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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20540

Charles Roney
CIV. RIGHTS

FILE: B-186667

DATE: - January 19, 1977

MATTER OF: Sondra L. Jacobs - Compensation for Holiday
Not Worked

DIGEST: Employee was in leave-without-pay status from 10:30 a.m. December 24, 1975, through 4:30 p.m. January 2, 1976. She claims compensation for December 25 and 26, 1975 holidays. Federal Personnel Manual Bulletin 610-25, December 15, 1975, states that employee who is in nonpay status before and after holiday is not entitled to pay for that holiday. This rule, which is based upon decisions of accounting officers, applies here. Since employee was not in pay status at either close of workday preceding holidays or at beginning of workday next following holidays, she is not entitled to compensation for such holidays.

Sondra L. Jacobs appeals the denial of her claim for 2 days' compensation for holidays not worked, which was denied by Claims Division Settlement Z-2621958, May 18, 1976.

Mrs. Jacobs is an employee of the General Services Administration (GSA) who, upon exhaustion of her annual and sick leave balances, was placed in a leave-without-pay status effective 10:30 a.m., December 24, 1975, and remained in such status through 4:30 p.m., January 2, 1976, for the purpose of taking a vacation. In order to receive compensation for holidays of December 25 and 26, 1975, authorized in Executive Order 11891, December 15, 1975, Mrs. Jacobs sought advice from her supervisor as to how to obtain entitlement to compensation for those days. She was advised to work 2 hours on December 24, 1975, and, accordingly, worked from 8 a.m. to 10 a.m. on that day.

Subsequently, however, GSA denied her claim for holiday pay for December 25 and 26, 1975, on the basis of paragraph e of the attachment to Federal Personnel Manual (FPM) Bulletin No. 610-25, dated December 15, 1975, excluding Federal Employees from Duty on Friday, December 26, 1975, which, in pertinent part, states:

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"When an employee is * * * in a nonpay status before and after his day off, he is not entitled to pay for that day.
* * *"

Subsequently the matter was referred to our Claims Division. The Claims Division cited the FPM Bulletin and denied her claim for holiday pay on the basis that an employee in a nonpay status before and after a legal holiday is not entitled to compensation for that day. Mrs. Jacobs argues that the above-quoted FPM Bulletin merely requires that she be in a pay status sometime during the day before the holiday and that she meets that requirement.

The applicable rule set forth in paragraph e of FPM Bulletin 610-25, supra, has its basis in decisions of the accounting officers. For instance, in 3 Comp. Gen. 756 (1924) this Office stated on page 759 that:

" * * * when a holiday occurs during a period of absence without pay, no pay is due for the holiday; that is, there must be deducted in such case one day's pay for each day of absence, including * * * holidays not occurring at the beginning or ending of the period."

The rule is founded on the theory that when an employee absents himself without leave before and after a holiday, there is no presumption that he would have worked on the holiday if it had been a regular working day. See 7 Comp. Dec. 433 (1901). In 9 Comp. Gen. 350 (1930) we adhered to that rule and stated the following:


"The established rule is that, in the absence of a statute providing specifically to the contrary, an employee in a nonpay status immediately preceding and immediately following a holiday, is not entitled to pay for the intervening holiday on which no service is performed. * * *"

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In the latter case this Office denied payment for the December 25, 1975 holiday to an employee who was on leave without pay on December 24 and the morning of December 26, 1975, but who performed work on the afternoon of December 26, 1975.

The record here shows that Mrs. Jacobs was in a nonpay status both immediately preceding and following the 2 holidays in question. She was on leave without pay at the end of her regularly scheduled tour of duty (4:30 p.m.) on the workday preceding the December 25, 1975 holiday. She was also in a leave-without-pay status at the beginning of her tour of duty (8 a.m.) on the next regular workday immediately following the December 26, 1975 holiday. Thus, under the above-cited decisions and the plain language of paragraph e of FPM Bulletin 610-25, supra, Mrs. Jacobs is not entitled to compensation for the claimed holidays.

Accordingly, the Claims Division's denial of Mrs. Jacobs' claim for compensation for the December 25 and 26, 1975 holidays was sustained.


Deputy Comptroller General
of the United States