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B-186820, Dec 16, 1977

Number: B-186820

Date: 1977-12-16

B-186820, DEC 16, 1977

EMPLOYEE REQUESTED RESTORATION UNDER PUBLIC LAW 93-181 OF ANNUAL LEAVE FORFEITED AT END OF 1973 LEAVE YEAR, AFTER HE RECEIVED CREDIT FOR AN ADDITIONAL 50 HOURS OF ANNUAL LEAVE WHEN HIS LEAVE ACCRUAL RATE WAS CORRECTED IN JULY 1973. UPON RECONSTRUCTION OF EMPLOYEE'S LEAVE ACCOUNT, FACTS SHOW 24 OF THE 50 HOURS WERE EARNED IN THE 1972 LEAVE YEAR AND FORFEITED AUTOMATICALLY UPON CORRECTION OF HIS LEAVE ACCRUAL RATE, AS THE EMPLOYEE HAD CARRIED OVER THE MAXIMUM 240 HOURS OF LEAVE ALLOWED AT THE END OF THE 1972 LEAVE YEAR. THESE 24 HOURS OF LEAVE MAY BE RESTORED. THE REMAINING 26 HOURS OF ANNUAL LEAVE FORFEITED AT THE END OF THE 1973 LEAVE YEAR WERE EARNED DURING THE 1973 LEAVE YEAR AND SHOULD HAVE BEEN USED AT THAT TIME. THEY MAY NOT BE RESTORED.

THOMAS P. WOLL - RESTORATION OF LEAVE:

BY LETTER DATED JUNE 16, 1976, MR. WOLL REQUESTED THAT 54 HOURS OF ANNUAL LEAVE FORFEITED BY HIM AT THE END OF THE 1973 LEAVE YEAR BE RESTORED UNDER THE PROVISIONS OF PUBLIC LAW 93-181, 5 U.S.C. SEC. 6304(D). MR. WOLL IS AN EMPLOYEE OF THE FEDERAL RAILROAD ADMINISTRATION, DEPARTMENT OF TRANSPORTATION.

THE RECORD SHOWS THAT IN JULY 1973 THE PERSONNEL OFFICE OF THE FEDERAL RAILROAD ADMINISTRATION (FRA) DISCOVERED THAT MR. WOLL HAD BEEN ELIGIBLE TO ACCRUE ANNUAL LEAVE AT THE RATE OF 6 HOURS PER PAY PERIOD SINCE JULY 1972. THEREFORE, FOR THE PAY PERIOD BEGINNING JULY 8, 1973, AND ENDING JULY 21, 1973, MR. WOLL'S LEAVE ACCRUAL RATE WAS CHANGED FROM 4 HOURS TO 6 HOURS PER PAY PERIOD. THE FOLLOWING PAY PERIOD WHICH ENDED AUGUST 4, 1973, MR. WOLL WAS CREDITED WITH AN ADDITIONAL ANNUAL 50 HOURS OF ANNUAL LEAVE REPRESENTING THE 2 HOURS OF ANNUAL LEAVE PER PAY PERIOD TO WHICH HE HAD BEEN ENTITLED FOR THE 25 PAY PERIODS PRIOR TO THE PAY PERIOD ENDING JULY 21, 1973. AT THE END OF THE 1973 LEAVE YEAR MR. WOLL FORFEITED 54 HOURS OF ANNUAL LEAVE. IT IS THIS 54 HOURS OF LEAVE FOR WHICH THE REQUEST FOR RESTORATION IS MADE UNDER THE PROVISIONS OF PUBLIC LAW 93-181.

WHEN AN EMPLOYEE IS RECREDITED WITH LEAVE IN ORDER TO CORRECT AN ADMINISTRATIVE ERROR, HIS LEAVE RECORDS ARE RECONSTRUCTED FOR EACH LEAVE PERIOD AFFECTED. IN THUS RECONSTRUCTING THE EMPLOYEE'S LEAVE ACCOUNT, HE MAY NOT BE RECREDITED WITH ANY LEAVE WHICH WOULD CAUSE HIS LEAVE BALANCE FOR THE BEGINNING OF A NEW LEAVE YEAR DURING THE PERIOD IN QUESTION TO EXCEED THE STATUTORY LIMITATION OF 240 HOURS IMPOSED BY THE ANNUAL AND SICK LEAVE ACT OF 1951, AS AMENDED, NOW 5 U.S.C. SEC. 6304. B-177977, MAY 21, 1973.

