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DECISION

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

FILE: B-157414 DATE: April 26, 1978

MATTER OF: Overseas School Teachers - Backpay in Excess of Judgment

DIGEST: Members of plaintiff-class in March v. United States, 506 F.2d 1306 (D.C. Cir. 1974), may not recover on an administrative claim for backpay in excess of $10,000 jurisdictional limitation of District Court under 28 U.S.C. § 1346(a)(2). When all aspects of the case are considered, the issue of liability for entire period has been litigated and that liability is limited to $10,000 per claimant. Doctrine of res judicata applies where a party raises same issue here as he raised and completely litigated in the courts.

This decision is in response to an administrative claim filed on behalf of the plaintiff-class in March v. United States, 506 F.2d 1306 (D.C. Cir. 1974), seeking payment of backpay allegedly due certain class members in excess of the $10,000 jurisdictional limitation of the United States District Court under 28 U.S.C. § 1346(a)(2) (1970).

The true beginning of this litigation was the passage of the Defense Department Overseas Teachers Pay and Personnel Practices Act, Public Law 86-91, July 17, 1959, 73 Stat. 213. That Act, among other things, removed the teachers in the Overseas Dependent Schools from the coverage of the Classification Act of 1949 and from the General Schedule pay system. Section 5(c) of the Act also established a new, separate pay system specifically for the overseas teachers. The implementation of that pay system by the Department of Defense (DOD) was challenged in the courts, and, in Crawford v. United States, 376 F.2d 266 (Ct. Cl. 1967), cert. denied 389 U.S. 1041 (1968), the DOD procedures were upheld.

Public Law 89-391, April 14, 1966, 80 Stat. 117, amended the pay-setting procedure so that in its present form, 20 U.S.C. § 903(c) (1970), it provides that:

> "The Secretary of each military department shall fix the basic compensation for teachers and teaching positions in his military department at rates equal to the average of the range of rates

> of basic compensation for similar positions of a comparable level of duties and responsibilities in urban school jurisdictions in the United States of 100,000 or more population."

The DOD's implementation of this section was also attacked in Trecosta v. United States, 194 Ct. Cl. 1025 (1971). The Court of Claims again held that the procedure being used by the Department of Defense was correct.

In 1970, March was filed as a class action in the United States District Court for the District of Columbia. Jurisdiction was stated to be under 28 U.S.C. § 1346(a)(2) (1970), which provides that:

> "(a) The district courts shall have original jurisdiction, concurrent with the Court of Claims, of * * *.
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> * * * * *
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> "(2) Any other civil action or claim against the United States, not exceeding $10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort. For the purpose of this paragraph, an express or implied contract with the Army and Air Force Exchange Service, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or Exchange Councils of the National Aeronautics and Space Administration shall be considered an express or implied contract with the United States."

Although there is no limitation on the amount that a plaintiff may recover in the Court of Claims, there would have been at least two additional hurdles to overcome in that court. First, the decision in Trecosta was diametrically opposed to the position espoused by the March plaintiffs. Second, formal class-action procedures are not available in the Court of Claims. There were

potentially about 23,000 members of the class in March, which would clearly require that class-action procedures be used. In Crone v. United States, 538 F.2d 875, 884, 210 Ct. Cl. 499, 514 (1976), the Court of Claims reiterated that it handled requests for class-action treatment on a case-by-case basis. These hurdles would seem to amply justify plaintiffs' decision to file March in the District Court.

Under the terms of 28 U.S.C. § 1346(a)(2), the District Courts of the United States have jurisdiction only to hear cases or claims "not exceeding $10,000." In March, supra, and in Fox v. City of Chicago, 401 F. Supp. 515 (N.D. Ill. 1975), it was held that in a class action, the claim of each plaintiff, not the total amount of the claims of all class members, cannot exceed $10,000. There is a split of authority as to what the District Court must do if a plaintiff's claim exceeds $10,000. Perry v. United States, 308 F. Supp. 245 (D. Col. 1970) aff'd. 442 F.2d 353 (10 Cir. 1971). In Perry and in Wolak v. United States, 366 F. Supp. 1106 (D. Conn. 1973), among other cases, the courts held that a plaintiff whose claim might exceed $10,000 could waive the excess and limit his recovery to that amount. In Fox v. City of Chicago, supra, the court held that the continued insistence that jurisdiction was proper under section 1346(a)(2) constituted a waiver of recovery of any amount over $10,000.

