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DECISION



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

[Source of Payment To Satisfy Court Judgment Against GPO]

FILE: B-200283

DATE: April 15, 1981

MATTER OF: Payment of "Front Pay". Court Judgment
against GPO

DIGEST: As a result of an employment discrimination suit brought by certain female employees, the Government Printing Office (GPO) was ordered in a court judgment to pay the plaintiffs back pay for past economic harm and an added increment of pay above that to which they were otherwise entitled, for continuing economic harm until a certain number of plaintiffs were promoted. The so-called award of "front pay" in this instance amounts to damages and should be paid from the permanent indefinite appropriations provided in 31 U.S.C. § 724a. Agency appropriations are not available to pay compensation above the amount prescribed for the particular job level in question. 55 Comp. Gen. 1447 (1976) is distinguished.

The Acting Public Printer has requested a decision from this Office concerning the source of payment of one element of a judgment against the Government Printing Office (GPO). A class action suit was initiated by certain GPO female employees, hereafter referred to as plaintiffs, under the Equal Pay Act of 1963, as amended, 29 U.S.C. § 206(d)(1) and Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e et seq. alleging that they had sustained economic loss from GPO discriminatory employment practices. In Thompson v. Boyle, 499 F. Supp. 1147 (1979), the court found for the plaintiffs and rendered a judgment in their behalf. Among other things, the judgment awarded the plaintiffs back pay on a pro-rata basis in a lump sum, representing the difference in pay the class as a whole would have received had 50 percent of its members been promoted to the next higher position, less the pay the class as a whole actually received. In addition, the court awarded what it termed "front pay," which amounts to an added increment of pay over each class member's current pay for each future pay period after the date of the judgment until such time as GPO is able to promote members of the class into a designated number of higher grades.

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GPO has correctly assumed that the back pay award may be paid from the permanent indefinite appropriations authorized by 31 U.S.C. § 724a. See e.g., 58 Comp. Gen. 311 (1979). However, GPO is uncertain whether the "front pay" award may be paid from this appropriation or whether it must use appropriations available within the agency. The front pay question is further complicated by the fact that the above captioned case has been appealed and the judgment has been stayed pending review of the lower court decision and judgment. As a result of the stay, GPO wishes to know whether it should obligate and reserve its own appropriations to make the front pay payments if the judgment is affirmed. Based on the rationale set forth below, we are of the opinion that both front pay and back pay should be paid from the permanent indefinite appropriations provided by 31 U.S.C. § 724a and hence the agency appropriations should not be used for any part of the judgment.

The provisions of the judgment concerning front pay are as follows:

"VII FRONT PAY UNDER TITLE VII FOR DISCRIMINATION IN MAKING PROMOTIONS

"It is FURTHER ORDERED, that from the date hereof, until the class plaintiffs fill one-half of all promotion positions in the Bindery, for each pay period each Title VII plaintiff remains employed by defendant, she shall receive the difference between her wages and the wages she would have received on a pro-rata basis as if JBWs [journeyman bindery workers] for that pay period filled one-half of all promotion positions in the Bindery or a proportionate number of such promotion positions, whichever number is lower, provided, however, that no JBW receiving a promotion shall receive compensation under this paragraph after receiving said promotion. It is provided further that, because of the equalization of wages ordered in part III supra, the Grade 4 JBWs shall not receive any compensation under this paragraph."

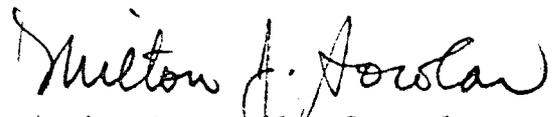
The term "front pay" is used in the instant decision to differentiate the money award payable each pay period subsequent to the date of the decision from the lump sum award payable to redress discriminatory practices in the past. While the latter award is termed "Back Pay," there was no finding made that any individual plaintiff would have been promoted but for the agency's discriminatory practices. The award, therefore, does not represent a make-whole remedy; that is, the court is not attempting to place each plaintiff in the same financial position she would have enjoyed had she been promoted at some fixed date in the past. Rather, the court has awarded a measure of damages for lost promotional opportunities due to past discriminatory practices.

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This distinction is important in considering the source of funds for the post-judgment payments ordered by the court. We had occasion to consider the issue of a judgment provision that ordered continuing future payments to employees in our decision concerning certain National Aeronautics and Space Administration (NASA) employees entitled: Matter of the source of funds to pay judgment in favor of Jack M. Whaley and Victor C. Wolff, 55 Comp. Gen. 1447 (1976). Among other things, the judgment in that case required the agency to pay the plaintiffs front pay beyond the date of the judgment. However, there, the court determined that NASA had erred in computing the rate of pay of certain wage grade employees that had been converted to the General Schedule. As a remedy, the court ordered NASA to pay the employees an added increment of pay to which they were duly entitled under applicable statutes and regulations and would have received except for the conversion error. We held that backpay to the date of the judgment should be paid from the permanent indefinite appropriations provided by 31 U.S.C. § 724a, but all pay after the date of the judgment for these employees should be paid from NASA appropriations at the corrected rate. In other words, the NASA employees were entitled to pay at the higher rate, and NASA's appropriations were available to pay the salary and benefits to which the employees were entitled on an ongoing basis.

The judgment in the instant case is different from the judgment in the NASA case. The court recognized that individual employees were not entitled to a higher rate of pay commensurate with the salary of the next higher grade. Again, there was no finding that any individual employee was entitled to be promoted. While the salary differential was taken into account in determining the dollar amount of the award, the award itself was simply a measure of damages. Therefore, GPO does not have authority under applicable statutes and regulations to pay the added increments to each individual plaintiff since its appropriations for salary are available only for the compensation prescribed for the particular grade level. We conclude that the added increments of pay authorized solely by the judgment must be paid out of appropriations provided under 31 U.S.C. § 724a.

If the instant judgment should be affirmed on appeal, front pay from the date of the judgment until the date of implementation may be handled as if it were backpay, which is what it has in fact become during the period of the stay. At that time representatives of GPO and this Office can discuss the most efficient manner in which to handle the front pay payments from the judgment fund.


Acting Comptroller General
of the United States