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DECISION



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

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FILE: B-194032

DATE: June 19, 1979

MATTER OF: Stephen C. Ehrmann and Robert Fullilove -
[Relocation expenses of New appointees]

DIGEST: (Two new appointees were advised that expenses of moving to their first duty station would be reimbursable, apparently on the assumption that they were "Manpower Shortage" appointees, which they were not. (There is no authority for reimbursement of the moving expenses of non-shortage category new appointees to their first duty station in the continental United States, therefore reimbursement is not proper. The fact that the employees relied on the erroneous representatives of agency employees in accepting their positions does not ^{release} ~~increase~~ Government's liability, since the Government cannot be bound by the acts of its employees ~~that~~ exceed their actual authority.

The issue presented here is whether two newly appointed employees may be reimbursed for expenses incurred in relocating to their first duty station when they affirmatively relied on the promised reimbursement in accepting the appointments. For the reasons set forth below, we hold that reimbursement is not proper.

By letter of January 24, 1979, the Director, Finance Division, Office of Education, Department of Health, Education, and Welfare, requested an advance decision on the reimbursement of relocation expenses for Mr. Stephen C. Ehrmann and Mr. Robert Fullilove. Both men were hired for limited term appointments (either 1 or 2 years, the record is not clear), as Program Officers working for the Fund for the Improvement of Postsecondary Education (Fund). Both were apparently hired at the grade GS-12 level in the GS-1720, Education Officer or Education Specialist, classification series.

One of the appointees requested that he be reimbursed for his moving expenses. Inquiries were made by the Fund to determine if reimbursement could be authorized. Apparently the assumption was made that the appointees involved were "Manpower Shortage" category employees. Based upon information received from the

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Finance Office within the Office of the Assistant Secretary for Education, it was decided by the Fund that reimbursement was authorized. According to the record, both employees relied upon the representation that they would be reimbursed for their relocation expenses when they occupied their jobs. After the two employees were appointed and moved to Washington, D.C., the Fund was advised that reimbursement was not proper.

Under 5 U.S.C. 5723(a) (1976) a new appointee who is hired for a position within the continental United States may be reimbursed for specified expenses incurred in moving to his first duty station if the Office of Personnel Management (formerly the Civil Service Commission) determines that a manpower shortage for employees in that classification series, grade level, and geographic area exists. Appendix A to Chapter 571 of the Federal Personnel Manual contains a listing of the Manpower Shortage positions as determined by the Office of Personnel Management (OPM). For positions in the GS-1720 classification series, two groups of positions are listed as Manpower Shortage positions. In both cases the geographic limitation is to the Washington, D.C. Standard Metropolitan Statistical Area. At the grades GS-12 to 15 levels, the Manpower Shortage Categorization is limited to "Education Officer or Education Specialist (limited to those positions in education of the handicapped)", and at the grades GS-16 to 18 levels, to "Education Program Administrators (various titles), Office of Education HEW".

We have consistently held that there is no authority to reimburse a new employee for the expenses of moving to his first duty station within the continental United States unless he is being appointed to a Manpower Shortage position. Matter of Harold C. Calvert, B-188095, September 28, 1977, and Matter of James Pakis, B-193616, February 14, 1979. Since neither of the appointees in the instant case was appointed to a Manpower Shortage position, there is no authority for reimbursing them for the expenses of moving to their first duty station.

In contending that the Fund should be permitted to reimburse the employees for their relocation expenses, the Fund first emphasizes that the employees were hired under the authority granted to it by 20 U.S.C. 1221d(d) (1976) to hire up to five individuals in technical positions for terms not to exceed 3 years without regard to the provisions of chapter 51 and subchapter III of Chapter 53

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of title 5 of the United States Code. The Fund also mentions that another employee who was hired to fill a position classified at grade GS-1720-16 in 1973 was authorized reimbursement of relocation expenses. Finally, the Fund notes that individuals employed under the provisions of the Intergovernmental Personnel Act (IPA), 5 U.S.C. 3371 et seq., may be authorized reimbursement of relocation expenses. We will consider each of these points in turn.

It is true that the employees involved here were hired under authority exempting their appointments from certain provisions of title 5 of the United States Code, but that exemption does not, by its own terms, extend to reimbursement of travel, transportation and relocation expenses. There is nothing in the Fund's authorizing legislation that exempts these employees from the coverage of the relocation expense reimbursement provisions of title 5. The fact that these employees may have been hired under authority exempting them from the certain provisions of title 5 has no bearing on whether they are exempted from any other provisions of title 5 and is not relevant to this decision.

Reimbursement of the GS-1720-16 employee's relocation expenses in 1973 would appear to have been proper, since the position, as it is described in the submission, was then designated a Manpower Shortage position by the Civil Service Commission. It must also be noted that individuals appointed under the IPA are specifically authorized to have certain relocation expenses reimbursed by 5 U.S.C. 3575 (1976). No parallel authority exists for appointments by the Fund, even to exempt positions.

Finally, even though travel orders were issued authorizing reimbursement of relocation expenses and the employees relied on the representations of the Fund that they would be reimbursed, such reimbursement is not authorized. The Government cannot be bound by acts of its agents that exceed their actual authority as expressed in the statutes and regulations. See 54 Comp. Gen. 747 (1975) and cases cited therein.

Accordingly, for the reasons set out above, there may be no reimbursement of the relocation expenses incurred by Mr. Ehrmann and Mr. Fullilove in reporting to their first duty station.


Deputy Comptroller General
of the United States