

Compensation Claim Decision
Under section 3702 of title 31, United States Code

Claimant: [name]

Organization: [agency component]
Federal Aviation Administration
U.S. Department of Transportation
San Diego, California

Claim: Unpaid Sunday Premium Pay

Agency decision: N/A

OPM decision: Denied; Statutorily Barred

OPM file number: 07-0031

/s/ for

Robert D. Hendler
Classification and Pay Claims
Program Manager
Center for Merit System Accountability
Human Capital Leadership
and Merit System Accountability

8/13/2007

Date

A January 30, 2007, letter from the U.S. Government Accountability Office (GAO) forwarded this claim to the U.S. Office of Personnel Management (OPM). The letter advised the claimant that section 211 of the Legislative Branch Appropriations Act of 1996, Public Law 104-53, 109 Stat. 514, 535, November 19, 1995, effective June 30, 1996, transferred GAO's claims settlement authority to the Director, Office of Management and Budget (OMB), who is authorized to delegate any such function, in whole or in part, to any other agency or agencies. GAO stated OMB had delegated settlement of Federal civilian employee compensation claims to OPM. In his November 11, 2006, letter to GAO, the claimant states:

On or about September 1993 the US Government settled a grievance (#(NC) ALR-92-12-NAT-1) as a result of Armitage et al. v. United States concerning Sunday Back-pay. On or about October 20, 1993 the FAA distributed a memorandum...covering procedures for filing a claim. On November 17, 1993 I submitted my claim...to receive the money owed me. On February 9, 1994 I received a letter from the FAA...stating that they received my claim on November 24, 1993.

The claimant states elected to "have my claim processed manually," and:

On March 9, 1995 the FAA sent me a letter...stating they have completed the processing of my claim. They only made a partial payment to me in the amount of \$1095.02 plus interest of \$317.57 on March 14, 1995. They further stated that they would pay the balance of \$558.07 plus any interest that accrues after October 1, 1995. FAA has never paid me this money. I have made numerous attempts over the years to determine the status of my payment....

By my calculations this debt has increased to an amount in excess of \$2000....I am requesting that you investigate this matter and determine the exact amount owed me and issue a check directly from the treasury to settle this debt.

The provisions of 31 U.S.C. § 3702(a)(2) are intended to provide recourse to challenge Federal agency decisions regarding entitlement to compensation. Regulations concerning the adjudication and settlement of claims for compensation and leave (part 178 of title 5, Code of Federal Regulations (CFR)) require that a final agency-level denial has been issued (see 5 CFR § 178.102(a)(3) and (b)) before it is submitted to the OPM for adjudication. However, the instant case does not appear to challenge such a denial since the FAA admitted that monies were due the claimant, thereby removing it from OPM's potential claims settlement purview. Furthermore, the provisions of 31 U.S.C. § 3702(a)(2) do not vest OPM with the authority to order the U.S. Department of the Treasury to issue a check to the claimant as he requested in his November 11, 2006, letter.

The claimant seeks payment for the monies he was owed by FAA, a component of the U.S. Department of Transportation (DOT), under the provisions of *Armitage*. However, Congress added a restriction to the 1995 DOT appropriation (Public Law 103-331, 108 Stat 2471, 2475, approved September 30, 1994) effectively reversing the court's holding for FAA employees, and only allowing payment of Sunday premium pay when employees actually perform work on Sunday. In 1996 and 1997, appropriations acts for DOT and related agencies continued to prohibit payment of appropriated funds for Sunday premium pay unless employees actually

perform work on Sunday. Subsequently, section 630 of the FY 97 Treasury, Postal Service, and General Government Appropriations Act, as contained in section 101(f) of Public Law 104-208, the Omnibus Consolidated Appropriations Act, 1997, effective September 30, 1996, precluded agencies covered by the Treasury, Postal Service, and General Government Appropriations Act from using funds appropriated by that Act to pay Sunday premium pay or night differential pay to Federal employees unless they actually perform work during the period for which such compensation otherwise would be payable.

Section 636 of the Treasury and General Government Appropriations Act, 1998 (Public Law 105-61, effective October 10, 1997) provided for a permanent restriction on the payment of Sunday premium pay for all employees Government-wide who are paid from appropriated funds and who do not actually perform work on Sunday, including GS and prevailing rate employees. Section 624 of the Treasury and General Government Appropriations Act, 1999, provided that notwithstanding any other provision of law, no part of any funds provided by the Act or any other Act beginning in fiscal year 1999 and thereafter shall be available for paying Sunday premium pay to any employee unless such employee actually performed work during the time corresponding to such premium pay. As a result, the restriction is no longer limited to funding from appropriations Acts, but applies to funds from any Act. This statutory language also has the effect of extending the restriction on payment of Sunday premium pay to payments from any revolving fund that has received any funding under the provision of any law. This change restricted the payment of Sunday premium pay beginning on October 1, 1998.

It is well established that a claim for payment of money from the Public Treasury contrary to a statutory appropriation is prohibited by the Appropriations Clause of the Constitution, Art. I, 9, cl. 7, which provides in effect that such money may be paid out only as authorized by a statute. Therefore, while the claimant was awarded monies under *Armitage*, the subsequently enacted appropriations acts cited above prohibit him from receiving these payments.

This settlement is final. No further administrative review is available within the Office of Personnel Management. Nothing in this settlement limits the claimant's right to bring an action in an appropriate United States court.