

Government may owe federal employees millions in shutdown damages

By Andy Medici

August 6, 2014

The government could owe hundreds of thousands of federal employees millions of dollars in damages for its inability to pay salaries during the shutdown last year. Federal employees sued the government on October 24, 2013. Their argument: For the pay period that began September 22 and ended October 5, 2013, the federal government paid for only one week—which put many employees below minimum wage during the second week. Even though employees were later paid for that work, they suffered losses from the initial shorted paycheck. Federal employees were unable to pay bills on time and had to deal with creditors and should be eligible for additional damages as a result, according to the lawsuit. On July 31, Judge Patricia Campbell-Smith of the U.S. Court of Federal Claims refused a government motion to dismiss the lawsuit and agreed the government violated the Fair Labor Standards Act by delaying paychecks. Campbell-Smith also denied a motion to dismiss the request to allow for a collective-action lawsuit, which would open up the lawsuit to any eligible federal employee. More than 1 million federal employees worked without pay during the shutdown. The plaintiffs are asking for damages equal to the minimum wage for one week plus double the amount of overtime any employee worked – or \$290 or more per employee. The government has until September 2 to make an argument against the lawsuit being certified for collective action status. The government shutdown—when Congress was unable to pass appropriations bills or a continuing resolution before the beginning of the fiscal year—lasted from October 1 to October 16. Heidi Rhodes Burakiewicz, attorney for the federal employees and a partner at law firm Mehri and Skalet, said her clients were “ecstatic” with the decision. She said the employee damages are limited by the FLSA and that for many even the damages they asked for might not be enough to make some employees whole from the damage caused by the shutdown. The federal government will also have a difficult time arguing that it acted in good faith—a possible defense against the lawsuit—because its own guidance said that companies and state and local governments cannot delay paychecks to employees. “We are very optimistic about our chances in the rest of the case,” Burakiewicz said. “An employee should be able to depend on when they should get their paycheck in order to budget accordingly.” The government also argued that the damages employees suffered from the lack of a paycheck were from poor financial planning, and not because of the government’s failure to pay. But Campbell-Smith disagreed, saying that many federal employees do not make that much money and that a missed paycheck at lower salaries could cause financial hardship. If the lawsuit is certified for collective-action, a notice will be sent to all eligible employees within the federal government. Employees will have to actively sign up for the lawsuit to receive damages, according to Burakiewicz. Greg Rinckey, a federal employment attorney at law firm Tully Rinckey, said the government was unable to pay employees without violating the law. The government now has to make a decision about

whether to settle the case quickly or fight against the decision because of the precedent it sets, he said. A class action lawsuit would “open up the floodgates” on federal employee claims, he said. “There is a good chance the government is going to fight this tooth and nail,” he said. “If more people join the lawsuit the damages start adding up pretty quickly.” Federal employee unions are also watching the case with intense interest. J. David Cox, the president of the American Federation of Government Employees, said the union fought hard to make sure employees received back pay, but is following the current case with interest. “AFGE is monitoring this litigation closely and, if it appears that damages are available, we will vigorously pursue an action for damages on behalf of the thousands of federal employees represented by AFGE who are entitled to a recovery,” Cox said. Colleen Kelley, president of the National Treasury Employees Union, said now that the courts have refused to dismiss the case, it will have to be decided on its merits. “NTEU will continue to watch this case closely.” Kelley said.