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DECISION



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

FILE: B-183751

DATE: October 19, 1976

MATTER OF: Millard W. Wilcox - Compensatory Time

DIGEST: Employee, requesting reconsideration of that portion of decision, B-183751, October 3, 1975, which disallowed claim for payment of 550 hours forfeited compensatory time, presents evidence showing that compensatory time was lost during series of consecutive pay periods in which additional compensatory time was authorized. Simultaneous forfeiture and acquisition of compensatory time over series of consecutive pay periods is sufficient evidence of exigency of service to preclude forfeiture.

This action is a reconsideration of that portion of our decision B-183751, October 3, 1975, in which we disallowed the claim of Mr. Millard W. Wilcox for 550 hours of overtime pay in lieu of 550 hours of forfeited compensatory time. Those hours were worked during the period January 12, 1969, to September 6, 1970. In the same decision we allowed Mr. Wilcox's claim for an additional 206 hours of overtime in lieu of unforfeited compensatory time which he was unable to use due to the exigency of the service beyond his control.

Mr. Wilcox had forfeited the 550 hours of compensatory time under the 6-month limit set by the Department of the Interior in accordance with 5 C.F.R. § 550.114(c). Section 550.114(c) provides that an employee shall lose his right to compensatory time off if it is not used unless the failure to use it is due to an exigency of the service beyond the employee's control. The claim for the 550 hours of overtime originally was disallowed as there was insufficient evidence that the 550 hours of forfeited compensatory time were not used due to the exigency of the service beyond the employee's control.

Mr. Wilcox in requesting reconsideration presented evidence which indicated that the 550 hours of compensatory time lost were

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lost over a series of consecutive pay periods in which he was officially authorized and performed additional compensatory time. In this regard we requested an administrative report from the National Park Service. This report substantiated Mr. Wilcox's contention. Also, the record shows that Mr. Wilcox forfeited 196 hours of annual leave in 1969 and 36 hours in 1970. Mr. Wilcox further states that he was unable to use the compensatory time without seriously and adversely affecting the Transcanyon Waterline work. The National Park Service has not refuted that statement.

We believe that the above evidence is sufficient to show an exigency of the service beyond the employee's control so as to preclude forfeiture. Accordingly, we have no objection to the payment of the additional 550 hours of overtime in lieu of compensatory time, if otherwise correct.


Acting Comptroller General
of the United States