**MORRIS L. SHALLER v. U.S. General Accounting Office**

**Docket No. 02-102-04-81**

**Date of Decision: September 1, 1983**

**Cite as: Shaller v. GAO (en banc), Docket No. 02-102-04-81 (9/1/83)**

**Before: Personnel Appeals Board, *en banc* (Edward C. Gallas, Chair; Mollie H. Bowers, Member; Ellen M. Bussey, Member; Jerome H. Ross, Member, Robert T. Simmelkajer, Member)**

**Headnotes:**

**Back Pay**

**Enforcement**

**ORDER**

BEFORE THE PERSONNEL APPEALS BOARD
OF THE GENERAL ACCOUNTING OFFICE
OF THE UNITED STATES OF AMERICA
WASHINGTON, D.C.

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| MORRIS L. SHALLER, | * | |
| Petitioner, | * | |
| v. | * | Docket No. 02-102-04-81 |
| GENERAL ACCOUNTING OFFICE | * | |
| Respondent, | * | |
| * * * * * * * * * * * * * * * * | | |

ORDER

Petitioner, Morris L. Shaller, has filed a Petition for Enforcement of the Board's award of backpay in this case.

The background of this proceeding is as follows: On August 11, 1981, a three-member panel of the Board ruled that Shaller had been terminated from employment improperly by the General Accounting Office. On December 1, 1981, the full Board affirmed the panel's decision, and ordered Shaller reinstated, with backpay from March 21, 1981, the date of his termination, to the date of reinstatement. GAO appealed the Board's decision to the U.S. Court of Appeals. On January 18, 1983, the Court remanded the case to the Board for further consideration of certain questions concerning Shaller's employment and termination. On April 18, 1983, the Board issued its decision on remand, in which it considered the questions raised by the Court and affirmed its December 1, 1981 decision. On May 20, 1983, the Court of Appeals affirmed the decision of the Board.

Thereafter, GAO began the process of implementing the Board's decision. During this process, GAO and Shaller disagreed over the proper method of computing the backpay due to Shaller pursuant to the Board's decision. Shaller then filed the instant Petition for Enforcement.

The dispute between Shaller and the GAO concerns the proper interpretation and implementation of the Board's award of backpay, including the effect, if any, of the Back Pay Act, 5 U.S.C.§5596, on the computation of that award. GAO seeks to deduct from the backpay award the amounts Shaller may have earned from other employment during the period between his termination on March 21, 1981 and the date he was reinstated. Such set-off is required, according to GAO, by the Back Pay Act. Shaller contends that the Back Pay Act is not applicable to GAO, and that, therefore, he is entitled to backpay in the full amount of the earnings he would have received had he not been terminated, with no set-off for interim earnings.

We find it unnecessary to reach the question of the applicability of Back Pay Act to GAO. The intent of the Board in awarding "backpay" in this case was that Shaller's interim earnings be deducted from the amount of wages he would have earned at GAO had he not been terminated. Deduction of interim earnings is the routine manner of computing backpay awards in most, if not all, circumstances where reinstatement and backpay are awarded under federal law. See, e.g., the National Labor

Relations Act, 29 U.S.C.§160, and Title VII of the Civil Rights Act of 1964, 42 U.S.C.§2000e-5. Deduction of interim earnings in backpay awards results in the employee being placed in the financial position he or she would have been in absent the wrongful termination. To do otherwise would result in a windfall to the employee. Such is not the purpose of a make-whole remedy. We did not intend in our award to deviate from the sound and usual practice of deducting interim earnings from backpay awards.

Accordingly, the Petition for Enforcement is denied.