

This is a complaint that the Federal Aviation Administration (FAA) at the National Capital Region Communication Center (NCRCC) forced me to forfeit over 200 hours of annual leave.

From 1974 until 2010 I was an Air Traffic Controller (GS-2152) for the FAA. During my last 7 years in the FAA I was employed as an Air Traffic Security Coordinator (ATSC) at the NCRCC in Herndon, VA. While employed at the NCRCC I requested annual leave during each year by submitting SF71/OPM Form 71. The leave request forms at the NCRCC were never returned to employees indicating leave approved or denied. Schedules were posted approximately one month before they became effective. If we were scheduled to work a shift where leave had been requested, the leave was denied. Contrary to what Ms. Kalinowski (ATO VP) states (see attachment) in her response to my complaint, I was never notified by Mr. Johnston or Mr. [REDACTED], prior to a schedule being published, that leave would be approved or denied.

In September each year, I requested time off in excess of my use or lose leave. This was done to allow the Front Line Manager (FLM) to schedule me off at any time when leave was available. This was my attempt to avoid leave forfeiture. I was never scheduled for any time off based on these September form 71s. These form 71s also ensured compliance with the requirement that leave in excess of 240 hours is scheduled prior to the third biweekly pay period prior to the end of the leave year. Ms. Kalinowski incorrectly concluded that my compliance with these requirements somehow constituted my "normal practice of waiting until September... to request using ... leave."

Ms. Kalinowski states in her response to my complaint "...James J. Johnston, Front Line Manager...and Douglas B Gould, Manager, Tactical Operations Security, regularly remind employees to plan using their annual leave...specifically stressed to you and other NCRCC ATSCs the constraints imposed on leave flexibility because of available staffing..." I neither met with, spoke with, communicated with nor received communications from Mr. Gould for over 6 years. This never happened; Ms. Kalinowski offers no evidence (emails, records of conversation, personal notes) that this ever happened. We did receive an annual email reminding us about use or lose, but this hardly constitutes "regularly reminding." Ms. Kalinowski implies that leave forfeitures were not a problem for others. While every ATSC did not request restoration, *over 50 percent of NCRCC ATSCs forfeited annual leave; Ms. Kalinowski does not dispute this easily verifiable fact.*

The FAA's responses (see attachments) to my complaints completely ignore supervisor responsibilities. OPM states "When an employee makes a timely request for leave, the supervisor must either approve the request and schedule the leave at the time requested by the employee or, if that is not possible because of project related deadlines or the agency's workload, must schedule it at some other time. If the employee forfeits annual leave because the supervisor did not schedule the leave or request a determination that a public exigency exists that would prevent the employee

from using the leave, the supervisor's negligence constitutes administrative error and the employee's leave must be restored." The supervisor at NCRCC neither scheduled leave nor requested a determination of exigency.

The front line manager (FLM) at NCRCC made all decisions on leave approval/denial. He used his own judgment as to who would be authorized leave when he received more than one request. Spot leave was not always approved on a first requested basis. Prime time leave was not always given priority over spot leave. Even Family Medical Leave Act (FMLA) was sometimes disapproved for unknown or questionable reasons even though this procedure was not lawful.

My final year with the FAA, 2009 to 2010 was typical of other leave years when I forfeited leave. I requested leave during the year and I scheduled 80 hours of prime time December leave in February. The NCRCC procedure was that spot leave could not be requested more than 2 months in advance and we requested prime time leave in February. I worked almost every shift alone so spot leave was almost never available after schedules were published. Our staffing was 6 specialists to staff 2 positions 24 hours a day 7 days a week.

Each January when I forfeited leave, I immediately requested leave restoration by submitting the form. I never received a response to any of these leave restoration requests until February 2010. I then received a reply from the FLM, Mr. James Johnston stating that I did not list any "clerical error" so leave could not be restored. I was told by Greg Davis that he listed "clerical error" and his 170+ hours of forfeited leave were restored. I appealed Mr. Johnston's decision to Ms. Nancy Kalinowski, VP.

Ms. Kalinowski stated in her response dated March 1, "no other member of the NCRCC team has asked Mr. Johnston to restore forfeited annual leave." This is untrue. Four of six employees at NCRCC forfeited annual leave. Leave was forfeited by [REDACTED], [REDACTED], [REDACTED] and me. Only [REDACTED] (the scheduler) and [REDACTED] did not forfeit annual leave. [REDACTED] told me that he forfeited only a few hours and did not request restoration. [REDACTED] told me that he verbally requested leave restoration. All of [REDACTED]' forfeited leave was restored.

Ms. Kalinowski's response states "leave balances have been corrected for at least one NCRCC employee "to address time and attendance administrative processing errors." [REDACTED] forfeited annual leave during the same years, and for the same reasons that I forfeited leave. [REDACTED] told me he requested leave restoration listing clerical errors as the reason. [REDACTED] had over 170 hours of forfeited annual leave, leave forfeited over many years, restored in 2010. 170+ hours forfeited over 4+ years were not "time and attendance administrative processing errors."

