



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON D.C. 20548

*Shultz*

B-202515

June 25, 1981

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Mr. S. David Freeman  
Chairman of the Board of  
Directors  
Tennessee Valley Authority  
400 Commerce Avenue, S.W.  
Knoxville, Tennessee 37902

Dear Mr. Freeman:

This letter is in response to yours dated March 13, 1981, in which you request our views on a proposal to change the statutory jurisdiction of the Merit Systems Protection Board.]

In your letter you express the belief that certain field offices of the Merit Systems Protection Board have been behaving irresponsibly in setting aside adverse personnel actions imposed by Federal agencies in cases of employee misconduct, and you describe several cases in detail to illustrate your point. You indicate that the field office determinations in those particular cases are now pending before the Board on appeal. However, you suggest that a resolution of the problem you perceive might also be achieved through legislation changing the statutory jurisdiction of the Board and its field offices. The suggested statutory amendment would permit the Board to review agency-assessed adverse personnel actions only in "cases where it is proven that the penalty is grossly disproportionate to the offense or the result of prohibited discrimination." You essentially ask whether we would be willing to endorse such a legislative proposal.

On April 10, 1981, the Board issued an "Opinion and Order," copy enclosed, in which it concluded that it did have authority under present law to reassess sanctions imposed by agencies, but only in cases where "the agency-imposed penalty is clearly excessive, disproportionate to the sustained charges, or arbitrary, capricious or unreasonable." However, that opinion is subject to judicial review under the provisions of section 7703 of title 5, United States Code, so that the issue may not be completely settled as to what statutory authority, if any, the Board now has to act in such cases.

Consequently, at this time we are not prepared to endorse the proposed statutory amendment. Rather, we believe that the process of judicial review should be allowed to take its course.

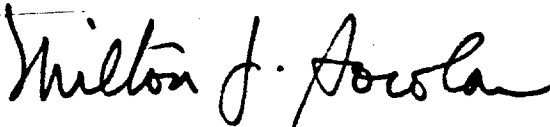
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If the courts approve of the standard which has now been adopted by the Board, then we feel sufficient time should also be allowed to determine whether the application of that new standard will correct the problem you perceive.

We trust this will serve the purpose of your inquiry.

Sincerely yours,

A handwritten signature in cursive script, reading "Milton J. Aorolan".

Acting Comptroller General  
of the United States

Enclosure