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United States General Accounting Office  
Washington, DC 20548

Office of  
General Counsel

In Reply  
Refer to: B-195046

September 29, 1980

Marsha D. Peterson, Esquire  
Commercial Litigation Branch  
Civil Division  
Department of Justice  
Washington, D.C. 20530

Subject: Norman Summers v. United States  
Ct. Cl. No. 130-79C

Dear Mr. Peterson:

This responds to your letters of September 4 and 24, 1980, reference MDPeterson:aft, 154-130-79C, as well as our telephone conversation of September 16, 1980, regarding the above-captioned action. We find no grounds for the application of our Turner-Caldwell line of cases in this matter since plaintiff was detailed to a lower grade position, not a higher grade position. Although in Turner-Caldwell cases the details involved are considered illegal in that they are in violation of Civil Service Commission regulations regarding details beyond 120 days, this technical error did not act to terminate the details. On the contrary, because the details continued beyond 120 days in violation of applicable regulations, the persons who had been so detailed became eligible for the salary of the higher grade position to which they had been detailed.

Plaintiff in Summers on the other hand contends that because his detail was illegal, i.e., that it lasted beyond 120 days, he is entitled to the overtime he would have received but for the detail in his appointed position of Officer-in-Charge of the Port of Entry at San Luis, Arizona. Since in Turner-Caldwell cases details continued beyond 120 days in spite of CSC regulations,



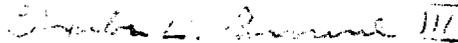
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it does not appear that the Turner-Caldwell cases would be of any assistance in supporting plaintiff's contention that his detail terminated after 120 days.

In your letter of September 24, 1980, you requested our opinion concerning application of the Back Pay Act to plaintiff's claim, if the Court of Claims should find: (1) the Immigration Service detailed plaintiff from his Officer-In-Charge position without compliance with the Civil Service Regulations; (2) the violation of the regulations rendered plaintiff's detail void and plaintiff still occupied the position of Officer-In-Charge and, (3) plaintiff had a history of earning overtime in the Officer-In-Charge position? Under these circumstances it appears that plaintiff would be entitled to overtime under the provisions of 5 U.S.C. § 5596.

Sincerely yours,

  
Charles L. Browne III  
Attorney-Advisor