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PLM-11
Mr. Richman

DECISION



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

FILE: B-196444

DATE: February 8, 1980

MATTER OF: Use of compensatory time to refund
excess annual leave

↓ address

DIGEST: Question arising from labor-management negotiations asks whether an employee may use compensatory time to refund excess annual leave taken because it had been credited to his account through administrative error, if such compensatory time would have been available for use at time that excess annual leave was taken. While payment for excess annual leave generally must be recovered under 5 U.S.C. 6302(f), alternatively, the employee's available compensatory time balance may be charged for the excess annual leave taken through administrative error as proposed in the submission. Cf. 58 Comp. Gen. 571 (1979). 45 Comp. Gen. 243 (1965), distinguished.

The question presented asks whether an employee may use compensatory time to refund excess annual leave taken through administrative error, if such compensatory time would have been available for use at the time that the excess annual leave was taken. For the reasons stated below, we hold that the proposed use of compensatory time is proper.

A request for an advance decision was submitted by Mr. Alfred M. Zuck, Assistant Secretary for Administration and Management, Department of Labor, representing a proposal agreed to during recent negotiations with the Department's National Council of Field Labor Locals (NCFLL) on absence and leave policy. The NCFLL has been served with a copy of this request as required by our regulations governing Labor-Management cases, 4 C.F.R. Part 21 (1979).

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Agencies, under certain conditions, may grant compensatory time off to an employee from his scheduled tour of duty instead of payment for time spent in irregular or occasional overtime work. However, the rules governing compensatory time are directed to the administration of premium pay, not annual leave.

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[QUESTION Arising from Labor-Management Negotiations]

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In the situation presented here, where an employee has used excess annual leave which was credited to his account because of an administrative error, 5 U.S.C. 6302(f) (1976), provides as follows:

"An employee who uses excess annual leave credited because of administrative error may elect to refund the amount received for the days of excess leave by lump-sum or installment payments or to have the excess leave carried forwarded as a charge against later-accruing annual leave, unless repayment is waived under section 5584 of this title."

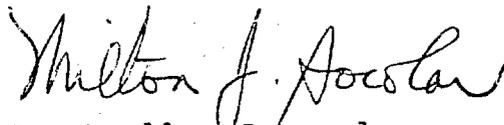
The Department of Labor believes that this section limits its authority to permit the use of compensatory time to liquidate excess leave charges as proposed by the union. Our decision, 45 Comp. Gen. 243 (1965), is cited for the proposition that in the absence of statutory authority, compensatory time may not be credited toward the balance of advanced annual or sick leave owed by an employee. However, no element of administrative error was involved in the advance of leave considered in that decision, and no statutory provision providing for alternate means of repaying the leave advanced existed at that time.

More recently, we have considered the import of 5 U.S.C. 6302(f) on repayment of excess leave charges. This provision was added as a new subsection to section 6302 by section 4 of the 1973 amendments to the Annual and Sick Leave Act, Public Law 93-181, December 14, 1973, 87 Stat. 705, 706. Our review of the legislative history indicates that the purpose of this provision was to permit an employee the option of repaying an overcharge of leave by lump-sum or installment cash payments or by a charge against current or later accruing annual leave where formerly there was no authority for repayment by charging future leave earnings. See S. Rep. No. 93-491, 93d Cong., 1st Sess.,

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November 9, 1973, 2, 4 (1973); and H.R. Rep. No. 93-456, 93d Cong., 1st Sess. September 10, 1973, 3, 7, 9 (1973). See also, Matter of Delores J. Copeland, B-187692, October 13, 1977. Nothing in the legislative history cited deals with the use of existing compensatory time as a mode of repayment for an excess annual leave charge. Since this section increases the options available to employees to repay excess leave that was credited to their accounts through administrative error, it is properly classified as remedial legislation to be broadly interpreted to achieve its purpose.

We recognize that although compensatory time and annual leave are authorized by different statutory provisions and are governed by different regulations, in their use they are in many respects equivalent. If an employee has both annual leave and compensatory time to his credit and wishes to take time off from work, it does not matter, within the limits imposed by the applicable regulations, whether the employee charges his time off to annual leave or compensatory time. The net effect is the same, the employee has time off with full pay. As an example, in Matter of Edward W. Dorcheus, 58 Comp. Gen. 571 (1979), we held, in part, that an employee's annual leave balance could, with his consent, be reduced by the amount of compensatory time erroneously granted and used. While the situation is reversed here, the same principle may be applied. Therefore, we believe that allowing excess annual leave to be charged against compensatory time as proposed comports with the intent of section 6302(f), and the proposal, if finally agreed to by both parties, may be implemented.



For The Comptroller General
of the United States