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DECISION



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

FILE: B-203292

DATE: January 8, 1982

MATTER OF: DeForrest E. Cline - Pay Retention Rights

DIGEST: Labor Department employee accepted voluntary downgrading with pay retention rights under 5 U.S.C. § 5363(a)(3) (Supp. III 1979). He is not entitled to full basic pay increases for his former grade since the law providing for pay retention limits increases to one-half of the amount of each increase in the maximum rate of basic pay payable for the grade of the employee's new position if the allowable former rate exceeds the maximum rate for such grade. Since pay retention rights are prescribed by statute, employee may not receive additional compensation because of mistaken assumption as to extent of pay retention rights.

This decision is in response to a claim by DeForrest E. Cline, an Apprenticeship and Training Representative with the Bureau of Apprenticeship and Training, U.S. Department of Labor. Mr. Cline, through his National Council of Field Labor Locals (NCFLL) representative, contends that his rate of pay was reduced in violation of his pay retention rights, after he agreed to a voluntary demotion at his agency's request.

We hold that Mr. Cline's pay retention rights were not violated and therefore we deny his claim.

The facts are as follows. Mr. Cline was assigned to the Washington, D.C., office of the Department of Labor, at the grade GS-14, step 10. In March 1979, he was asked to accept a transfer at Government expense to the St. Louis office, to fill an opening there and to meet personnel ceiling goals in the Washington office. The transfer involved a voluntary downgrading to grade GS-12, step 10, which Mr. Cline accepted with the understanding that he would have full pay retention rights.

Under 5 U.S.C. § 5363(a)(3) (Supp. III 1979), pay retention is authorized for employees who otherwise would be subject to pay reduction under circumstances prescribed by the Office of Personnel Management (OPM). In Mr. Cline's case, the Department granted approval for pay retention based on 5 C.F.R. § 536.212(b)(2)(1980), which authorizes

pay retention for employees whose pay grades otherwise would be reduced "[a]s a result of a personnel action initiated by management to further an agency's mission * * *."

Mr. Cline initially was advised that his pay retention rights would last only 2 years. That advice was later corrected in a memorandum from the regional personnel officer, which notified Mr. Cline that his entitlement to pay retention would continue until terminated by a qualifying personnel or pay action. He also was advised that he would retain his annual salary of \$42,171, "* * * periodically adjusted in accordance with Office of Personnel Management regulations."

Mr. Cline's change to lower grade was effective on July 15, 1979. Under the general comparability pay increase effective October 7, 1979, Mr. Cline's salary was increased by the full amount corresponding to the GS-14, step 10, grade level, raising his salary to \$45,126. The next general pay increase went into effect on October 5, 1980, but because a question had arisen as to the proper calculation of Mr. Cline's pay, no increase was made to his salary at that time.

On November 6, 1980, Mr. Cline was formally notified that his salary increase in October 1979 had been calculated incorrectly, resulting in overpayments to him of approximately \$1,908. He also was advised that under the October 1980 pay increase, he was entitled to only one-half of the increase for his current grade level, GS-12, step 10, instead of the full increase for his former grade level. As a result, Mr. Cline's annual salary was adjusted from \$45,126 to \$44,680.

The Department's action was based on its conclusion that Mr. Cline's salary increase in October 1979 had not been computed in accordance with the statute conferring pay retention rights, 5 U.S.C. § 5363(a), and its implementing regulations, 5 C.F.R. Part 536 (1980). The statute itself prescribes the formula for determining pay increases for employees with pay retention rights. An employee is entitled to basic pay at a rate equal to: (A) the employee's allowable former rate of basic pay, plus (B) one-half of the amount of each increase in the

maximum rate of basic pay payable for the grade of the employee's new position, if the allowable former rate exceeds the maximum rate for the new grade.

The statute thus limits Mr. Cline's entitlement to one-half of each comparability increase for his current grade, GS-12, step 10, until his entitlement to pay retention ceases. In October 1979, however, Mr. Cline was erroneously given the full increase for his former grade, GS-14, step 10. Accordingly, the Department of Labor properly took corrective action in November 1980 to reduce his basic pay rate and to recover the overpayments of pay for the period from October 1979 to October 1980. Further, the Department correctly calculated Mr. Cline's entitlement to the October 1980 pay increase on the basis of one-half of the increase for the GS-12, step 10, grade level.

The substance of Mr. Cline's protest against the Department's corrective action is that he accepted the voluntary downgrading on the assurance that he would receive full pay retention rights. Unfortunately, it appears that Mr. Cline incorrectly interpreted that information to mean that he would retain his basic rate of pay and receive in full all subsequent pay increases applicable to his former grade. His misinterpretation of the Department's advice affords no basis to grant the relief he requests because the Department of Labor has no authority to grant greater pay retention rights than those established in 5 U.S.C. § 5363(a). Melvin Ackley, Jr., B-200817, April 27, 1981; Thomas L. Gardner, B-199461, April 15, 1981.

Furthermore, Mr. Cline did not suffer an adverse action within the meaning of 5 U.S.C. § 7512 (Supp. III 1979). The applicable regulation, 5 C.F.R. § 752.401(c)(10) (1980), specifically excludes from the scope of adverse action any reduction in pay made to bring the pay rate in conformance with statutory or regulatory requirements.

It is our conclusion, therefore, that the Department of Labor in November 1980 properly adjusted Mr. Cline's pay in accordance with 5 U.S.C. § 5363.

Harry E. Jan Claus
For Comptroller General
of the United States