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DECISION



*J. J. Mitchell*  
THE COMPTROLLER GENERAL *PLM E*  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548

FILE: 3-191379

DATE: September 28, 1978

MATTER OF: Carl J. Ronollo - Restoration of forfeited  
annual leave

DIGEST: Although extenuating circumstances existed in Vietnam at the end of leave year 1974, employee who forfeited 136 hours of accrued leave while stationed in that area may not have leave restored under 5 U.S.C. 6304(d)(1)(B) in the absence of timely request for and written scheduling of leave as required by the law and applicable regulations, even though a determination of exigency of public business existed which precluded his use of the leave.

This action is in response to an appeal of a settlement of our Claims Division dated July 21, 1977, which disallowed Mr. Carl J. Ronollo's claim for restoration of 136 hours of annual leave. The leave was forfeited under the provisions of 5 U.S.C. § 6304 at the end of leave year 1974.

Mr. Ronollo was assigned to the Defense Attache Office, Army Division, Procurement Branch, in Vietnam during the greater part of the leave year 1974. Mr. Ronollo states that he had applied for authorized annual leave for the month of November 1974; however, he was not allowed to use the leave because of exigencies of public business. He also indicated 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 he submits a statement from F. D. Bollard, his supervisor, for the period November 15, 1974, to the time of his evacuation from Vietnam in April of 1975. Mr. Bollard states that he recalls that Mr. Ronollo had authorized annual leave planned for November of 1974 and March or April 1975. This information was on a wall chart in his office. Mr. Bollard also states that he recalls that at least three other American personnel applied for and received approval for the restoration of annual leave during this same period, because work priorities, remoteness of the post, and difficulty of travel precluded their timely use of leave.

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The Navy Regional Finance Center, Washington, D.C., provided an administrative report on the matter after requesting reports from the various activities involved. That report indicates that after an exhaustive search of available records, no information could be found which would substantiate Mr. Ronollo's claim.

Also submitted with the report was DA Form 2496, issued November 13, 1974. This indicated that Defense Attache had made a determination that the exigencies of the public service during the 1974 leave year to date had been such that some assigned employees had been precluded from using all of their accrued leave. The 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 section 6304(d)(1) of title 5, United States Code (Supp. III, 1973), 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,

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are contained in Federal Personnel Manual Letter (FPML) No. 630-22, dated January 11, 1974. The regulations, but not the guidelines, were also 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 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 bi-weekly pay period prior to the end of the leave year." (Emphasis added.)

Paragraph 5c.(3)(c) of the Attachment to FPML 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

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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 by employees of their leave plans 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 extenuating circumstances exist. Matter of Michael Duna, et al., 56 Comp. Gen. 470 (1977).

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. Ronollo's claim by our Claims Division must be sustained.

  
Acting Comptroller General  
of the United States