

**DECISION**

95308  
THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548  
50581

**FILE:** B-181188**DATE:** FEB 26 1975**MATTER OF:** Alaska Railroad employee - retroactive  
effect of change in tour of duty

**DIGEST:** Tour of duty of Alaska Railroad employee whose schedule at beginning of workweek of December 30, 1973, to January 5, 1974, was Sunday and Saturday off and work on the other days, and was changed on January 2, 1974, to Monday and Tuesday off and work on the other days, is not entitled to holiday pay for January 2, 1974, which would have been a day off in lieu of January 1, 1974, under new tour, since new workweek may not retroactively affect employee's holiday pay entitlement and he had been paid holiday pay for January 1, 1974.

The Department of Transportation, Federal Railroad Administration, the Alaska Railroad, asks whether one of its employees is entitled to holiday premium pay for work performed on January 2, 1974, as the result of a change in his administrative workweek.

At the beginning of the week of December 30, 1973, to January 5, 1974, the employee had an assigned administrative workweek which provided for Sunday off, duty on Monday, Tuesday, Wednesday, Thursday, Friday, and Saturday off. The employee worked on Monday December 31, 1973, which by Presidential proclamation was a holiday and on Tuesday January 1, 1974, New Year's Day. The employee was paid basic pay for the work performed on those days plus holiday pay. At 12:01 a.m., January 2, 1974, the employee's basic workweek was changed to provide for work on Sunday, Monday and Tuesday off, and work on Wednesday, Thursday, Friday, and Saturday. The submission states that under the modified workweek, the employee would have been entitled to Wednesday off for the New Year's holiday which occurred on Tuesday.

From the related facts the employee is assumed to be subject to the provisions of subsection 3(b) of Executive Order No. 11522, 3 C.F.R. 294 (1974), set out as a note under section 6103 of the United States Code (Supp III, 1973). That subsection provides that an employee whose basic workweek includes Sunday and who would ordinarily be excused from work on a holiday falling within the basic workweek shall be excused from

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work on the next workday of his basic workweek whenever a holiday falls on a day that has been administratively scheduled as his regular nonworking in lieu of Sunday.

As stated above, the record shows that the employee's administrative work schedule was changed in mid-week. Therefore, the question is whether the holiday provision may be applied retroactively.

Section 6101 of Title 5, United States Code (1970), provides under paragraph (a) (2) and (3) in pertinent part as follows:

"(2) The head of each Executive agency, military department, and of the government of the District of Columbia shall--

(A) establish a basic administrative workweek of 40 hours for each full-time employee in his organization; and

(B) require that the hours of work within that workweek be performed within a period of not more than 6 of any 7 consecutive days.

"(3) Except when the head of an Executive agency, a military department, or of the government of the District of Columbia determines that his organization would be seriously handicapped in carrying out its functions or that costs would be substantially increased, he shall provide, with respect to each employee in his organization, that--

(A) assignments to tours of duty are scheduled in advance over periods of not less than 1 week;

\* \* \* \* \*

(E) the occurrence of holidays may not affect the designation of the basic workweek; . . . "

Under the statute cited above there is no provision for rescheduling a workweek retroactively. Moreover, since the statute specifically provides that the occurrence of holidays

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may not affect the designation of the basic workweek, a change in a workweek may not be made to enlarge or diminish an employee's entitlement to holiday premium pay. In the instant case the new workweek was not effective until 12:01 a.m., January 2, 1974, a nonholiday, and may not retroactively affect the employee's holiday pay. In view of this and since the employee has already been paid holiday pay for January 1, 1974, he is not entitled to holiday pay for January 2, 1974.

R.F. KELLER

[Deputy] Comptroller General  
of the United States