

DOCUMENT RESUME

08044 - [C3538640]

[Reemployed Employee Not Entitled to Reimbursement for Relocation Expenses]. B-192817. December 18, 1978. 3 pp.

Decision re: Wallace E. Boulton; by Robert F. Keller, Deputy Comptroller General.

Contact: Office of the General Counsel: Personnel Law Matters II.

Organization Concerned: United States Customs Service.

Authority: 5 U.S.C. 5724a. 54 Comp. Gen. 747: F.T.R. (FERR 101-7).

The propriety of reimbursing a reemployed employee's relocation expenses was questioned. The employee, who was reemployed after a break in service not involving a reduction in force or transfer of function, was not entitled to reimbursement for relocation expenses in spite of the fact that he was erroneously advised that he would be reimbursed and was issued a travel advance. (HTW)

DECISION

Handwritten: 7/11-11

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

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FILE: B-192817**DATE: December 18, 1978****MATTER OF: Mr. Wallace E. Boulton**

DIGEST: Where a former employee, after a break in service not involving a reduction in force action or transfer of function, is reemployed in a non-manpower shortage position, the fact that he was erroneously advised his relocation expenses would be reimbursed and was erroneously issued a travel advance, would not create any right in him to be so reimbursed under 5 U.S.C. 5724a and 5 FPMR 101-7, it being well established that the Government cannot be bound beyond the actual authority conferred on its agents by statute. 54 Comp. Gen. 747 (1976).

This action is in response to a letter dated August 29, 1978, with enclosures, from Mr. H. R. Hively, Director, Financial Management, United States Customs Service, Department of the Treasury, requesting a decision as to the propriety of making payment on a voucher in the amount of \$2,559.03, in favor of Mr. Wallace E. Boulton, an employee of the Customs Service, representing reimbursement for his relocation expenses incident to his employment with the Service.

The submission states that Mr. Boulton had been employed by the Customs Service until May 15, 1978, when he resigned to accept employment outside Government service. On March 27, 1978, Mr. Boulton was rehired into the service. At that time he was living in Bountiful, Utah, and was selected for a position as a Patrol Officer in Los Angeles, California.

It is reported that during the course of his preemployment interview the selecting officer agreed to reimburse Mr. Boulton for his relocation expenses. Mr. Boulton then applied for a travel advance of \$1,750, which payment was issued to him on March 20, 1978, by the Office of Financial Management. The fact that the employee had a break in service was apparently forgotten and was not discovered until some time later.

The submission goes on to state that since no manpower shortage existed in his selected position (Patrol Officer), paragraph 2-1.2 of

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the Federal Travel Regulations (FPMR 101-7) precludes reimbursement for relocation expenses where there is a break in service. Therefore, the employee was refused reimbursement on his submitted travel voucher and repayment of the travel advance was demanded, citing our decision 54 Comp. Gen. 747 (1975) as controlling. As a result of that action, the employee filed a grievance. In settling the grievance, it was agreed that the matter would be submitted to this Office for resolution. The basic question being asked is whether the selecting official's agreement to pay relocation expenses and the compounding error of issuing the travel advance would entitle the employee to reimbursement for the expenses.

The provisions of law governing travel and transportation expenses for new appointees, student trainees and transferred or reemployed employees are contained in subchapter II of chapter 57, title 5, United States Code. Section 5724a of that title authorizes reimbursement for relocation expenses for an employee transferred in the interest of the Government from an official station or agency to another for permanent duty. In the case of an employee separated by reason of reduction in force or transfer of function, reimbursement is authorized if the employee is reemployed by a nontemporary appointment at a different geographical location within 1 year after separation.

Regulations promulgated to implement the foregoing provisions are contained in FPMR 101-7, paragraph 2-1.2a of which defines persons for coverage purposes as:

"(1) Civilian officers and employees upon permanent transfer from one official station to another.

* * * * *

"(3) * * * new appointees to positions within the conterminous United States for which the U. S. Civil Service Commission has determined that a manpower shortage exists."

New appointees are further defined in subparagraph 2-1.5.e. (1)(a) as including individuals when first appointed to Government service and individuals who are appointed after a break in service.

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According to the file, Mr. Boulton had approximately a 22-month break in service, was not separated because of reduction in force or transfer of function; and the position for which he was selected was not in a manpower shortage category.

On the question as to whether the selecting officer's erroneous agreement to pay relocation expenses and the fact that the error was compounded by the issuance of a travel advance would in some way entitle him to be reimbursed, notwithstanding the fact that there was no manpower shortage, in 54 Comp. Gen. 747, supra, involving a claim somewhat similar to the present case, we denied that claim and stated:

"* * * It is a well-settled rule of law, however, that the Government cannot be bound beyond the actual authority conferred upon its agents by statute or by regulations, and this is so even though the agent may have been unaware of the limitations on his authority. * * *"

Thus, in situations such as this, where an individual has no basic legal right to be relocated or be reimbursed for relocation at Government expense, erroneous acts of Government agents would not create such right in him.

Accordingly, the question is answered in the negative and the voucher accompanying the submission may not be paid.

R. A. Keller
Deputy Comptroller General
of the United States