

DOCUMENT RESUME

01988 - [A1112105]

[Request for Reconsideration of Claim for Loss of Rented Typewriter]. B-182766. April 19, 1977. 3 pp.

Decision re: Allen Business Machines Co.; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Facilities and Material Management: Building, Buying, or Leasing Federal Facilities and Equipment (706).
Contact: Office of the General Counsel: General Government Matters.

Budget Function: General Government: General Property and Records Management (804).

Organization Concerned: Administrative Office of the United States Courts.

Authority: 55 Comp. Gen. 356. 23 Comp. Gen. 907-8. B-171084 (1970). Clark v. United States, 95 U.S. 539, 542 (1877). Alliance Assurance Co. v. United States, 252 F.2d 529 (2d Cir. 1958). 8 Am. Jur. 2d, Bailments, 315 at 1202-3 (1963).

Counsel for company requested reconsideration of denial of claim for reimbursement for a leased electric typewriter destroyed by fire in Government employee's home. Use of typewriter in home was consistent with rental agreement, and was authorized by Government. Government was therefore not negligent, and disallowance was affirmed. (DJM)

89610

DECISION



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

*Logg
GGM*

FILE: **B-182788**

DATE: **APR 19 1977**

MATTER OF: **Allen Business Machines Company-Request for
Reconsideration**

DIGEST: Decision to disallow claim for loss of typewriter rented by Administrative Office of United States Courts for employee and destroyed in fire at employee's home is affirmed since no material mistake of law or fact in original decision is established. Government was not negligent in allowing employee to use typewriter at home since home use was specifically authorized by agency officials and neither purchase order nor rental agreement restricted use of typewriter to Government building.

This decision is in response to a request by counsel for Allen Business Machines Company (Allen) that we reconsider our decision at 55 Comp. Gen. 319 (1975), in which we denied Allen's claim for reimbursement for destruction of an IBM C Model typewriter leased to the Administrative Office of the United States Courts.

The facts of the case as set out in the decision of October 9, 1975, are as follows:

"* * * A Purchasing Officer for the Administrative Office issued two purchase orders for the rental of a single typewriter, each purchase order specifying a rental term of approximately three months. The first purchase order was executed on September 26, 1973 and covered a period through December 10, 1973. The Purchasing Officer authorized an Administrative Office employee to receive the machine from Allen and to use the typewriter at her apartment in connection with a Government training course. The employee, in addition to acknowledging receipt of the typewriter, signed an agreement with Allen which purportedly obligated the Government to pay \$325 if the machine was not returned on the due date (December 10, 1973). The agreement expressly made this \$325 damage clause applicable

B-182766

If fire should destroy the typewriter. The purchase order, however, specified only the basic rental rate (\$75) and the rental term. Allen has received the rent for this period. On December 10, 1973, the Purchasing Officer issued a second purchase order with a view toward extending the rental term an additional three months. Allen extended the rental term and fixed the expiration date in accordance with the terms of the second purchase order (March 4, 1974). It appears that neither the employee nor Allen specifically renewed the damage clause which allegedly bound the Government in the first rental transaction. A fire at the employee's apartment subsequently destroyed the typewriter on December 19, 1974. Allen filed a claim for \$325, although it is unclear whether the \$325 claim is submitted pursuant to the damage clause or, alternatively, whether it represents the replacement cost of the destroyed typewriter."

In denying the claim we stated:

"While the precise terms of the rental contract remain for discussion, the rental of the typewriter is to be regarded as a bailment for mutual benefit. B-171664, December 15, 1970. The Government, as a bailee in a bailment for mutual benefit, is required to exercise ordinary care to protect the bailed property in its possession. Clark v. United States, 95 U.S. 539, 542 (1877). In the case of a bailment for mutual benefit, the destruction of bailed property would ordinarily establish a presumption that the Government as bailee was negligent. See Alliance Assurance Co. v. United States, 352 F.2d 529 (2d Cir. 1955). However, the weight of authority appears to support the rule that no presumption or inference of a bailee's negligence arises as a matter of law from the mere fact that the property, while in the bailee's possession, was destroyed by fire. 8 Am. Jur. 2d, Bailments, § 315 at 1202-1203 (1963). The record before us in this case contains no indication of negligence on the part of the employee concerning the fire which destroyed the

B-182766

typewriter. On the contrary, the fire apparently originated in electrical wiring. Thus, absent any contractual provision increasing the Government's liability beyond its duty of ordinary care as a bailee, the instant claim may not be paid. See 28 Comp. Gen. 907, 908 (1944)."

Allen seeks reconsideration of this decision on the ground that allowing the employee to use the typewriter at her home was an act of negligence. Allen alleges that "the purchase rental order was executed for use of the typewriter at a government building, to wit, a court house."

We have overruled decisions where a material mistake of law or fact has been established. In the present case, however, the request for reconsideration does not present any new factual information or indicate through argument or cited precedent any mistake of law.

The request is based solely on the assertion that the typewriter was rented for use at a government building and, therefore, the Government was negligent in permitting the employee to use it at home. However, nothing in the record supports this assertion. Neither the Government's purchase order nor the rental agreement indicates that the typewriter would be used at a Government building. On the contrary, the original rental agreement lists the employee's home and states that the typewriter will not be removed from the address listed. Thus permitting home use of the typewriter was not inconsistent with the rental arrangement. Moreover, the employee was specifically authorized to use the typewriter at home. The Government knew where the typewriter was and kept records of its authorization. Thus there was no negligence on the part of the Government.

Since there has been no new evidence to show there was a mistake of law or fact in our decision of October 9, 1975, we reaffirm that decision to disallow the claim for reimbursement.

R. F. KELLER

Deputy | Comptroller General
of the United States