

DECISION

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

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FILE: B-184608

DATE: MAY 4 1976

MATTER OF: Warren E. Street - Claim for Reimbursement for
Transportation of Foreign-Made Vehicle and Annual
Leave

DIGEST:

1. Civilian employee of the Department of the Army may not be reimbursed for cost of shipping foreign-made privately owned vehicle, purchased overseas, from Germany to the United States incident to permanent change of station since valid regulations in effect at the time (JTR par. C7153-2, implementing FTR par. 2-10.2) prohibited transportation of such vehicles at Government expense. It is immaterial that such shipments may have been permitted at the time he was transferred overseas.
2. The General Accounting Office cannot disturb an administrative determination that annual leave was not charged and is therefore not reimbursable in the absence of substantive evidence overcoming this determination.

Mr. Warren E. Street requests reconsideration of that part of Certificate of Settlement No. Z-2580847, issued by the Transportation and Claims Division of the General Accounting Office on September 29, 1975, which denied him reimbursement for the cost of transporting his foreign-made vehicle from Germany to the United States in December 1973, incident to a permanent change of station (PCS) as a civilian employee of the Department of the Army. Mr. Street also claims reimbursement for 8 hours of annual leave which he believes were improperly charged him incident to his PCS travel.

Mr. Street was transferred from Anniston, Alabama, to Heidelberg, Germany, in December 1970, where he purchased a foreign-made vehicle on January 2, 1971. Incident to his transfer back to Anniston upon completion of his tour of overseas duty, he was authorized to ship this vehicle as an ineligible foreign-made privately owned vehicle on a space available reimbursable basis under the provisions of AR 55-71, paragraph 12-7b (7). On November 17, 1973, Mr. Street delivered the vehicle to the Vehicle Processing Unit at Bremerhaven, Germany, for shipment to Bayonne, New Jersey, and paid \$184 to cover the cost. The vehicle was picked up by him in New Jersey on December 28, 1973, from where he drove to Anniston, arriving on January 2, 1974.

Mr. Street claims reimbursement for the cost of shipping his automobile, plus \$23.75 for removing salt and rust resulting from shipment on open deck, on the grounds that there was no restriction on transporting privately owned foreign-made vehicles at Government expense at the time he was transferred overseas, that the imposition of such a restriction during his overseas tour of duty was a breach of the conditions of his employment, and that he should therefore be excepted from its provisions.

The authority for the transportation of privately owned vehicles at Government expense is derived from subsection 5727(b) of title 5, United States Code, which provides as follows:

"(b) Under such regulations as the President may prescribe, the privately owned motor vehicle of an employee, including a new appointee and a student trainee to the extent authorized by sections 5722 and 5723 of this title, may be transported at Government expense to, from, and between the continental United States and a post of duty outside the continental United States, or between posts of duty outside the continental United States, when—

"(1) the employee is assigned to the post of duty for other than temporary duty; and

"(2) the head of the agency concerned determines that it is in the interest of the Government for the employee to have the use of a motor vehicle at the post of duty."

This provision of law was originally enacted in section 321 of Public Law 86-707, approved September 6, 1960, 74 Stat. 797, and the authority to regulate which it bestowed upon the President was originally delegated to the Director of the Bureau of the Budget, later Director of the Office of Management and Budget. See section 2 (1) of Executive Order 10903, January 12, 1961, and its successor, section 1 (6) of Executive Order 11230, July 7, 1965. This authority was subsequently transferred to the Administrator of General Services by section 1 (9) of Executive Order 11609, July 22, 1971. Section 10(c) of this Order provided that any regulations previously prescribed by the Director of the Bureau of the Budget or the Office of Management and Budget would remain in effect until amended, modified, or revoked by the Administrator.

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The purpose of the limitation on the shipment of foreign-made vehicles is to aid in the control of the balance of payments. Section 36(b)(5) of Bureau of the Budget Circular A-4, added effective April 17, 1961, pursuant to the aforementioned delegation of authority, provided that authorization for the shipment at Government expense of privately owned vehicles of foreign manufacture, purchased on or after April 17, 1961, would be dependent upon policies established or which may be established concerning the reduction of expenditures abroad. This restriction was continued in section 8.2(5) of Bureau of the Budget Circular A-56, which superseded Circular A-4, effective June 1, 1962, and in subsequent revisions effective October 12, 1966, section 10.2 a. (3), and August 17, 1971, section 10.2 c. (6).

