



The Comptroller General  
of the United States

Washington, D.C. 20548

Howell

138996

## Decision

Matter of: Intermittent Employees - Compensation - Lapsed  
Appropriations and Emergency Closing

File: B-233656

Date: June 19, 1989

### DIGEST

1. Intermittent employees who were furloughed for 4 hours on October 17, 1986, due to a lapse in appropriations are entitled to be compensated for the period during which the lapse occurred. See H.J. Res. 754, Oct. 27, 1986.
2. Intermittent employees who were furloughed for 3-1/4 hours due to an emergency shutdown of the office (waterline break) claim compensation for the period during which the shutdown occurred. Evidence shows that the employees were at work and had ample work to complete a normal workday. Under these circumstances, the agency may grant them administrative leave and may compensate them in same manner as all other employees who were sent home.

### DECISION

This decision concerns two unresolved grievances between employees represented by the National Treasury Employees Union (NTEU), Chapter 28, and the Internal Revenue Service (IRS), Richmond District Office.<sup>1/</sup> The issues in dispute are: (1) whether temporary intermittent employees are entitled to compensation (in the form of administrative leave) for time lost during a furlough which resulted from a lapse in appropriations; and (2) whether the IRS has authority to compensate intermittent employees who were deprived of compensation for work that would have been performed but for an emergency closing of the regional office.<sup>2/</sup> For the

<sup>1/</sup> Submitted by Jack G. Petrie, IRS District Director. Both parties have agreed to abide by our decision.

<sup>2/</sup> The IRS states that in the interest of equity and good employee relations, the agency has no objection to compensating these employees for the time lost if there is a legal way to do so.

reasons stated below, we conclude that the IRS may pay retroactive compensation to the intermittent employees for the two periods in question.

#### LAPSED APPROPRIATIONS

In the first grievance, all employees in the Richmond District of the IRS (except those declared to be essential) were sent home on October 17, 1986, 4 hours before the end of the normal tour of duty, due to the failure of Congress to pass an appropriations bill. Among the employees sent home were approximately 18 employees who were serving on a temporary appointment with an intermittent tour of duty. House Joint Resolution 754 was subsequently passed and provided, in part, that:

" . . . Federal employees furloughed as a result of the lapse in appropriations from midnight October 16, 1986, until the enactment of House Joint Resolution 738 shall be compensated at their standard rate of compensation for the period during which there was a lapse in appropriations."3/

All IRS employees (other than the intermittent employees) who were sent home were paid.4/ The NTEU grieved on behalf of the intermittent employees without resolution. The union contends that the intermittent employees were "Federal employees" (as that term is used in the joint resolution) at the time of the furlough and that, because there was more than enough work to keep these employees occupied for the entire 8-hour workday on October 17, 1986, they should be paid for the time lost.

The IRS argues that the employees affected were working an intermittent tour of duty at the time of the furlough, that only "regular employees"5/ are entitled to be relieved from duty with pay, and that employees working an intermittent tour of duty fail to meet the definition of regular employees as that term is defined in the Code of Federal

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3/ Pub. L. 99-559, 100 Stat. 3145 (Oct. 27, 1986).

4/ The manner in which the district was instructed to compensate federal employees was to give them 4 hours of administrative leave.

5/ Defined as employees paid at daily, hourly, or piecework rates who have a regular tour of duty. See 5 C.F.R. §§ 610.301-610.306 (1985).

Regulations. The agency further asserts that, in accordance with the provisions of Section 336 of the Hours of Duty and Absence and Leave Handbook (Internal Revenue Manual), intermittent employees are not entitled to "other" leave except in cases involving workers' compensation.

We have reviewed the language and legislative history of the Joint Resolution which provided for all federal employees to be compensated for the brief period during which the lapse in appropriations occurred. The legislative history of the Act includes statements by Senator John Warner during the debate, noting that federal employees would not be penalized because of Congress's delay in the completion of the appropriations process. He stated:

"Congress has historically tried to make Federal Employees whole regarding their pay when we have found ourselves in a legislative logjam. . . .

