

**DECISION**

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

31569

**FILE:** B-206219**DATE:** June 28, 1985**MATTER OF:** Jeffrey P. Cardinal -- Repayment of  
Relocation Expenses**DIGEST:**

1. Former air traffic controller challenges indebtedness for relocation expenses paid incident to his transfer from Alaska to California where he failed to complete the 12-month service agreement he signed pursuant to agency regulations. Although a service agreement is not required by statute for a transfer from Alaska to the 48 States, our decisions have held that an agency may require a service agreement before paying such relocation expenses and that the employee is bound by the terms of the agreement. Since the former employee signed a service agreement, he is bound by its terms.
2. Former air traffic controller violated his relocation service agreement when he was fired for participation in a strike. Waiver of the service agreement depends on a determination that the separation was beyond the employee's control and acceptable to the agency. That determination is primarily for the agency to decide, and our Office will not overrule absent evidence it was arbitrary or capricious.

The issues in this decision involve the indebtedness of a former Federal employee for relocation expenses where the employee was separated from Government service before completing his 12-month service agreement. We hold that the agency may require such a service agreement as a condition for paying relocation expenses. In addition, we sustain the agency's determination that the employee's separation was not for reasons beyond his control nor for reasons which were acceptable to the agency.

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BACKGROUND

This decision is in response to the claim of Mr. Jeffrey P. Cardinal, a former employee of the Federal Aviation Administration (FAA), for repayment of retirement contributions which the FAA applied against his indebtedness to the agency for advance annual leave and relocation expenses. Mr. Cardinal is represented by his attorney, William J. Flynn.

Mr. Cardinal was employed by the FAA as an air traffic controller, and in December 1980, he transferred from Anchorage, Alaska, to Fremont, California. He signed a travel and transportation agreement with the FAA which stated that in consideration of payment of his relocation expenses, he agreed to remain in the Government service for 12 months from the date of relocation, unless separated for reasons beyond his control and acceptable to the agency. The date of relocation was January 3, 1981, the date Mr. Cardinal reported to his new duty station.

The record before us indicates that Mr. Cardinal was fired by the FAA in August 1981, for his participation in the strike by FAA air traffic controllers. His appeal of his removal was denied by the Merit Systems Protection Board, and he did not pursue an appeal before the U.S. Court of Appeals for the Federal Circuit.

Following his removal, the FAA determined that Mr. Cardinal was indebted for advance annual leave (\$1,078.70) and repayment of his relocation expenses (\$14,323.59). When Mr. Cardinal applied for refund of his retirement contributions (\$7,823.29), the FAA applied this amount against his indebtedness, and the FAA has been pursuing collection of the balance of the indebtedness.

On behalf of Mr. Cardinal, Mr. Flynn does not dispute indebtedness for the advance annual leave. However, with respect to the relocation expenses, Mr. Flynn argues that his client was discharged and that since the agency failed to allow him to complete his "contractual obligations," it cannot now seek damages for breach of that agreement. Mr. Flynn also argues that 5 U.S.C. § 5724(i) concerning service agreements applies only to transfers within the "continental United States," and that since Mr. Cardinal was transferred from Alaska to California, the statute does not apply to his situation. Finally, Mr. Flynn contends that the agency may not extend a service agreement beyond the limits of the statute, citing Finn v. United States, 192 Ct. Cl. 814 (1970).

The report from the FAA states that Mr. Cardinal was separated for participation in an illegal strike contrary to 5 U.S.C. § 7311 and for absence without leave. The report states further that Mr. Cardinal's actions as a striker required that he be terminated from the Federal service and that his separation was not for reasons beyond his control. The FAA argues that Mr. Cardinal was transferred within the continental United States and that his relocation expenses were paid under the authority of 5 U.S.C. § 5724(a) and (i). The FAA concludes that Mr. Cardinal is indebted for repayment of his relocation expenses, citing a memorandum opinion in Smith v. United States, No. 82-C-1328-M., slip. op. (N.D. Ala. March 31, 1983).

