



The Comptroller General  
of the United States

Washington, D.C. 20548

*H. H. T. Man*

## Decision

Matter of: VOA Relay Station, Antigua - Night Differential  
Pay - Foreign Service Nationals  
File: B-227411  
Date: May 19, 1988

---

### DIGEST

The Director, Voice of America (VOA), is advised that there is no authority to retroactively grant payment of a night differential to VOA Foreign Service Nationals employed on the Island of Antigua prior to the effective date such premium compensation was specifically authorized by headquarters or was included in a local compensation plan. Such payment of night differential is discretionary, and an increase in compensation resulting from an exercise of discretionary administrative authority is payable only on or after the effective date of the increase or specific authorization, in this case March 16, 1986.

---

### DECISION

The Director, Voice of America (VOA), requests a decision concerning retroactive payment of night differential pay for Foreign Service Nationals (FSNs) employed by VOA on the Island of Antigua prior to the date such payment was specifically authorized or the effective date of a local compensation plan. We hold that the FSN employees are not entitled to be reimbursed for night differential pay retroactively for the reasons that follow.

### BACKGROUND

In March 1985, the VOA sent out offers of employment to several residents of the Island of Antigua to fill positions at the local VOA Relay Station. The letters were signed by the manager of the station and, in addition to explaining the hours of duty and benefits available, included a promise of night differential pay.<sup>1/</sup> The Embassy in Antigua

---

<sup>1/</sup> Night differential pay is a premium paid for regularly scheduled work usually during the hours of 6 p.m. to 6 a.m.

042195

submitted an amended local compensation pay plan to the State Department FSN Personnel Office in Washington, D.C., for approval. The compensation plan included a night differential, and, in fact, several FSN employees were hired and paid a night differential on the basis of this plan through part of 1985.

In October 1985, FSN Personnel in Washington advised the Antigua station manager that State Department regulations require prior Washington approval before night differential may be paid. At this time night differential payments were terminated; however, the station manager continued to pursue the matter of night differential pay with FSN Personnel with the concurrence of the regional personnel office in Barbados. In March 1986, FSN Personnel again advised the Antigua station manager that he did not have the authority to promise night differential to FSN employees, and there was no authority to retroactively implement night differential. However, based upon the survey data then available, FSN Personnel authorized payment of a night differential allowance of \$1 per hour effective March 16, 1986. Effective June 8, 1986, when a revised local FSN plan was approved for VOA on Antigua, that plan reduced the night differential allowance to 85 cents per hour based on prevailing practice rates.

The Director, VOA, recommends payment for the interim period between October 1985 and March 1986 on the basis that there is no express prohibition against retroactive payment of night differential in the State Department regulations. He states that VOA's failure to fulfill a promise made to FSN employees is having an adverse effect on morale and would cost less than \$2,500 to rectify.

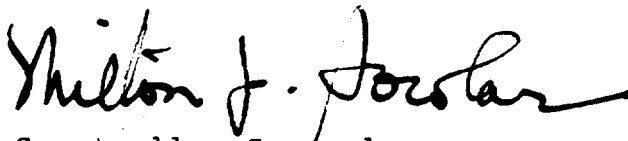
#### OPINION

Under the provisions of section 408 of the Foreign Service Act of 1980, 22 U.S.C. § 3968 (1982), the Secretary of State is authorized to hire foreign nationals and to establish compensation plans based on prevailing wage rates and compensation practices in the locality of employment. The Secretary is also authorized to prescribe regulations governing the establishment of local compensation plans for all government agencies and establishments. 22 U.S.C. § 3968(c) (1982). The Secretary has prescribed such regulations in title 3 of the Foreign Affairs Manual (3 FAM) 930.

The applicable regulations pertaining to retroactive increases provide that premium compensation pay, such as night differential, cannot be retroactively granted unless data is available indicating it is a local prevailing practice in the area to grant a retroactive increase. For example, if the salary survey data clearly documented that a majority of the surveyed employers retroactively adjusted their employees' night differential pay, then the State Department could, under its regulations, make an adjustment retroactively. 3 FAM §§ 932.5c(1) and (6). There is nothing in the record to indicate that this was the case here. In any event, the regulations specifically provide that all new local compensation plans and all revisions or amendments in existing plans are subject to approval by Washington headquarters. 3 FAM § 932.5a. See also 3 FAM § 931.2, which provides that all regulations and procedures shall be established only after full consultation with headquarters.

In this case the payment of a night differential premium compensation benefit is based on the exercise of discretionary administrative authority since there is no specific statutory authority directing its payment. The statutory authority granted to the Secretary of State in 22 U.S.C. § 3968 is not self-executing since payment of night differential is dependent upon surveys and reports as to the prevailing practice in the area. Thus, the station manager had no authority to promise or pay night differential until authorized by FSN Personnel in Washington. See 3 FAM § 932.5a.

Accordingly, we conclude that there is no authority to retroactively grant payment of a night differential to VOA FSN employees on the Island of Antigua prior to March 16, 1986.



Acting Comptroller General  
of the United States