"Simply stated, this joint resolution will assure that Federal Government Employees will be fully credited for any loss of pay due to a temporary shutdown.

"They will be fully compensated, just as if we had completed the appropriations process in an orderly manner." 132 Cong. Rec. S. 16943 (daily edition, Oct. 17, 1986) (remarks of Senator Warner) (emphasis added).

We found nothing in the language of the joint resolution or its legislative history to indicate any intent by Congress to preclude intermittent employees from being compensated. On the contrary, it was the evident intent of Congress to compensate all federal employees who were affected by the lapse in appropriations. Since these 18 intermittent employees were on duty and were furloughed due to the lapse in appropriations, they are entitled to compensation for the period during which the lapse occurred on the same basis as all other employees who were similarly affected.

#### EMERGENCY CLOSING

The second grievance involves compensation of intermittent employees whose furlough was necessitated by a local rather than a national emergency. On September 30, 1987, due to a main waterline break, the Richmond District office building of the IRS was closed until the line could be repaired. As a result of the break, all employees were sent home at 1:30 p.m., 3 hours and 15 minutes before the end of the normal workday. Among those sent home were approximately

70 temporary employees assigned to an intermittent tour of duty. There was ample work on hand to keep these employees working until the end of the normal workday. Administrative leave was granted to all employees who were sent home except the intermittent employees. The basis for the agency's decision in this grievance is the same as that of the first grievance, i.e., intermittent employees are not regular employees who accumulate sick and annual leave, and are therefore not entitled to administrative leave.

The union again grieved on behalf of the employees who were not compensated. It cited the same rationale as that of the first grievance absent the provisions of the joint resolution, i.e., the intermittent employees would have worked 8 hours but for the emergency and should be treated as the others were treated in the interest of equity.

The agency contends that the same regulations apply in this instance and that, in this case, there is no joint resolution to provide any potential relief.

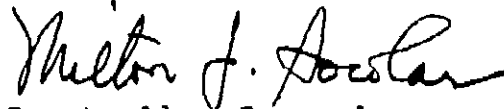
With regard to the emergency shutdown of the IRS district office, the Office of Personnel Management has not issued any general regulations on the subject of granting excused absences to employees without loss of pay or charge to leave (commonly called "administrative leave"). Further, there is no general statutory authority under which federal employees may be excused from their official duties without loss of pay or charge to leave. However, excused absences with pay have been authorized in specific situations. For example, section 6326 of title 5, United States Code, authorizes an absence of up to 3 days for an employee to participate in funeral services of an immediate relative who died as a result of military service in a combat zone.

In addition, over the years, this Office has recognized that, in the absence of a statute controlling the matter, the head of an agency may in certain situations excuse an employee for brief periods of time without charge to leave or loss of pay. 63 Comp. Gen. 542 (1984). Some of the more common situations in which agencies generally excuse absence without charge to leave are discussed in Federal Personnel Manual (FPM) Supplement 990-2, Book 630, Subchapter S11. See 53 Comp. Gen. 582 (1974).

Additionally, the Federal Personnel Manual states that "[t]he closing of an activity for brief periods is within the administrative authority of an agency." FPM chapter 610, S3-1(a). Examples of the appropriate use of such authority given by the FPM include (1) when normal operations are interrupted by events beyond the control of

management or employees such as emergency conditions; and (2) when managerial reasons require the closing of an establishment or portions thereof for short periods of time.

Clearly, because of the waterline break, the normal operations of the Richmond district office were interrupted by an emergency condition which was beyond the control of management or the employees. Therefore, the agency had discretion to close the office during the emergency and to compensate (in the form of administrative leave) the employees on duty for the brief period during which the emergency occurred. The intermittent employees on duty may also be compensated since they, too, were furloughed as a result of the emergency and since there was sufficient work to keep them on duty until the end of the normal workday. Accordingly, we have no objection to the agency compensating the 70 intermittent employees for the time lost due to the emergency closing on September 30, 1987.



Acting Comptroller General  
of the United States