IN RECONSTRUCTING MR. WOLL'S LEAVE ACCOUNT IN ACCORDANCE WITH THE ABOVE RULE WE REACH THE FOLLOWING RESULTS:

1. AT THE END OF THE 1972 LEAVE YEAR MR. WOLL FORFEITED 24 OF THE 50 HOURS OF ANNUAL LEAVE WITH WHICH HE WAS CREDITED DURING THE PAY PERIOD ENDING AUGUST 4, 1973;

2. MR. WOLL SHOULD HAVE BEEN CREDITED WITH 26 HOURS OF ANNUAL LEAVE DURING THE PAY PERIOD ENDING AUGUST 4, 1973, NOT 50; AND

3. AT THE END OF THE 1973 LEAVE YEAR MR. WOLL FORFEITED 30 HOURS OF ANNUAL LEAVE, NOT 54.

THE PERTINENT STATUTORY PROVISION FOR RESTORATION OF ANNUAL LEAVE FORFEITED DUE TO ADMINISTRATIVE ERROR IS FOUND AT 5 U.S.C. SEC. 6304(D) AND PROVIDES IN PART AS FOLLOWS:

"(D)(1) 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

"(2) ANNUAL LEAVE RESTORED UNDER PARAGRAPH (1) OF THIS SUBSECTION, OR UNDER CLAUSE (2) OF SECTION 5562(A) OF THIS TITLE, WHICH IS IN EXCESS OF THE MAXIMUM LEAVE ACCUMULATION PERMITTED BY LAW SHALL BE CREDITED TO A SEPARATE LEAVE ACCOUNT FOR THE EMPLOYEE AND SHALL BE AVAILABLE FOR USE BY THE EMPLOYEE WITHIN THE TIME LIMITS PRESCRIBED BY REGULATIONS OF THE CIVIL SERVICE COMMISSION. ***"

WITH REGARD TO THE REQUEST FOR RESTORATION OF 24 HOURS OF ANNUAL LEAVE FORFEITED AT THE END OF THE 1972 LEAVE YEAR, WE FIND THAT SAID LEAVE WAS FORFEITED AUTOMATICALLY UPON ADMINISTRATIVE CORRECTION OF A PRIOR ERROR INVOLVING THE EMPLOYEE'S LEAVE ACCRUAL RATE. THE LEAVE WAS FORFEITED IN SUCH A MANNER THAT THE EMPLOYEE WAS NEVER GIVEN AN OPPORTUNITY TO USE THE LEAVE. ACCORDINGLY, THE 24 HOURS OF ANNUAL LEAVE FORFEITED AT THE END OF THE 1972 LEAVE YEAR MAY BE RESTORED AND PLACED IN A SEPARATE ACCOUNT FOR USE WITHIN 2 YEARS AS PROVIDED BY 5 U.S.C. SEC. 6304(D).

WITH REGARD TO THE CLAIM FOR RESTORATION OF 30 HOURS OF ANNUAL LEAVE FORFEITED AT THE END OF THE 1976 LEAVE YEAR, WE FIND THAT ALL OF THE 30 HOURS WERE EARNED BY THE EMPLOYEE DURING THE 1973 LEAVE YEAR AND WERE FORFEITED BECAUSE THE EMPLOYEE FAILED TO USE THEM. ALTHOUGH EMPLOYEE DID NOT KNOW THAT HE WAS ENTITLED TO 6 HOURS OF LEAVE PER PAY PERIOD UNTIL JULY 1973, HE STILL HAD SIX MONTHS OF THE YEAR IN WHCIH TO USE THE ADDITIONAL LEAVE. THEREFORE, THE FORFEITURE OF THE 30 HOURS WAS CAUSED BY THE EMPLOYEE'S FAILURE TO USE THE LEAVE WITHIN THE LEAVE YEAR. ACCORDINGLY, THE 30 HOURS OF LEAVE FORFEITED AT THE END OF THE 1973 LEAVE YEAR MAY NOT BE RESTORED.