The other line of authority is found in Murray v. United States, 405 F.2d 1361 (D.C. Cir. 1968), in which the court dismissed a claim that exceeded $10,000. It should be noted that Murray was decided by the Court of Appeals for the District of Columbia, the same court that decided March. We have found no case where a District Court took jurisdiction under section 1346(a)(2), over a claim in excess of $10,000. In footnote 1 of the Court of Appeals decision in March, the court stated that: "[n]o individual claim in this case exceeds $10,000." In light of Murray, which is controlling for the District of Columbia Circuit, and the Court of Appeals' statement, we must conclude that court found that no claim of any member of the plaintiff-class exceeded $10,000, because if any claim had been found to exceed $10,000 the court would have been required to dismiss the suit at least as to those claims. Even if the waiver rule is applied the same result is reached, in that recovery of all amounts in excess of $10,000 would be considered to have been waived.

In the claim filed with us on behalf of the class, counsel argues that at the time March was originally filed, no member of the class had a claim in excess of $10,000, that the backpay due up to the time suit was filed should be considered one claim and the amounts due for subsequent years should be considered to be separate claims. This theory must fail. The Judgment entered on June 30, 1975, by the District Court which sets up the system for paying the individual members of the plaintiff-class, provides for payment for all of the years between April 14, 1966, and June 1975, and does not set up a separate system for payments ending at the time the suit was filed. Paragraph 3G of the Judgment entered on June 30, 1975, provides that:

> "* * * No ODS teacher shall recover more than $10,000 in damages pursuant to this Judgment. This Section shall prevail notwithstanding any other provision of this Judgment; so that if the computation of damages for an ODS teacher under the provisions of this Judgment shall exceed $10,000, she shall be entitled to recover no more than $10,000 damages from April 14, 1966 to date of this Judgment."

Clearly, the court has ruled on the class members' rights for the entire period of the controversy.

Moreover, in State of Washington v. Udall, 417 F.2d 1310 (9th Cir. 1969), the court held that a plaintiff may not split his cause of action in order to meet the jurisdictional limitation under section 1346(a)(2). Following the suggestion made now by plaintiffs' counsel would be impermissibly splitting plaintiffs' cause of action.

On the basis of the Judgment entered by the District Court, and all of the above cases, we believe that the conclusion is inescapable that the plaintiff-class and the Department of Defense have fully litigated the Government's liability to the teachers for backpay for the period beginning April 14, 1966, and ending June 30, 1975. This Office has consistently adhered to the position that the doctrine of res judicata applies when a party raises the same issue before this Office that he raised in the courts. 47 Comp. Gen. 73 (1968). We believe that the Government's liability to the teachers has been fully and finally litigated in the courts and that there are no issues remaining

for us to decide. Therefore, we do not believe that there is any legal basis for paying the claim asserted by counsel on behalf of the plaintiff-class in March.

Counsel for the plaintiff-class has also raised two "equitable" arguments in support of the teachers' claims. It is asserted that the position that the teachers voluntarily waived the amounts of their claims in excess of $10,000 is raising a "technical legalism," and is penalizing the teachers for the delays in the judicial process since no teacher had a claim in excess of $10,000 when the suit was filed, and only the lengthy delay in the litigation caused the claims to exceed $10,000. We cannot agree. Every Federal court is a court of limited jurisdiction and has only the jurisdiction granted it by the Constitution or by a statute. This is especially true when suit is brought against the Government. The sovereign may be sued only when it consents to be sued, and the terms of that consent define the court's jurisdiction to hear the case. United States v. Sherwood, 312 U.S. 584 (1941). Here the jurisdiction of the District Court extended only to claims that did not exceed $10,000. Rather than being a "technical legalism," the $10,000 limitation is at the heart of the court's jurisdiction.

