



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: British, Dutch and Italian Claims for Fuel and Services for U.S. Navy Vessels.

File: B-225673, B-224905, B-180569

Date: November 6, 1987

DIGEST

1. Claims asserted against the United States Navy by the governments of the United Kingdom and Italy (which arose in the course of a routine and continuing series of transactions that hinge directly upon the long-standing, day-to-day relationships of the governments involved) may be paid, despite the absence of supporting official records, because their validity and non-payment have been satisfactorily substantiated.

2. A claim asserted against the United States Navy by the government of the Netherlands may not be paid, because the claim was not actually received at GAO within 6 years after the date on which the claim accrued (i.e., the date when fuel was delivered, not the date on which the Netherlands issued its bill for payment of the fuel), as required by 31 U.S.C. § 3702(b)(1) (1982).

3. GAO may not waive the provisions of 31 U.S.C. § 3702(b)(1) (1982), and lacks the jurisdiction necessary to consider whether a claim barred by operation of that act might be valid under the laws of another country because section 3702(b)(1) is not a mere "statute of limitations," but rather is a "condition precedent" to the right to have the claim considered by GAO.

DECISION

This decision considers three separate claims asserted against the United States Navy by agencies of the governments of the United Kingdom, the Netherlands, and Italy. Each claim requests reimbursement for alleged provision of fuel or support services to Navy vessels which either operated in conjunction with the vessels of those three governments, or visited their naval bases. Two of these claims have been previously considered and disallowed by our Claims Group. The third claim was referred to us by the Claims Group and has not previously been acted upon. For the reasons given below, the claims asserted by the governments of the United Kingdom and Italy may be paid.

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However, the claim asserted by the Netherlands is time-barred.

BACKGROUND

1. The United Kingdom (B-225673; Claim No. Z-20(738)).

According to materials submitted by Navy, the Government of the United Kingdom (UK) maintains that on May 24-25, 1982, its naval forces provided a variety of services and supplies to the U.S.S. Clark during its visit at the British naval base at Gibraltar. The UK claims that, although it has submitted detailed additional information and repeated bills to Navy, none of those services or supplies have ever been paid for. (The British claim totals \$451.14 pounds sterling.) Navy advised our Claims Group that despite an exhaustive record search, it could confirm only that the U.S.S. Clark was in Gibraltar on the dates in question. Navy can neither verify nor dispute that the supplies and services at issue were in fact received or whether payment was made. Based on the absence of Navy records to confirm the validity of this claim, the Claims Group disallowed payment in its settlement dated August 12, 1986.

In seeking this reconsideration, The British Ministry of Defence contends:

"It is not in dispute that USS Clark visited Gibraltar during the 24/25 May 1982. It is inconceivable that during the period of the visit the ship would not have been provided with [these] logistics services for which payment should have been made. The fact that on the US side the records have been destroyed is inconvenient but it does not destroy the validity of [the] claim" (Emphasis added.)

In response to the Ministry's contention, Navy agreed that "it is highly probable that USS Clark . . . received the port services [and supplies] in question. . . ."

2. Italy (B-180569; Claim No. Z-2475653).

Apparently, Italy's claim arose in a similar fashion to that of the UK, but involves more than one ship and concerns fuel

supplies only, as provided on several occasions during 1978-80.^{1/} A listing of those transactions follows:^{2/}

<u>U.S. SHIP</u>	<u>PORT or SOURCE^{3/}</u>	<u>DATE</u>	<u>LIRE</u>
U.S.S. Cavalla	La Spezia, Italy	3/20/78	2,689,230
U.S.S. Escape	La Spezia, Italy	5/5/78	5,396,460
U.S.S. Lawrence/Sampson	ITN Vesuvio	5/22/78	91,938,665
U.S.S. Manley	ITN Stromboli	5/30/78	16,902,120
U.S.S. Biddle	La Spezia, Italy	10/27/78	20,364,000
U.S.S. Peterson	ITN Stromboli	10/15/79	16,007,134
U.S.S. Comte De Gras	ITN Stromboli	5/13/80	203,871,745

According to Navy, Italy first submitted bills for these transactions in October 1983. Sometime thereafter, those bills and the related Navy records were mislaid. As with the claim of the UK, Navy has been able to verify that the vessels at issue here were in fact in the ports, or operating in conjunction with the Italian ships on the dates listed above. Based essentially on probabilities, Navy believes that the fuel was most likely provided and that payment has not been made, but has not been able to

^{1/} The record shows that, in order to toll the 6-year statute of limitations prescribed by 31 U.S.C. § 3702(b)(1), Navy sent copies of the Italian bills to our Claims Group in February 1984. Thus, there is no statute of limitations problem in this claim.

^{2/} This list was derived from Navy's letter of August 20, 1986. A slightly different list was provided to us by the United States Defense Attache Office in Rome by means of "telex" dated March 1986. As explained below, we conclude that Italy's claim may be paid. However, before making payment, Navy should try to reconcile the differences.

