

PLM 77

**DECISION**



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

10,485

FILE: B-194545

*[Request for]*

DATE: June 15, 1979

MATTER OF: Arthur E. Quillo - Restoration of  
forfeited annual leave

**DIGEST:** Employee in Vietnam at the end of leave year 1974 who forfeited 124 hours of accrued leave may not have leave restored under 5 U.S.C. 6304(d)(1)(B) (1976) in the absence of timely written request for scheduling of leave as required by the law and applicable regulations.

This action is in response to an appeal of a settlement of our Claims Division dated January 4, 1979, which disallowed Mr. Arthur E. Quillo's claim for restoration of 124 hours of annual leave. The leave was forfeited under the provisions of 5 U.S.C. § 6304 (1976) at the end of leave year 1974.

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Mr. Quillo was assigned to the Defense Attache Office, Saigon, Vietnam, from March 14, 1974, until March 15, 1975. Mr. Quillo states that he was not allowed to use his annual leave in 1974 because of exigencies of public business. He also indicates that normal leave could not be taken in his case because of the conditions existing in Vietnam at that time.

In support of his claim Mr. Quillo asserts that others similarly situated had leave restored upon their return from Vietnam. He alleges that he had been assured by his supervisors that the leave would not be lost, that all his requests for leave were verbal and therefore there would be no documentation.

The Naval Supply Center, Oakland, California, which maintained the records of the employees of the Defense Attache Office, Saigon, reports that Mr. Quillo has not provided evidence to support the approval of leave on specific dates nor documentation of the reasons for cancellation of the approved leave.

On November 13, 1974, the Chief, Personnel Division, issued DA Form 2496, setting forth the determination of the Defense Attache that the exigencies of the public service during the 1974 leave year had been such that some assigned employees had been precluded from using all of their accrued leave. The

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instruction also cited the law authorizing the restoration of annual leave and the establishment of special leave accounts. Further, it was stated that certain documentation would have to be available before forfeited leave could be restored. This included an SF 71 Form, or other appropriate leave application form showing the calendar date the leave was scheduled, and approval of the official having the authority to approve leave and dates the leave was scheduled for actual use, including the number of hours scheduled.

Forfeited annual leave can be restored under the limited circumstances set out in 5 U.S.C. § 6304(d)(1), which provides:

"Annual leave which is lost by operation of this section because of—

"(A) administrative error when the error causes a loss of annual leave otherwise accruable after June 30, 1960;

"(B) exigencies of the public business when the annual leave was scheduled in advance;  
or

"(C) sickness of the employee when the annual leave was scheduled in advance;

shall be restored to the employee."

The Civil Service Commission's implementing regulations and guidelines, issued pursuant to 5 U.S.C. §§ 6304(d)(2) and 6311, are contained in Federal Personnel Manual (FPM) Letter No. 630-22, dated January 11, 1974. The regulations were published in the Federal Register of January 11, 1974, and have been codified in Subpart C, Part 630, title 5, Code of Federal Regulations.

For restoration under subsections (B) or (C), there is a statutory requirement that the annual leave be scheduled in advance. See Matter of Michael Dana, 56 Comp. Gen. 470 (1977). Regarding this requirement 5 C.F.R. § 630.308 provides:

"Beginning with the 1974 leave year, before annual leave forfeited under section 6304 of

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title 5, United States Code, may be considered for restoration under that section, use of the annual leave must have been scheduled in writing before the start of the third biweekly pay period prior to the end of the leave year." (Emphasis added.)

Paragraph 5c.(3)(c) of the Attachment to FPM 630-22 further elaborates:

"\* \* \* The scheduling and, as necessary, rescheduling of annual leave must be in writing. (In this regard, Standard Form 71, Application for Leave, may be used to document the actions, supplemented as required.) Documentation must include the following:

" - The calendar date the leave was scheduled, i.e., approved by the official having authority to approve leave \* \* \*." (Emphasis added.)

The rule requiring approval in writing stems from the legislative history of section 6304(d)(1) itself:

"The committee intends that for purposes of complying with the 'scheduled in advance' requirement, some formal documentation will have to be furnished to show that the employee, a reasonable time before the end of the leave year, did, in fact, request a certain amount of annual leave in advance, that such request was approved by the appropriate authority, and that such annual leave was lost due to exigencies of the service or sickness of the employee." H.R. Rep. No. 93-456, 93rd Cong., 1st Sess. 9 (1973).

In this regard, informal notification or verbal request by employees for leave is not considered as meeting the documentation requirements of the law and regulations. Furthermore, it has been held that the scheduling requirement under 5 U.S.C. 6304(d)(1)(B) may not be waived or modified even where

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extenuating circumstances exist. Matter of Michael Dana, et al., 56 Comp. Gen. 470 (1977). See also B-191379, September 28, 1978.

While Mr. Quillo may have been misled by his supervisors as to the necessity of documenting scheduled leave and by his own practice as a supervisor and Civil Service employee for many years and thus lost leave that might otherwise be restored if properly documented, the liability of the Government, nevertheless, is limited to that provided by law. The Government cannot be bound beyond the actual authority conferred on its agents by statute. 54 Comp. Gen. 747 (1975).

The limited facts set forth in Mr. Quillo's letters concerning others similarly situated who it is asserted had leave restored preclude a conclusive determination as to what occurred.

While we are not unmindful of the situation in Vietnam at the end of the year 1974, on the basis of the record before us we are unable to conclude that the requirements necessary for restoration of forfeited leave have been met. Accordingly, the disallowance of Mr. Quillo's claim by our Claims Division is sustained.

  
Deputy Comptroller General  
of the United States