UNITED STATES OF AMERICA

MERIT SYSTEMS PROTECTION BOARD

MICHAEL G. CLARK, appellant, v. OFFICE OF PERSONNEL MANAGEMENT, agency.	DOCKET NUMBER DC07528211215 Date: 07 NOV 1984

OPINION AND ORDER

The Office of Personnel Management (OPM) has petitioned for review of the April 1, 1983, initial decision which found that it had not shown why appellant did not meet a stated exemption to its furlough action involving certain employees taken under 5 U.S.C. Chapter 75, and accordingly, reversed its action furloughing appellant. For the reasons discussed below, the petition for review is GRANTED. 5 U.S.C. § 7701(e)(1).

The validity of the furlough, in general, is not at issue. Congress reduced the salary and expenses (S & E) funding in OPM's budget by sixteen per cent. As a result, OPM undertook to furlough employees at its costs centers, which were S & E funded, based on the percentage of S & E funds each center received. See Official File, Tab 4.

Appellant was appointed to an S & E funded position although both at the time the furlough was proposed and effected he was on detail to another position in OPM which was funded by non- S & E appropriations. Appellant, pointing out that the notice of proposed furlough stated an exemption to the furlough for an employee "not causing the expenditure

funds for payroll," contended below and reasserts in response to OPM's petition that he should have been exempt from the furlough because it was undisputed that he did not cause such an expenditure while serving on his detail.

Contrary to the presiding official's finding, we do not find appellant should have been excepted from the furlough. It is undisputed that, despite the general exemption appearing in the proposed furlough notice, OPM uniformly furloughed all S & E funded employees who, like appellant, were on details to non-S & E funded positions within OPM. Thus, even recognizing that, at some preliminary point in the furlough's conception, appellant was advised by OPM management that he would likely be exempt from the furlough, see Initial Decision at 2, we find that the claimed exemption represented no more than a possible exception which the agency chose not to utilize. Further, we note that appellant does not claim he was adversely misled by the OPM into believing that he was exempted from the furlough or that his procedural rights were in any way abridged.

We find that the agency satisfied the requirement that the furlough be undertaken for such cause as promoted the efficiency of the service by showing, in general, that the furlough was a reasonable management solution to the financial restrictions placed on the S & E funding and that it applied its determination as to which employees to furlough in a fair and even manner. Compare Griffin v. Department of Agriculture, 2 MSPB 335, 336-37 (1980) (in a reduction-in-force situation, once the determination has been made that the agency had a legitimate reason for invoking RIF regulations the Board has no authority to review the management considerations which underlie that agency determination by considering whether a particular position should be eliminated).

Turning to appellant's rights in the furlough process, it has consistently been held that an employee is only entitled to the rights and salary of the position to which (s)he has been appointed. See Goutos v. United States, 552 F.2d 922, 924 (Ct. Cl. 1976) (an employee was not demoted upon return to his position of record where the position he was detailed to was upgraded so that it was at a higher grade level than the employee's position of record because his rights are controlled by the latter position); Peters v. United States, 534 F.2d 232, 234 (Ct. Cl. 1975) (an employee is only entitled to retirement benefits based on his position of record and not a position to which he was detailed despite the length or open-ended nature of the detail); and Frankel and White v. Department of Education, MSPB Docket No. PH03518210198 at 2-3 (October 3, 1983) (the duties and responsibilities of an employee's assigned position, not those of a position to which he is detailed, are controlling for RIF purposes); See also Federal Personnel Manual, Chapter 300.8-1 (a detailed employee is still the incumbent of his/her original position). Thus, appellant was appropriately reached in the furlough; and absent any showing of disparate treatment among similarly situated, detailed employees, we will not interfere with OPM's management determination respecting how to structure the furlough.

Accordingly, the initial decision is REVERSED and the agency's furlough of appellant is SUSTAINED. This is the final order of the Merit Systems Protection Board in this appeal. 5 C.F.R. § 1201.113(c).

Appellant is hereby notified of the right under 5 U.S.C. § 7703 to seek judicial review, if the Court has jurisdiction, of the Board's action by filing a petition for review in the United States Court of Appeals for the Federal Circuit, 717 Madison Place, N.W., Washington, D.C. 20439. The petition for judicial review must be received by the court no later than thirty (30) days after the appellant's receipt of this order.

FOR THE BOARD:

Stephen E. Manrose

Stephen E. Manrose
Acting Clerk of the Board

Washington, D.C.