Counsel also contends that the Government has a moral obligation to the teachers to make them whole and that the Government may bind itself to pay moral obligations, citing State of Arizona, Arizona Highway Dept. v. United States, 494 F.2d 1285 (Ct. Cl. 1974), and our decision B-142623, July 6, 1964. It is true that the principle cited is mentioned by the court in the Arizona case, but it is dicta since the court found that the United States had a contractual obligation to pay the money sought by the plaintiff. Additionally, the court in support of the proposition that the Government may bind itself to pay moral obligations cited United States v. Realty Company, 163 U.S. 427 (1896). In the latter case the court held that the Congress could enact laws creating "moral obligations" to be satisfied out of appropriated funds. We certainly agree, but Congress has not passed any such law in regard to the instant case.

In the Comptroller General's decision cited, by counsel, B-142623, the claimant's right to recover had been conceded by the Government in the United States District Court, but through some error on the part of the claimant, the claim was omitted from the final judgment. We recognized that the claimant could

have reopened that judgment and received payment in that manner. Our payment was a matter of convenience. Here the plaintiff-class cannot reopen the March Judgment and receive a greater recovery because the District Court lacks the necessary jurisdiction.

This Office possesses only such equitable jurisdiction as is granted it by statute. The primary example is the authority granted by 5 U.S.C. § 5584 (1976) to the Comptroller General to waive collection from Federal employees of erroneous payments of pay and allowances when collection "would be against equity and good conscience." No similar statute is applicable to the instant claim. In the absence of legal liability and any statute authorizing payment on the basis of equity, the claim may not be paid.

Accordingly, the claim asserted in behalf of the plaintiff-class in March, supra, is disallowed.

Deputy Comptroller General
of the United States

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

D. Faulkner
C/S

IN REPLY REFER TO: B-157414

April 26, 1973

Isaac N. Groner, Esq.
Cole and Groner, P.C.
1730 K Street, NW.
Washington, D.C. 20006

Dear Mr. Groner:

Enclosed please find a copy of our decision Matter of Overseas School Teachers, B-157414, of today, disallowing the claim that you filed on behalf of the plaintiff-class in March v. United States, 506 F.2d 1306 (D.C. Cir. 1974), for backpay in excess of the $10,000 limitation contained in the judgment.

We have forwarded a copy of our decision to Chairman Rodino of the Committee on the Judiciary of the House of Representatives because of his request for our views in connection with H.R. 14346, 94th Cong., 2d Sess., a "Bill for the Relief of John C. Shurtleff." That bill would have paid Mr. Shurtleff the amount he would have been entitled to in excess of $10,000. We advised Chairman Rodino that if any legislation is enacted in this area, it should apply to all affected teachers, to avoid disparate treatment.

In addition, we are forwarding copies of our decision to Senator Russell B. Long, Representative Lee H. Hamilton, Representative John Breaux, and Representative James P. Johnson, all of whom have previously expressed interest in this case.

Sincerely yours,

R.F. Keller

Deputy Comptroller General
of the United States

Enclosure

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

IN REPLY REFER TO: B-157414

April 26, 1978

Mr. Robert L. Gilliat
Assistant General Counsel
(Manpower, Health & Public Affairs)
Department of Defense

Dear Mr. Gilliat:

Enclosed please find a copy of our decision, Matter of Overseas School Teachers, B-157414, of today, disallowing the claim filed on behalf of the plaintiff-class in March v. United States, 506 F.2d 1306 (D.C. Cir. 1974), for backpay in excess of the $10,000 limitation contained in the judgment.

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R.F. Keller

Deputy Comptroller General
of the United States

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

IN REPLY REFER TO: B-157414

April 26, 1978

The Honorable John Breaux
House of Representatives

Dear Mr. Breaux:

We refer to our letter to you of December 30, 1977, concerning the claim of the plaintiff-class in March v. United States, 506 F.2d 1306 (D.C. Cir. 1974), for payment of backpay in excess of the $10,000 limitation contained in the judgment.

Enclosed is a copy of our decision Matter of Overseas School Teachers, B-1 7414, of today, disallowing the claim.

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R.F. Keller

Deputy Comptroller General
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