Circular A-56 was superseded by the Federal Travel Regulations, FPMR 101-7, May 1973, which were promulgated by the Administrator of General Services pursuant to the delegated authority transferred to him, and which became the statutory or authoritative regulations governing the travel and transportation allowance of Federal civilian employees. Paragraph 2-10.2. c. of the FTR provides in pertinent part as follows:

"c. Agency determination required. The cost of transporting a privately owned vehicle shall not be authorized unless it has been determined by the head of the agency concerned or his designee that it is in the interest of the Government for the employee to have the use of his privately owned vehicle at his post outside the conterminous United States. Such a determination may be made only if all of the following conditions are present:

* * * * *

"(6) The privately owned vehicle is of United States manufacture unless (i) the head of the agency or his designee determines that only vehicles of foreign manufacture may be used effectively at the official station concerned, (ii) the privately owned vehicle to be transported was purchased by the employee before he was aware that he would be assigned to duty at an official station to which the transportation of a privately owned vehicle would be authorized or, (iii) for other reasons and taking into consideration the current United

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States balance of payments situation it is determined that the employee should be allowed to ship a vehicle of foreign manufacture."

In addition, the Department of Defense restated and implemented the provisions of Circular A-56 and the FTR for its civilian employees in Volume 2 of the Joint Travel Regulations. Paragraph C7153-1, item 3, of these regulations, effective September 1, 1971, provided that the transportation of a privately owned motor vehicle would not be authorized if it was of foreign manufacture and purchased overseas or for delivery overseas after March 6, 1961, with certain exceptions not here applicable. This restriction was suspended from July 1, 1972, to January 1, 1973, when it was reinstated in paragraph C7153-2. It has remained in force ever since.

From the foregoing it is clear that, while there may have been interim periods during which shipments of privately owned foreign made vehicles at Government expense were permitted, such shipments have continuously since 1961 been governed by regulations, issued under delegated statutory authority, subjecting them to policies relating to the balance of payments and the reduction of expenditures abroad. These policies fluctuate with economic conditions and it is well established that the authority to prescribe regulations includes the authority to amend them prospectively to increase or decrease benefits when circumstances warrant. Therefore, these regulations and the changes thereto have the force and effect of law and the General Accounting Office is without authority to waive or modify them in the absence of a clear showing of some inconsistency with the parent statute.

Accordingly, Mr. Street may not be reimbursed for the cost of transporting his foreign-made vehicle purchased overseas since valid regulations in effect at the time prohibited such shipments at Government expense, and the Transportation and Claims Division settlement is sustained.

With regard to his claim for reimbursement for annual leave, Mr. Street believes he was improperly charged 8 hours for January 2, 1974, because he delayed by one day the completion of his PCS travel because of the President's request for Sunday closings of gasoline stations. In connection with the settlement of his original claim, this Office found this delay justified and authorized payment of per diem for the day.

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Moreover, while this Office has generally held that the charging of annual leave is primarily a matter for administrative determination, the Department of the Army had previously indicated it would be governed in the matter by our determination as to whether the claimant was in a duty status and entitled to per diem. Subsequently, however, the agency informed Mr. Street by letter dated December 31, 1975, that there was no record of his having been charged annual leave for January 2, 1974, and therefore no payment was due him. In the absence of any substantive evidence overcoming this administrative determination, this Office is without authority to disturb it.

Concerning Mr. Street's request as to where he may appeal a decision of our Office he is advised that decisions of the Comptroller General of the United States rendered on claims settled by the General Accounting Office are conclusive upon the Executive Branch of the Government. See 31 U.S.C. 74. Independent of the jurisdiction of the General Accounting Office, the United States Court of Claims and the District Courts have jurisdiction to consider certain claims against the Government if suit is filed within 6 years after the claim first accrued. See 28 U.S.C. 1346(a)(2), 1491, 2401 and 2501.

R. F. Keller

Deputy Comptroller General
of the United States