#### OPINION

The first issue for our decision concerns the authority for the FAA to require a service agreement in connection with this transfer. We note that for certain transfers under the relocation statutes, an employee must agree to remain in the Government service for 12 months after the transfer, unless separated for reasons beyond the employee's control which are acceptable to the agency concerned. Thus, an employee who is transferred to a post of duty outside the continental United States or an employee who is transferred within the continental United States is required by statute to sign a service agreement. See 5 U.S.C. §§ 5722(b) and 5724(i) (1982). See also para. 2-1.5 of the Federal Travel Regulations (FTR), incorp. by ref., 41 C.F.R. § 101-7.003 (1984).

The term "continental United States" is defined in 5 U.S.C. § 5721(3) as the several States and the District of Columbia, but not including Alaska or Hawaii. Thus, since Mr. Cardinal transferred from Alaska to California, his transfer was not within the "continental United States" as the term is used in the statute and regulations.<sup>1/</sup> We also note that Mr. Cardinal's transfer was not subject to the provisions of 5 U.S.C. § 5722(b), since he was transferred

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<sup>1/</sup> FTR para. 2-1.5 refers to the "conterminous United States" which is defined as the 48 contiguous States and the District of Columbia. FTR para. 2-1.4a.

from a duty station outside the continental United States rather than to a duty station outside the continental United States.

However, our decisions have held that even though the statute does not require a service agreement, agencies may refuse to pay relocation expenses unless the employee signs a service agreement. Johnny R. Dickey, 60 Comp. Gen. 308 (1981); 47 Comp. Gen. 122 (1967); Thelma B. Van Horn, B-205892, July 13, 1982; and B-163726, May 8, 1968. Where the employee signs such an agreement, as Mr. Cardinal did in this case, he is bound by its terms. 47 Comp. Gen. 122; and B-163726, cited above.

Mr. Cardinal signed a service agreement under the authority of Department of Transportation (DOT) Order 1500-6, which provides in part that a service agreement is required for an employee who is transferred to the continental United States. Paragraph 322, Chapter 3, DOT Order 1500.6. Agency regulations such as these were recommended by our prior decisions. See 47 Comp. Gen. 122, 125, cited above.

Mr. Flynn argues that Mr. Cardinal's transfer was not subject to the provisions of 5 U.S.C. § 5724(i) and that the agency may not extend the statute to cover his transfer, citing the court's decision in Finn, cited above. As noted above, we agree that Mr. Cardinal's transfer was not subject to the provisions of 5 U.S.C. § 5724(i), since that statute applies only to transfers within the continental United States. We disagree, however, with the application of the Finn decision to Mr. Cardinal's situation.

In Finn, the Court of Claims considered the situation where, incident to a relocation, an agency required 12 months of service with that agency or the employee would violate the service agreement. The court held in Finn that where the applicable statute and regulations required only 12 months of Government service, the agency could not impose the more specific requirement of agency service. 192 Ct. Cl. 814, 820.

In Mr. Cardinal's case, the FAA has not imposed a more specific service agreement than that required by 5 U.S.C. §§ 5722(b) or 5724(i), and the agency's use of a service agreement in this situation has been recognized by our decisions. Therefore, we conclude that the Finn decision does not preclude the agency from requiring Mr. Cardinal to sign a service agreement.

The next issue for our decision is whether Mr. Cardinal was separated for reasons which were beyond his control and which were acceptable to the FAA. Our decisions in this regard state that this determination rests primarily with the agency concerned and that we will overturn the agency's determination only where it has been shown to be arbitrary or capricious. William C. Moorehead, 56 Comp. Gen. 606 (1977); Arnold M. Biddix, B-198938, March 4, 1981; and B-114898, July 31, 1975.

Mr. Flynn argues that Mr. Cardinal did not quit but was discharged by the FAA. He contends that Mr. Cardinal has been willing to work for the FAA since the time of the strike but the agency chose to terminate his employment, thus excusing a violation of the service agreement.

We note that Mr. Cardinal was separated from the Federal service for cause, and although he may have had little control in his separation, the actions resulting in his separation were within his control. B-114898, cited above. Thus, in the absence of any evidence that the FAA was arbitrary or capricious in refusing to accept Mr. Cardinal's reasons for his separation from Government service, we sustain the FAA's action in this case.

Accordingly, we conclude that Mr. Cardinal violated his service agreement and is indebted for the relocation expenses paid pursuant to that agreement.



Acting Comptroller General  
of the United States