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DECISION



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

FILE: B-186830

DATE: November 5, 1976

MATTER OF: Richard S. Day -- Tropical Differential :

DIGEST: Employee placed in position within United States following reduction in force in Canal Zone requests ruling on whether tropical differential authorized by section 7(a)(2) of Act of July 25, 1958, 72 Stat. 407, may be included in "rate of basic pay" for purpose of applying "highest previous rate" rule. Question is based on provision of above-cited law requiring inclusion of tropical differentials as basic compensation for, inter alia, "any other benefits which are related to basic compensation." In 39 Comp. Gen. 409 (1959) we held that tropical differential may not be included in applying "highest previous rate" rule.

This action is in response to the letter of Mr. Richard S. Day, dated June 22, 1976, in which a ruling is requested as to whether the tropical differential authorized by section 7(a)(2) of the Act of July 25, 1958, Pub. L. No. 85-550, 72 Stat. 407, is included in the term "rate of basic pay" for the purpose of applying the "highest previous rate" rule, 5 U.S.C. § 5334 (1970).

The information furnished shows that following separation from his position in the Canal Zone due to a reduction in force, Mr. Day was placed in a position in the United States. However, in establishing the rate of basic pay for the purpose of the "highest previous rate" rule, the administrative agency involved excluded the tropical differential on the basis that it does not come within the scope of the definition of "rate of basic pay" found at 5 C.F.R. § 501.202(1) (1975). That provision, which serves to define the term "rate of basic pay" for the purpose of the highest previous rate rule, is as follows:

"Rate of basic pay" means the rate of pay fixed by law or administrative action for the position held by an employee before any deductions and exclusive of additional pay of any kind."

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The problem presented is whether the above-quoted provision requires inclusion of the tropical differential in establishing a rate of basic pay for the "highest previous rate" rule. The tropical differential was authorized for employees in Canal Zone by section 7(a)(2) of Pub. L. No. 85-550, supra. That section authorized in part:

"an overseas (tropical) differential not in excess of an amount equal to 25 per centum of the aggregate amount of the rate of basic compensation established under Section 5 of this Act * * *."

Furthermore, section 9 of the above-cited Act requires that the rate of basic compensation established under section 5 and the differential determined under section 7 of the Act are to be included as basic compensation of employees who are citizens of the United States for certain stated benefits, not relevant here, and for "any other benefits which are related to basic compensation."

Mr. Day argues that the effect of this provision is to require that the tropical differential be included in his rate of basic pay for the purpose of establishing his compensation under the "highest previous rate rule."

This issue has been previously determined in our decision 39 Comp. Gen. 409 (1959). In that decision we stated:


"Concerning the tropical differential, we held in 24 Comp. Gen. 181, deciding a question which arose under laws and practices in effect prior to the enactment of Public Law 85-550, that the differential paid in a classified position in the Canal Zone was not saved upon transfer to a similar position within the United States, even though the differential was regarded as basic compensation for the Canal Zone position. In other words, the rules allowing previous rates of compensation to be used in fixing initial salary rates upon transfer, reinstatement, promotion, demotion, and the like, have been applied in terms of rates prevailing in the United States. We

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find nothing in Public Law 85-550, its legislative history, or its purpose to require a departure from the rule of the decision just cited. We view the phrase 'any other benefits which are related to basic compensation' appearing in section 9(6) of Public Law 85-550 as referring to emoluments and perquisites flowing directly from employment in the Canal Zone in the same manner as those specifically enumerated in section 9; and our opinion is that such phrase is not to be construed as conferring benefits in connection with subsequent employment elsewhere." (Emphasis added.)

We are unaware of any compelling reasons requiring a different result.

Mr. Day also requests rulings concerning whether tropical differential is subject to Federal income tax and whether it constitutes "basic pay" for the purpose of retirement deductions. A determination as to the taxable status of all income, including a tropical differential, is a matter primarily within the jurisdiction of the Internal Revenue Service. Also, the determination as to what is basic pay under the Civil Service Retirement Act is for determination by the Civil Service Commission. Therefore, these questions should be addressed to the Internal Revenue Service and the Civil Service Commission, respectively.


Deputy Comptroller General
of the United States