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The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: John C. Ramos - Pay Retention - Temporary
Reassignment
File: B-220829
Date: September 26, 1986

DIGEST

An Internal Revenue Service employee requested pay retention upon his return from a "limited assignment" overseas, the request being based upon 5 U.S.C. § 5363 (1982). The employee had attained career status; therefore, a limited assignment of that employee to an overseas duty station was not proper. However, since the employee was assigned overseas for a definite period of time, and was informed in advance that the assignment was temporary, he is not entitled to pay retention because 5 C.F.R. § 536.105(b) (1985) precludes pay retention for the pay rate earned during a temporary assignment.

DECISION

The issue in this decision is whether an Internal Revenue Service (IRS) employee, serving on a "limited assignment," is entitled to pay retention under 5 U.S.C. §§ 5361 et seq. (1982), upon his return to his position in the United States. We hold that, under the circumstances of this case, the employee is not entitled to pay retention.

Background

In February 1966, the Department of the Treasury and the Agency for International Development concluded an interagency agreement pursuant to the Foreign Assistance Act of 1961, specifically under the section thereof currently codified at 22 U.S.C. § 2392(b) (1982). Under the terms of that agreement, an IRS employee, John Ramos, was assigned to a number of overseas positions during the period June 1966 to January 1985. These assignments were made under another

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provision of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. § 2385(d) (1982), which provides for the assignment of personnel overseas by agencies such as IRS not otherwise authorized to make such assignments.

Mr. Ramos' final assignment under the interagency agreement was to Costa Rica, and was for the period October 1983 to January 1985, during which time he was compensated under the Foreign Compensation Schedule at grade FC-12, step 9 (GS-15, step 9, equivalent). The agency cited 5 C.F.R. § 301.202 (1983), governing limited overseas appointments, as the authority under which the assignment was made. Consequently, when Mr. Ramos returned from overseas, the IRS personnel office "converted" his appointment status from that of an overseas limited appointee to that of a career appointee. Additionally, the personnel office set Mr. Ramos' rate of compensation at GS-14, step 10, which was the rate of compensation he was receiving in his permanent position with the IRS during his last period of employment within the United States. Apparently the agency's reason for "converting" Mr. Ramos' position and for setting his grade and pay at GS-14, step 10 was that limited overseas appointees under 5 C.F.R. § 301.202 are not entitled to grade and pay retention under 5 U.S.C. §§ 5361 et seq., since their appointments are temporary.

Based upon this action, Mr. Ramos requested that his personnel file be corrected to reflect his status as a career appointee from 1963 to the present and that he be granted pay retention under the provisions of 5 U.S.C. §§ 5361 et seq., for the 2-year period commencing with his return to the United States on January 20, 1985. The IRS personnel office denied his request based upon its contention that Mr. Ramos' assignment overseas was employment on a temporary basis. Mr. Ramos then requested that the Regional IRS personnel office submit the matter for determination by our Office. Roy J. Ellis, Regional Personnel Officer, IRS, submitted a request to this Office for a decision.

Discussion

As noted above, when Mr. Ramos' assignment to Costa Rica was made, the regulatory authority cited in the Standard Form (SF) 50 was 5 C.F.R. § 301.202 (1983). This section of

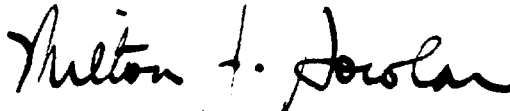
the regulations is inapposite, since Mr. Ramos' assignment does not fall within the language of that section. Mr. Ramos is, and has been since 1963, a career appointee within the civil service. He was not properly designated as an overseas limited appointee as defined in section 301.202 because he was not recruited under emergency conditions for the purpose of filling an overseas vacancy. Were this the case, Mr. Ramos would lose his status as a career employee as that is defined in 5 C.F.R. § 315.201 (1985), a status which he attained and has preserved since 1963. The agency thus acted erroneously in making Mr. Ramos' assignment under the authority of 5 C.F.R. § 301.202. Nevertheless, as discussed below, Mr. Ramos' assignment was in fact temporary and therefore not subject to pay retention.

The provisions governing grade and pay retention appear in 5 U.S.C. §§ 5361-5366 (1982). In essence, any employee who has suffered an involuntary reduction in grade or pay is entitled to retain the grade for 2 years or the pay of his or her former position for an indefinite period. Mr. Ramos is seeking pay retention based upon the rate of pay he was receiving while assigned to Costa Rica. Significantly, 5 U.S.C. § 5361(1) defines an employee as "* * * an employee * * * whose employment is other than on a temporary or term basis."

With respect to the question of whether a temporary reassignment is excluded from the provisions of 5 U.S.C. §§ 5361 et. seq., the nature of the assignment is dispositive. Section 536.102 of title 5, Code of Federal Regulations (1985), includes a definition of temporary reassignment as follows: "a reassignment with a definite time limitation, and one which the individual is informed in advance is temporary." Such an assignment would come under the coverage of 5 C.F.R. § 536.105(b) (1985), which states, "* * * an employee serving under a * * * temporary reassignment may not retain a grade or rate of basic pay held during the * * * temporary reassignment."

In the instant case, Mr. Ramos' assignment to Costa Rica is memorialized in the SF 50 notifying him of the assignment. That SF 50 bears a not-to-exceed date of April 29, 1986, and the record shows Mr. Ramos returning from that assignment on January 20, 1985. Given these facts, the assignment in question clearly fits the definition of temporary reassignment stated in the regulations and is, therefore, excluded from pay retention.

In summary, the limited overseas appointment of Mr. Ramos under the authority of 5 C.F.R. § 301.202 (1983) was erroneous; he held continuous status as a career employee from 1963 on. Nevertheless, Mr. Ramos' assignment was temporary, and as such, outside of the pay retention provisions. Therefore, he is not entitled to pay retention based on his pay rate during his assignment to Costa Rica.

for 
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of the United States