Leave at NCRCC was impossible to schedule/manage for an ATSC. I was not able to be certain of any leave approval, including FMLA approval even though laws on FMLA are specific and unambiguous. My mother became terminally ill. I requested FMLA to assist in her care by submitting the appropriate forms requesting FMLA, accompanied by the completed government form with certification from my mother's physician of her illness and prognosis. I was told verbally by the FLM that I was authorized for FMLA.

On June 19, 2009 I verified that no one had requested any leave in early December and I then submitted a Form 71 requesting FMLA leave from November 28 to December 12 (see attachment.) In October my co-worker, [REDACTED], told me that [REDACTED] saw my SF71 in the training office with a note attached. [REDACTED] copied the SF71 (attached) and gave me the copy. The note is from the FLM to the scheduler. It disapproves my FMLA leave on 12/11 and 12/12. Neither the FLM nor the scheduler said anything to me about this or I would have advised them that this was not legal. When the schedule was published on November 3rd, I learned that my FMLA was denied on 12/11 and 12/12 (see attachment.) The schedule appears to indicate that my FMLA was disapproved so that spot leave for other employees could be authorized.

In February 2009 I requested 80 hours of prime time leave in December. In September 2009 I requested the entire months of November and December off in an attempt to avoid leave forfeiture. This allowed the FLM to schedule me off any time to avoid leave forfeiture. As always, no leave was granted as a result of this request. When the December schedule was published on November 3, 2009 (see attachment), I learned that 56 (of 80 requested) hours of prime time leave were approved. There was never an opportunity to take any leave after the schedule was posted as I worked every shift alone. [REDACTED], who never forfeited leave and told me [REDACTED] didn't have use or lose leave, was authorized more than 15 consecutive days off. In January 2010 I forfeited approximately 20 hours of annual leave. According to Ms. Kalinowski's letter, I forfeited 187.3 hours in previous years so this additional 20 hours totals over 200 hours of forfeited annual leave.

I appealed Mr. Johnston's and Ms. Kalinowski's decisions to deny leave restoration to Mr. Rick Day, Senior VP (see attachment) and pointed out that in every Comptroller General decision on restoration of forfeited leave similar to my complaint, the Comptroller General ruled: GAO does not believe that an agency may cause an employee to forfeit leave by failing to schedule it or to present the matter to the proper official for a public exigency determination. An agency's failure to take one of these actions is properly considered an administrative error. Additionally, such failure to act is in derogation of an employee's statutory right to restoration of leave. I listed a number of decisions in similar situations and each Comptroller General decision supported restoration of leave. One of those decisions involving the FAA is described below.

In *Cox vs FAA*, the FAA stated “unlike the agencies involved in those decisions, FAA has a *nondiscretionary agency policy* that requires management to take deliberate steps to insure that the annual leave of employees is not lost...Thus the FAA believes that its failure to plan and schedule Mr. Cox’s leave and to counsel him as to a potential loss of leave provides a basis for restoring his annual leave for a *second* time.”

Mr. Day responded “With regards to the referenced 1978 Comptroller General’s decision: This citation is not controlling upon the Agency, *arguendo* that the fact circumstances were the same.”

At the time that I forfeited leave; the FAA had a written policy that required supervisors to counsel employees that were not scheduling leave and to get the employee to sign a statement acknowledging that they were aware of their failure to schedule leave and the consequences. This was never done and I have never been counseled by anyone about failure to schedule or attempt to schedule leave.

The new FAA policies articulated in Ms. Kalinowski’s and Mr. Day’s letters: that supervisors and managers are not required to provide timely responses to employees leave requests, that supervisors do not have to approve or schedule leave when requested even if forfeiture is probable, and that supervisors are not required to document that an employee has decided to forfeit leave and associated counseling, are flawed policies that all employees should be made aware of, if these are in fact FAA policies.

Ms. Kalinowski’s assertions that supervisors must do nothing more than offer annual reminders to employees to use leave and her declaration that I somehow caused my leave forfeitures by waiting until September (compliance with requirements) to request leave are incorrect. Supervisors should have records of counseling when employees are forfeiting leave almost every year; especially air traffic or other aviation safety employees working rotating shifts.

ATSC at NCRCC work rotating shifts, almost always alone, without breaks away from the positions of operation. The health risks of rotating shifts are well documented; leave forfeitures under these circumstances should not be tolerated.

I believe all annual leave that I earned, and then forfeited should be restored. Mr. Davis and I forfeited leave during the same years, for the same reasons. All of his forfeited leave was restored. Greg Davis may have forfeited additional annual leave in 2010 had a portion of my Family and Medical Leave Act request not been denied so that his spot leave could be authorized.

An organization where over half of the employees forfeit annual leave has a problem. When only 25% of the employees who forfeit leave request to have leave restored,

there are probably additional problems. Solutions to NCRCC staffing and leave problems are not difficult. The FAA should obviously increase staffing at NCRCC. A first level supervisor/FLM with fewer than eight employees (FLM) should occasionally cover a shift, especially when leave forfeiture and/or FMLA are involved. Forced leave forfeitures without compensation should not be tolerated in any organization.

If you have questions or need additional information, I can be reached at phone numbers:

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attachments