

Mosher
PLM-11-412

DECISION



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

8835

FILE: B-191860

DATE: January 10, 1979

MATTER OF: Canadian nationals employed by the Defense
Logistics Agency] - [retroactive pay for

AGC 00378

DIGEST: Canadian nationals employed in Canada by the
Defense Logistics Agency (DLA) are paid sala-
ries and other benefits comparable to those
paid Canadian Government employees. Canadian
Government employees are paid retroactive pay
due to lapse of 4 to 6 months between the date
existing negotiated rates expire and the date
new rates are negotiated. DLA may pay its
Canadian national employees the retroactive pay
provided it is consistent with the public inter-
est and the agency pay practice is coordinated
with other agencies of the United States in
Canada.

AGC 00378

This action is in response to a letter dated April 26, 1978,
from the Defense Logistics Agency (DLA) requesting our decision as
to the entitlement to retroactive pay of Canadian nationals formerly
employed by DLA in Canada after they are separated by retirement,
resignation or reduction in force in the situation set forth below.

The DLA employs Canadian nationals in Canada pursuant to
5 C.F.R. 8.3, who are paid salaries and other benefits comparable
to those paid Canadian Government employees. Canadian Government
employees are paid salary rates which are negotiated between the
Canadian Treasury Board and the Public Service Alliance of Canada.
Generally there is a time lag between the expiration of the old
contract and the date of the acceptance of the new contract of
from 4 to 6 months. As a result, provision has been made for the
pay increases to be retroactive. Pursuant to the applicable
Canadian regulations, Privy Council (P.C.) 1694-1417, Retroactive
Remuneration Regulations, paragraph 3(a)(ii) (Sept. 10, 1964),
retroactive increases are applicable to a person who ceased to
be an employee during the retroactive period because of
(A) lay-off (B) retirement, or (C) death.

DLG 581

DLG 582

With respect to employees of the United States Government
generally there is no entitlement to retroactive pay absent a
provision in an employment contract or express statutory

~~003214~~

Dec

B-191860

authorization. However, such limitation would not necessarily apply to foreign nationals employed outside the United States by the United States Government. Pursuant to 22 U.S.C. 889 (1976) the Secretary of State is authorized, in accordance with such regulations as he may prescribe, to establish compensation plans for alien employees of the Foreign Service, provided that such compensation plans shall be based upon prevailing wage rates and compensation practices for corresponding types of positions in the locality, to the extent consistent with the public interest. Subsection (b) of that section extends this authority to other Government agencies for the purpose of performing functions abroad. See B-186957, February 9, 1977.

In 51 Comp. Gen. 123 (1971) we considered certain questions relating to foreign national employees of nonappropriated fund activities and their rights under 22 U.S.C. 889, supra, where we stated at page 124 that:

"It is apparent from the foregoing that compensation plans for aliens need not be limited by laws and regulations applicable to employees subject to the civil service laws and regulations generally, and that where such plans are consistent with the local practice and in the public interest, no question would arise as to the availability of appropriations to meet the cost of such plans."

See also 40 Comp. Gen. 650 (1961), and B-166917, June 10, 1969.

We see no reason why the subject former employees of the DLA in the situation described are precluded from receiving the retroactive pay increase, provided such payments are determined to be consistent with the public interest and the agency pay practice is coordinated with other agencies of the United States operating in Canada. See 40 Comp. Gen. 650 (1961).


Deputy Comptroller General
of the United States