



**The Comptroller General
of the United States**

Washington, D.C. 20548

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Decision

Matter of: Norfolk Naval Shipyard - Restoration of Forfeited
Annual Leave

File:

B-234596

Date:

August 23, 1989

DIGEST

Some employees of the Norfolk Naval Shipyard, on approved leave for the remainder of the 1987 leave year ending January 2, 1988, forfeited up to 4 hours of annual leave as a result of the President declaring the last half (4 hours) of the scheduled workday on December 24, 1987, as a half-day closing. As a result, the employees' annual leave accounts exceeded the maximum carryover of 240 hours. There is no authority to restore the forfeited annual leave in excess of statutory limit of 240 hours for carryover into the next leave year.

DECISION

This decision is in response to a joint request for decision pursuant to labor-management relations procedures set forth in 4 C.F.R. Part 22 from the Department of the Navy, Norfolk Naval Shipyard, Portsmouth, Virginia, and the American Federation of Government Employees (AFGE), Local 4015. The parties request a decision as to whether approximately 40 employees who forfeited up to 4 hours annual leave because of the issuance by the President of Executive Order 12619, excusing all federal employees from duty for the last half of the scheduled workday on December 24, 1987, are entitled to the restoration of the forfeited annual leave under the facts set forth below. We hold that, in the circumstances presented here, the employees are not entitled to leave restoration.

BACKGROUND

The Norfolk Naval Shipyard has established a curtailment policy, stopping all but essential operations for 4 to 8 workdays between Christmas through New Year's Day. On July 31, 1987, the activity issued a notice which set out the period of curtailment for 1987-1988, which was from

7:40 a.m. on December 24, 1987, until 7:20 a.m. on January 4, 1988.

By Executive Order 12619, issued December 22, 1987, the President excused all federal employees from duty for the last half of the scheduled workday on December 24, 1987. As a result, certain employees who were scheduled to and did take annual leave during the full curtailment period forfeited between 0.1 and 4.0 hours of annual leave.^{1/} Approximately 40 employees were affected.

AFGE Argument For Restoration

Employees scheduled "use or lose" annual leave for the period beginning on December 24, 1987, and ending January 4, 1988, because the Shipyard was in an official shutdown period and their services were not required. The union argues that had there been no official shutdown on December 24, 1987, and had these employees been working, they would have been excused from duty without loss of pay or charge to leave for the last 4 hours of the workday of December 24, 1987. In that case, assuming they had used their excess leave earlier in the year, they would not have forfeited the annual leave. Employees in the unit planned their leave judiciously as required by the Shipyard Commander in preparation for the shutdown which began December 24, 1987, and ended January 4, 1988. Therefore, these employees were penalized for following the Shipyard Commander's instructions. Employees in the bargaining unit were not notified that they had been excused from duty for the last half of the scheduled work-day on December 24, 1987, until they returned to work on January 4, 1988, when the Shipyard was reopened for business.

Agency Argument For Denying Restoration

The agency relies on decisions of our Office in support of its position that the "lost" leave is not subject to restoration, that the employees are not entitled to additional pay, and that advance notice of the December 24 excusal under Executive Order is not required. The agency cites our decision Joseph A. Seymour, B-182549, Aug. 22, 1975. In Seymour we stated that where an employee takes annual leave for the remainder of the leave year (13 days) but is charged for only 11 days because 2 additional holidays were declared by Executive Order during that period, there is no authority to restore 6 hours of annual leave

^{1/} The Shipyard grants annual leave in tenths of an hour increments.

that was forfeited in excess of the statutory limit of 240 hours. The agency also cites our decision William M. Gualtieri, B-207139, Sept. 29, 1982, in which an employee whose annual leave account exceeded the maximum carryover of 240 hours, and who was on approved leave for the remainder of the 1981 leave year, forfeited 4 hours of annual leave as a result of the President encouraging agency heads to excuse employees from work for the last half of the workday on December 24, 1981. We held that the failure of the employee's agency to counsel the employee of our holding in Joseph A. Seymour, supra, did not constitute administrative error within the meaning of 5 U.S.C. § 6304(d)(1)(A), and that no authority existed for the restoration of the forfeited annual leave.

OPINION

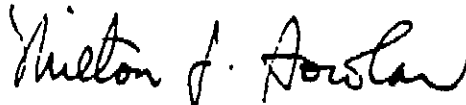
At the end of the leave year, employees must forfeit annual leave in excess of the maximum carryover allowed unless the forfeiture was caused by administrative error when the error causes a loss of annual leave otherwise accruable, exigencies of the public business when the annual leave was scheduled in advance, or sickness of the employee when the leave was scheduled in advance. 5 U.S.C. § 6304 (1982). In interpreting this law, we have held that there is no authority to permit the crediting or use of the excess leave which is forfeited because a closing of federal offices was declared by the President on a day that annual leave was scheduled to be used. Joseph A. Seymour, supra, and William M. Gualtieri, supra. The forfeited annual leave in such situations is not within the scope of the statute's provisions which permit restoration of forfeited annual leave. See also Priscilla Cooke, B-231759, Jan. 4, 1989.

As indicated above, by Executive Order 12619, issued December 22, 1987, the President excused all federal employees from duty for the last half of the scheduled workday on December 24, 1987. Section 3 of Executive Order 12619 provides that Thursday, December 24, 1987, shall be considered as falling within the scope of Executive Order No. 11582, February 13, 1971 (observance of holidays), and of 5 U.S.C. §§ 5546 (premium pay for holiday work) and 6103(b) (pay and leave of employees with respect to a holiday declared by Executive order).

This leave in question was forfeited because of the rule that an employee on previously authorized leave is not charged leave for a day or part day on which federal offices are closed by Executive Order. See 43 Comp. Gen. 501 (1964) (Executive Order 11128, Nov. 23, 1963, closing federal offices as a mark of respect on the death of

President Kennedy). That decision is predicated on section 205(a) of the Annual and Sick Leave Act of 1951, codified at 5 U.S.C. § 6302(a) (1982), which defines days of leave as "days on which an employee would otherwise work and receive pay . . . exclusive of holidays and nonworkdays established by Federal statute, Executive order, or administrative order." Thus, an employee on previously authorized leave on the day that Federal offices are closed is not to be charged leave for that day. See B-153196, Jan. 27, 1964.

In this case there is no authority to restore the hours of forfeited annual leave since the employees had previously scheduled the use of annual leave in accordance with the agency's instructions and the declaration of the last half of the scheduled workday on December 24, 1987, as a half-day closing by the President does not constitute an administrative error or otherwise trigger any of the premises for restoration in 5 U.S.C. § 6304(d)(1).



Acting Comptroller General
of the United States