁸Robert W. Gambino, 71 Comp. Gen. 467 (1992).

permit the retired D.C. Police officers employed by the Library to use their D.C. Police service for annual leave accrual purposes.

The Library also asked whether the waiver authority under section 4-629(c) of the D.C. Code provides a basis to permit retired D.C. Police officers to use their D.C. Police years of service for annual leave accrual purposes under 5 U.S.C. § 6303(a).

Section 4-629(c) of the D.C. Code provides that any individual entitled to an annuity under the D.C. Retirement Act "may decline to accept all or any part of such annuity by a waiver signed and filed with the Mayor." Such waiver may be revoked in writing at any time, "but no payment of the annuity waived shall be made covering the period during which such waiver was in effect." Id.

The waiver authority in section 4-629(c) does not entitle former D.C. Police officers to irrevocably waive their right to an annuity or to withdraw their retirement contributions and redeposit them in the federal system or to otherwise make their D.C. service creditable under the federal system. Thus, in the absence of specific authorization by law, for those D.C. Police officers who retired under the D.C. Retirement Act and who waive payment of an annuity for any period, the waiver would not provide a basis to permit crediting of their D.C. years of service under 5 U.S.C. § 6303(a).

Finally, the Library asked whether the adjustments to accounts should be made retroactively to the affected individual's date of employment with the Library, to the date of change by the OPM as announced in the Federal Personnel Manual Supplement 296-33, dated March 29, 1991, or another date.

We conclude that adjustments must be made beginning with the dates the affected individuals were first employed by the Library following their retirement as D.C. Police officers. An employment status with the federal government with its attendant benefits is a matter of statute and is subject to all terms and conditions contained in the law in effect when a particular employment status begins. Therefore, in the case of retired D.C. Police officers who were employed by the Library following their retirement under the D.C. Retirement Act, since they could not withdraw their contributions to the D.C. Retirement Act system and redeposit those amounts into the CSRS or the FERS when they began their employment with the Library, there is no legal basis upon which their D.C. Police years of service could be credited under 5 U.S.C. § 6303(a). As a result, all adjustments to their service computation dates and to their annual leave accounts are to be made retroactive to the dates they began their post-retirement employment with the Library.

If the adjustments to their leave accounts result in a negative leave balance for any year, the affected employees, pursuant to 5 U.S.C. § 5584 (1988), may apply for waiver of the indebtedness.

Robert P. Murphy
General Counsel