



UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

Released K.A.B.
7-15-79

B-112924-o.m., May 13, 1974

TRANSPORTATION AND CLAIMS DIVISION

FEB 27 1974

PA-Z-2525603-ZW-1, et al

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The Comptroller General

Herewith are the claim files of Eusebio B. Felicilda, and five others, containing requests by the Departments of the Treasury, Army, and Air Force for transfer of funds representing the proceeds of uncurrent depository checks inadvertently cashed or paid by U.S. Depositorys and which had been deposited previously into the Treasury under symbol 20X6045. The actions are requested in order to clear overdrafts resulting in Disbursing Officers' accounts.

In B-112924-O.M., July 6, 1973, it was held that the propriety of transfer of funds from 20X6045 to the disbursing officer's account depends on whether the person receiving payment of the check by the depository was otherwise entitled thereto. In other words, the depository stands in the place of the drawer or holder of the check, and, unless the proceeds were otherwise properly paid to the person presenting the check, the depository would not be entitled to be reimbursed therefor. Consequently, since the transfer of funds constitutes, in effect, a claim for the proceeds of a stale check, such transfer requires settlement by the General Accounting Office.

In reply to our request in the Felicilda case for information evidencing the entitlement of the person receiving payment of the check, we were advised by letter dated January 16, 1974, copy enclosed, from the Department of the Treasury, that the Office of the Deputy Comptroller for Finance in the Department of the Treasury, Bureau of Accounts, would make adjustment in the instant case and in all future requests of this nature, and that no further action is necessary by our Office.

In view thereof, questions arise as to whether settlement of such claims properly are to be made by the General Accounting Office and, if so, the minimum evidence to be required. Also, if answered in the negative, whether it is proper for Treasury to make such adjustments in the uncurrent depository cases involving requests from the Departments of the Army, and the Air Force.

Accordingly, the matter is submitted for your consideration and instructions.

H. J. Shannon

Chief, Payment Claims Branch

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Director, TCD

Returned. The authority and responsibility of the General Accounting Office (GAO) with respect to stale Government checks drawn on designated depositaries are set forth in 31 U.S.C. § 132(b) as follows:

"The amount of all checks drawn by authorized officers of the United States on designated depositaries which have not been paid prior to the close of the fiscal year next following the fiscal year in which the checks were issued shall be withdrawn from the accounts with such depositaries and deposited with the Treasurer of the United States for credit to a consolidated account or accounts on the books of the Treasury. Claims for the proceeds of such unpaid checks shall be payable from such consolidated accounts by checks drawn on the Treasurer of the United States pursuant to settlement by the General Accounting Office."

Prior to the enactment of Public Law 85-183, the source of the present section 132(b), several categories of stale checks required settlement by GAO. Pub. L. 85-183 was designed to substantially reduce this requirement in favor of a more mechanized process. The settlement requirement with regard to checks drawn on designated depositaries, however, was left essentially unchanged. See S. Rep. No. 397, 85th Cong., 1st Sess. 3 (1957).

In B-112924-O.M., July 6, 1973, we considered similar questions under this statute and concluded that a distinction must be drawn between transactions which in effect involve claims for the proceeds of stale checks and those which represent mere bookkeeping adjustments. We held therein that, while settlement by GAO was not necessary in the latter situation, the statute required it in the former. The reasons for that distinction, and hence its application, are equally valid here.

In Claim No. Z-2517360, a check payable to one William T. Forbes, Jr., drawn on the Chase Manhattan Bank and negotiable only within the Republic of Vietnam, was dated May 28, 1970, and cashed, apparently by Mr. Forbes, on June 8, 1970. The record indicates that Chase Manhattan did not post the Disbursing Officer's account until August 1972, after the proceeds had been transferred from the Disbursing Officer's account to Treasury account 20X6045. Since the check was not stale when negotiated, and there appears to be no question as to Mr. Forbes' entitlement thereto, the transfer involved here appears to represent a bookkeeping adjustment necessary to remove the overdraft from the Disbursing Officer's account, rather than a claim for the proceeds of a stale check. Accordingly, settlement by GAO is not required.

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Claim No. Z-2525603, involving a check payable to Eusebio B. Felicilda, is typical of the remaining five. The check in question was drawn on the First National City Bank, Manila, Philippines, and was dated January 31, 1970. The Disbursing Officer transferred the proceeds to Treasury account 20X6045 on March 29, 1972. The check was inadvertently paid by the depository in September 1972. If the check had been processed properly, .i.e., presented to the Treasury for payment by the payee, payment would not have been proper under 31 U.S.C. § 132(b) except upon settlement by GAO. In these circumstances, the Disbursing Officer's request to recover the proceeds previously transferred to Treasury account 20X6045 involves more than a mere bookkeeping transaction; he seeks the proceeds in order to reimburse a depository for paying a check it should not have paid. Section 132(b) is a congressional mandate that a stale check drawn on a designated depository is to be paid only after GAO has determined that the payee is entitled to the proceeds thereof. The requirement for such a determination is not vitiated by the inadvertence of the depository. Thus, we believe that such a case falls within the scope of section 132(b) and requires settlement by GAO. To hold otherwise would render the statute largely meaningless since it could be avoided by the simple act of a depository in honoring a stale check.

Inasmuch as transfer of the funds requested would not relieve the depository of its liability to refund to the United States any loss that may be incurred as a result of its having honored a stale check, it would appear sufficient if the request--to our Office--for transfer of funds be accompanied by an administrative statement to the effect that there is nothing of record to indicate that the payee was not, at the time the check was honored, and at the present time, entitled to the proceeds of the check.

The Department of the Treasury should be advised in accordance with the foregoing.

Paul G. Dembling

Paul G. Dembling
General Counsel

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Attachments