

**DECISION**

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

**FILE:** B-209085**DATE:** March 22, 1983**MATTER OF:** Russell F. Gober - Relocation Expenses  
Incident to Reemployment After RIF**DIGEST:**

Under 5 U.S.C. § 5724(e) and 5724a(c) (1976), the losing or gaining agency has administrative discretion whether to pay all, none, or part of reimbursable relocation expenses for employees separated by a reduction-in-force from one agency and hired by another agency within 1 year in a nontemporary appointment at a different geographical location. Thus, the National Transportation Safety Board as losing agency may, in its administrative discretion, pay all, part, or none of the relocation expenses of its former employees subsequently hired by another agency, and the Federal Railroad Administration as gaining agency has the same range of discretion.

Mr. Jim Burnett, Chairman, National Transportation Safety Board (NTSB), has requested an advance decision as to whether it is permissible for the NTSB to pay only a portion of the relocation expenses reimbursable under 5 U.S.C. §§ 5724 et seq. (1976) for former employees of the NTSB separated as a result of a reduction-in-force (RIF), and rehired shortly thereafter by another Federal agency. Specifically, he refers us to the claim for relocation expenses made by Mr. Russell F. Gober, a former employee of the NTSB who was subsequently hired by the Federal Railroad Administration (FRA). For the reasons stated below, we conclude that, subject to certain conditions, the NTSB has administrative discretion to pay all, none, or some of the relocation expenses otherwise reimbursable under 5 U.S.C. §§ 5724 et seq., for such employees, including Mr. Gober.

In April 1982, Mr. Gober was involuntarily separated from the NTSB through a RIF. In July 1982, he accepted an offer of employment with the FRA. Prior to his relocation, Mr. Gober received an offer from the NTSB to pay for up to \$5,000 of his relocation expenses if, among other things, the FRA issued travel orders prior to September 30, 1982,

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for a permanent change of station. The FRA has refused to issue travel orders to employees separated through RIF actions from the NTSB and subsequently hired by the FRA on the grounds that to issue travel orders might undermine the agency's stance in an on-going labor relations arbitration over the selection of outside candidates for employment with the FRA.

Section 5724(a) generally provides that, under certain conditions, employees who are transferred in the interest of the Government from one agency to another for permanent duty may be reimbursed for the travel expenses of their relocation. As for employees who are first separated through a RIF, but subsequently hired by another agency after a break in service, rather than being directly transferred to the second agency, 5 U.S.C. § 5724a(c) (1976) provides that:

"\* \* \* a former employee separated by reason of reduction in force or transfer of function who within 1 year after the separation is reemployed by a nontemporary appointment at a different geographical location from that where the separation occurred may be allowed and paid the expenses authorized by sections 5724 \* \* \* in the same manner as though he had been transferred in the interest of the Government without a break in service to the location of reemployment from the location where separated."

Once it is determined that a transfer is in the interest of the Government, then certain allowances under sections 5724 and 5724a are mandatory and will be paid on a uniform basis, while others are left to administrative discretion. The determination as to whether the reimbursement of a particular type of expense is mandatory or is within administrative discretion depends on the specific provisions of law and regulation controlling that expenditure. See Dennis P. Bracy, B-196596, January 9, 1980; Paul J. Walski, B-190487, February 23, 1979.

Section 5724(e) provides that:

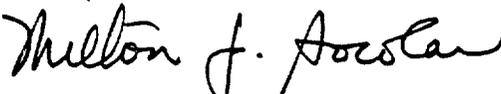
"\* \* \* in a transfer from one agency to another because of a reduction in force or transfer of function, expenses authorized by this section \* \* \* may be paid in whole

or in part by the agency from which the employee transfers or by the agency to which the employee transfers, as may be agreed on by the heads of the agencies concerned."

We have previously concluded that section 5724(e) is permissive and vests broad discretion in the individual agencies involved in determining whether to reimburse the relocation expenses of employees who are separated by a RIF and reemployed by another agency at a different geographical location. Patricia C. Reed, 55 Comp. Gen. 1338 (1976); B-167987, October 23, 1969. Thus, in Reed, we concluded that a losing agency did not have to pay the relocation expenses of a former employee where the losing agency had a policy of not paying the relocation expenses of former employees separated by RIF's when hired by another agency. Nor do we think that a refusal to pay relocation expenses under the above-cited portion of section 5724(e) is an abuse of discretion where it is based on a rational determination that to pay such expenses would jeopardize the agency's position in an on-going labor relations arbitration.

Not only do the losing or gaining agencies have discretion whether to pay the relocation expenses of employees separated by a RIF from one agency and hired by another agency, but the agencies concerned also have discretion whether to pay such expenses in whole or in part. Section 5724(e) plainly states that the expenses for which the section authorizes reimbursement, "may be paid in whole or in part" by the losing or gaining agencies.

We conclude that under the authority of sections 5724(e) and 5724a(c), the NTSB has discretion to decide whether to pay all, some, or none of the reimbursable relocation expenses of former employees separated as a result of a RIF and hired within 1 year by another agency in a nontemporary appointment at a different geographical location. Therefore, the NTSB, in the sound exercise of its administrative discretion, may reimburse Mr. Gober for some, all, or none of his relocation expenses, provided Mr. Gober satisfies the above conditions. As for the FRA, we find no abuse of discretion in its refusal to pay the relocation expenses of Mr. Gober and others similarly situated.

for   
Comptroller General  
of the United States