

DOCUMENT RESUME

02449 - [A1812868]

[Overtime Compensation Under Work-Study Program]. B-187867. June 23, 1977. 5 pp. + enclosure (1 pp.).

Decision re: University of Montana; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Education, Training, and Employment Programs (1100).

Contact: Office of the General Counsel: Civilian Personnel.

Budget Function: Education, Manpower, and Social Services:

Higher Education (502).

Organization Concerned: Forest Service.

Authority: Brawley v. United States, 96 U.S. 168 (1878). Simpson v. United States, 172 U.S. 372 (1899). United States v. Spearin, 248 U.S. 132, 136 (1918). Kansas Turnpike Authority v. Abramson, 275 F. 2d 711 (1960). Day v. United States, 245 U.S. 159 (1917). Barnard-Curtis v. United States, 244 F. 2d 565 (1957).

The university appealed disallowance of a claim for reimbursement of overtime compensation paid to students under a work-study program under an agreement between the university and the Forest Service. Reformation of the agreement to increase the proportionate share of the Federal Government's contribution would be contrary to rules governing such contracts, and agents of the United States do not have authority to waive contract rights. (HTW)

Herbert Dunn  
Civ. Pers.

**DECISION**



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

**FILE: B-187867**

**DATE: June 23, 1977**

**MATTER OF: University of Montana - overtime compensation  
under work-study program**

**DIGEST: Reformation of a work-study program agreement to increase the proportionate share of the Federal Government's contribution for student salaries would be contrary to the well-established rules that contracts containing an express stipulation as to amount are conclusive upon the parties as to the measure of recovery for performance and, in the absence of a compensating benefit to the United States, agents and officers of the United States are without authority to modify existing contracts or to surrender or waive contract rights that have vested in the Government.**

This action is a response to an appeal by the University of Montana of our Claims Division settlement dated August 18, 1976, disallowing its claim for reimbursement of overtime compensation paid to students under the College Work-Study Program, during the summer of 1975, in the amount of \$265.36 under an agreement entered into on July 1, 1971, between the University of Montana and the Intermountain Forest and Range Experiment Station, Forest Service, Department of Agriculture.

The relevant provisions of the agreement, as amended, which address the question of compensation are set forth below:

**"SEVENTH:**

"Compensation of students for work performed on a project under this agreement will be paid by the Institution. All payments due as an employer's contribution under State or local workmen's compensation laws, under Federal or State social security laws, or under other applicable laws, will be made by the Institution.

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"(1) At such times, as agreed upon by both parties, but not more often than monthly, the Agency will pay by way of reimbursement to the Institution an amount calculated to cover the Agency's share of compensation of students employed under this agreement. The Agency's share will be 20% of the compensation paid by the students for the period billed. If this percentage basis is changed by law the Agency agrees to pay at the new rate.

"(2) In addition to the payment specified in paragraph (1) above, and at such times as specified, The Agency will pay by way of reimbursement to the Institution, an amount equal to any and all payments required to be made by the Institution under State or local workmen's compensation laws, and under Federal or State social security laws, and any other applicable laws, on behalf of students participating in projects under this agreement.

\* \* \* \* \*

"EIGHTH

"The Institution shall have the ultimate right to control and direct this Program in accordance with Institutional and Federal regulations. It shall establish such policy as is appropriate and reasonable for the effective administration of the program including the total number of students to be employed, the hourly rate of pay, the total number of hours per week each student will be utilized, and the total wages a student is eligible to earn within a given academic year. The maximum rate on which a Federal share may be paid by the institution from its grant is \$3.50 per hour."

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The agreement provides that the University of Montana is responsible for payment of compensation to students and shall be reimbursed by Agriculture an amount equal to 20 percent of the base compensation paid to the students with a ceiling reimbursement of seventy cents per hour (20 percent of \$3.50 per hour).

Under its authority under paragraph 8 of the agreement to "control and direct" the program, the University of Montana issued regulations dated October 1, 1974, which required that compensation for overtime be paid at the rate of time-and-one-half and that all funds for overtime pay are to be charged in its entirety to Agriculture. The University of Montana now argues that Agriculture's failure to fully reimburse it for the overtime worked is in clear violation of this regulation. Specifically, the Director, Financial Aids Office, University of Montana, contends as follows:

" \* \* \* By definition once a student has earned the amount authorized he is ipso facto no longer being employed under the Work-Study Program. When your agency continued these people in employment they necessarily assumed full responsibility for their compensation.

"Regulations further provide \* \* \* that a student may not be employed more than 40 hours per week. Again, if overtime occurs, by definition the student is not being employed under the Work-Study Program.

"Under the terms of the agreement with your agency they agreed to pay reimbursements required by ... 'any other applicable laws ...' para. 7 (2). It is our position that the above mentioned regulations apply here. Furthermore in this same agreement your agency agreed to 'permit a student to work up to 40 hours per week or such lesser number of hours per week as his college may

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determine in accordance with its own standards and considering (a) the extent of the students financial need...' \* \* \* Also, in the Eighth Section of this agreement, your agency agrees that 'The Maximum rate on which a Federal Share may be paid by the institution from its grant is \$3.50 per hour,' clearly not accommodating overtime compensation."

It should be pointed out that paragraph 4 of the agreement requires that the Department of Agriculture will not permit students to work for more than 40 hours in any one week. Therefore, we would agree that to the extent that the overtime resulted from students being permitted to work in excess of 40 hours per week in violation of the agreement, reimbursement may be made by the Department of Agriculture at the rate of 100 percent.

The record reveals that although some students worked in excess of 40 hours in a given week, most of the overtime claimed occurred because students were allowed to work in excess of 8 hours in a given day but did not exceed 40 hours in a given week. Overtime resulting in this manner may only be reimbursed at the 20 percent rate of up to seventy cents per hour.

As pointed out in our Claims Division Settlement, the authority to control and direct the College Work-Study Program and to establish appropriate and reasonable policy for effective administration may not be construed as permitting the University of Montana to unilaterally increase the amount of reimbursement due to it under the clear terms of the agreement between the parties. The established rule is that where a contract contains an express stipulation as to the amount to be paid, such stipulation is conclusive on the parties and measures the amount of recovery for performance. See Brawley v. United States, 96 U.S. 168 (1878), and Simpson v. United States, 172 U.S. 372 (1899). Also, the generally accepted rule is that "where one agrees to do for a fixed sum a thing possible to be performed, he will not

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be excused or become entitled to additional compensation, because unforeseen difficulties are encountered." United States v. Spearin, 248 U.S. 132, 136 (1918); Kansas Turnpike Authority v. Abramson, 275 F. 2d 711 (1960). See also Day v. United States, 245 U.S. 159 (1917); Barnard-Curtis Co. v. United States, 244 F. 2d 565 (1957); Restatement, Contracts, § 467 (1932); Williston, Contracts, Rev. Ed. § 1963.

A settlement in accordance with this decision will issue in due course.

Deputy

  
Comptroller General  
of the United States

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C... ..*

**JUN 23 1977**

**Director, Claims Division**

**Deputy  
Comptroller General R.F. KELLER**

**Claim of University of Montana - B-187007-0.1.**

**Returned herewith is file 2-74(21) forwarded by your memorandum of November 19, 1974, along with our decision of today, B-187007. A settlement should be issued in the University of Montana's favor in the amount found due in accordance with the attached decision.**

**Attachments**