^{3/} The designation "ITN" identifies the source as a vessel of the Italian Navy. Otherwise, the reference is to a port in Italy.

establish this with any degree of certainty. Navy recommends payment.^{4/}

3. Netherlands (B-224905; Claim No. Z-2863216).

On June 11, 1976, the U.S.S. Koontz obtained some fuel at Den Helder, Netherlands. Navy does not dispute that the fueling took place as claimed, nor does it challenge the amount charged by the Netherlands (\$32,806.65). However, Navy's submission states that the government of the Netherlands "misaid" the paperwork on this transaction and consequently delayed submitting an invoice for it until June 1984, more than 6 years after the transaction occurred. Referring to the 6-year statute of limitations prescribed in 31 U.S.C. § 3702(b)(1), Navy has refused to pay the claim.

The Netherlands continues to press its claim, maintaining that an invoice was sent to the United States Embassy at the Hague on September 8, 1976, 3 months after the transaction. The Netherlands adds that it has made continuous efforts to secure payment of this claim over the years since. The Netherlands believes that this claim is governed by Dutch law since the transaction occurred in Dutch territory, and argues that under Dutch law, its claim is not yet barred by the passage of time. Nonetheless, in its settlement of October 9, 1985, our Claims Group observed that the claim was not received at GAO until May 7, 1985, and based on 31 U.S.C. § 3702(b)(1), disallowed the claim.

Pursuant to discussions with Navy, the Netherlands submitted a new invoice, dated April 10, 1986 (which was included with Navy's submission in this matter). Navy's submission concludes: "We believe that the United States is morally obligated to make payment, irrespective of whatever fault the Dutch have in this matter."

DISCUSSION

We have long held that the claimant bears the burden of proof in establishing its claim. E.g., 31 Comp. Gen. 340 (1952); B-184712, Mar. 3, 1976. Normally, of course, government records are used to help satisfy that burden. However, claims may be paid even though official records have been lost or destroyed, or are otherwise unavailable, but only if the claimant furnishes other clear and satisfactory evidence which reasonably substantiates both the validity of the claim and the absence of prior payment.

^{4/} This matter was not previously considered by our Claims Group.

With regard to the British and Italian claims, we think that despite the absence of supporting official records, their validity and non-payment have been satisfactorily substantiated. In both cases, we understand that the claims arose in the course of a routine and continuing series of transactions which hinge directly upon the long-standing, day-to-day relationships of the governments involved. In neither instance does the Navy dispute these claims. To the contrary, Navy suggests that it is particularly unlikely that its vessels did not receive the supplies and services claimed, and Navy believes that the amounts being claimed by the UK and Italy are reasonable. Consequently, Navy recommends these claims be paid. We agree. Navy may therefore promptly process these claims for payment, if otherwise correct.

With regard to the claim asserted by the Netherlands, however, the crucial issue is not the absence of records and burden of proof, but rather the timeliness of the claim's submission to GAO. Under 31 U.S.C. § 3702(b)(1), every claim asserted against the United States which lies within the scope of GAO's claims settlement authority must be "received by the Comptroller General within 6 years after the claim accrues" Our previous decisions have read this language strictly and literally to mean that claims must actually be filed with GAO before the expiration of the 6-year period. Filing with the particular agency against which the claim is asserted will not satisfy the statute. E.g., 62 Comp. Gen. 187, 192 (1983); 57 Comp. Gen. 281, 283 (1978). Transmittal by the agency to GAO will be sufficient, as occurred here with the Italian claim, but this did not happen with respect to the Netherlands claim, and the claimant must bear the ultimate responsibility for complying with the statute. We have no authority to waive the act's requirements. E.g., 64 Comp. Gen. 156, 158 (1984); 25 Comp. Gen. 670, 672 (1946).

A claim "accrues" under this statute on the date when all events necessary to establish the government's liability have occurred. E.g., 42 Comp. Gen. 622, 623-24 (1963). In a transaction such as this, the last event which is necessary to establish the government's liability is the fueling itself, not the receipt of an invoice for its payment. The date on the invoice, or the submission of a new invoice does not influence the date on which the statutory period begins to run. Hence, the April 1986 invoice is of no legal effect. (To conclude otherwise would allow the creditor to circumvent the statutory limitation at will merely by issuing a new invoice. Cf., e.g., B-152388 Mar. 4, 1964.)

Accordingly, our Claims Group was correct in finding the claim time-barred. With respect to the suggestion that Dutch law should apply, it is sufficient to note that the passage of time has deprived GAO of the jurisdiction to consider the claim any further. See, e.g., 64 Comp. Gen. 155, 160 (1984) (Barring Act "is not a mere statute of limitations, but is a condition precedent to the right to have the claim considered by our Office. . . ."); B-151285, May 16, 1963 ("The act is not a mere statute of limitations but simply deprives the General Accounting Office of jurisdiction to settle claims . . ."). Of course, nothing we have said here precludes the government of the Netherlands from pursuing any judicial remedies that may be available to it.

Notwithstanding the foregoing, there may be one remaining possibility for administrative relief. The fueling of a Navy vessel is surely related to the national defense. Thus, Navy may wish to consider the possibility of relief under the authority of Public Law 85-804, 50 U.S.C. §§ 1431-1435. We offer no opinion on the feasibility of this approach since GAO has no jurisdiction under Public Law 85-804 and determinations under it are not subject to our review. E.g., B-212529, May 31, 1984.

for 
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