

DECISION



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

FILE: B-184130

DATE: July 3, 1975

MATTER OF: Carroll Beaver

DIGEST:

Government not bound by rental agreement signed by contracting officer where rental agreement violated Forest Service Regional Office memorandum establishing maximum rates. Further, since equitable doctrine of estoppel only applies where injustice would otherwise result, Government not estopped to deny authority of contracting officer where claimant has been adequately compensated by payment at administrative maximum rate. Settlement affirmed.

On August 3, 1973, Mr. Carroll Beaver entered into an equipment rental agreement with the Tahoe National Forest, Region 5, Forest Service, United States Department of Agriculture. Beaver's 21-foot refrigerator van was used in the suppression of the Pilliken fire which occurred on the adjoining Eldorado National Forest during August and September of 1973.

Upon receipt of an invoice from Beaver for rental of the refrigerator van the Certifying Officer refused to certify it for payment on the basis that the rate of \$18 per hour portal to portal exceeded by 860 percent the administrative maximum established in the January 18, 1973, Regional Office memorandum, File 6320 (5100), of \$45 per day. The memorandum states in paragraph 1 that:

"* * * These rates represent maximum rates to be paid, and may not be exceeded without prior written approval of the Division of Fire Management.
* * *" (Regional Office)

The contracting officer, who had been delegated contracting authority to execute the agreement, signed the Equipment Rental Agreement for Fire Suppression, R5-6300-2, at the rate of \$18 per hour without obtaining the prior approval of the Regional Office.

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B-184130

The Transportation and Claims Division of our Office issued a Certificate of Settlement to Beaver on August 5, 1974, for \$1,343, which represents payment at the administrative maximum rate of \$45 per day for the time Beaver's equipment was utilized by the Forest Service. Beaver has requested reconsideration of this settlement.

It is well-established that the United States is not liable for the erroneous acts or advice of its officers, agents, or employees, even if committed in the performance of their official duties. Federal Crop Insurance Corporation v. Merrill, 332 U.S. 380 (1947); A. D. Roe Company, Inc., B-181692, October 8, 1974. The United States has power to contract only through its agents whose authority, and the manner of exercise thereof, is prescribed and limited by statute, regulation, and administrative and judicial determination. To make the Government liable for other than benefits received would permit agents of the Government to obligate the United States in direct contravention of those limitations and prescriptions. 46 Comp. Gen. 348 (1966). Accordingly, the Government was not bound by the contracting officer's unauthorized act of approving an agreement providing for a rental rate above the administrative maximum.

Beaver argues that under the holding of United States v. Georgia-Pacific Company, 421 F.2d 92 (9th Cir. 1970) the United States is estopped from denying the authority of the contracting officer. However, as noted by the court in Georgia-Pacific, equitable estoppel is a doctrine adjusting the relative rights of parties based upon consideration of justice and good conscience. 421 F.2d at 95. As an equitable doctrine, estoppel can only be raised against the Government if the Government's wrongful conduct threatens to work a serious injustice, and the public's interest would not be unduly damaged by the imposition of estoppel. United States v. Lazy FC Ranch, 481 F.2d 985, 989 (9th Cir. 1973).

Neither condition is met in this instance. Clearly, considerations of justice and good conscience do not demand payment at the unconscionable rate of \$432 per day. Indeed, to allow payment at such a rate would work a serious injustice upon the Government. The evidence of record supports the conclusion that payment at the rate of \$45 per day adequately compensated Beaver for the use of his refrigerator van.

B-184130

Therefore, the settlement issued to Beaver by the Transportation and Claims Division on August 5, 1974, in the sum of \$1,343 is affirmed.


Deputy Comptroller General
of the United States