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UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

August 4, 1969

JUL 23 1969

B-167543-O.M.

CLAIMS DIVISION

IN REPLY PLEASE QUOTE
PR-Z 2391027-MLG

The Comptroller General

Herewith is the claim of Zorobabel Augusto Dantas for 4,440.00 New Cruzeiros (Brazilian currency), representing severance pay, pay for unused annual leave and pay for period of advance notice of termination, pursuant to compromise settlement of a suit against the United States.

The record shows that Mr. Dantas, a Brazilian national, was employed by a contractor which provided janitorial and guard services at Santos-Dumont Airport, Rio de Janeiro, Brazil, under a contract with the Department of the Army. It is stated that there was no employer-employee relationship between the claimant and the contractor, supervision being exercised by United States civilian and military personnel whose offices were located at the airport, and that problems and questions arising from the terms of employment were resolved by the United States Air Force or the United States Navy. Mr. Dantas was discharged on March 31, 1969, but the record does not show how or by whom his separation was effected. The U. S. Army Finance Service, Fort Clayton, Canal Zone, advises that no evidence is available of the claimant's employment by the Government; that his name was not included in regular civilian payrolls paid by that office; and that he was determined to be an employee of the Government by the Commander, U. S. Military Group, Brazil, and the U. S. Embassy.

The claimant instituted suit against the Joint Brazil-United States Military Commission (JBUSMC), and the U. S. Army Finance Center reports that settlement out of court was authorized by the Department of Justice. The appropriation sought to be charged with the expenditure is "2192020 Operation and Maintenance, Army, 1969." The claim was forwarded to our Office because of doubt as to the legality of the proposed payment and the propriety of the appropriation chargeable, and in order to establish a precedent for the disposition of anticipated future similar claims.

Inasmuch as the suit which resulted in the compromise settlement was brought in a foreign tribunal, there is a question as to whether the provisions of the first and third paragraphs of 28 U.S.C. 2414 are applicable. If it is so held, instructions are requested as to whether the Army's statement that the "Department of Justice has authorized a settlement out of court" may be accepted in lieu of the required certification by the Attorney General that it is in the interest of the United States to make payment.

The matter is submitted for your consideration and instructions.

A. S. WISE

Chief, Payment Claims Branch

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Indorsement

Director, Claims Division

Returned. Section 2414 of title 28 of the United States Code was amended to read in its present form by Public Law 87-187, approved August 30, 1961, 75 Stat. 415. It is apparent from reading the legislative history of Public Law 87-187 that it was intended to cover compromise settlements of cases arising in foreign countries. See, for example, the following from the report of the Department of Justice which was quoted in the body of Senate Report No. 733 of August 14, 1961, as setting forth in detail the purposes and aims of the legislation.

"The expeditious payment of compromise settlements effected by the Attorney General in connection with foreign litigation, and litigation pending in State courts, is presently dependent upon the availability to the interested Government agency of funds or appropriations for this purpose. The unsatisfactory nature of this reliance is demonstrated by a recent case in Germany involving a potential liability of \$35,000 in connection with a contract for the sale of surplus property. The Department of Justice was able to obtain an agreement to settle this case by the payment of \$4,000. However, the military department concerned was unable to find an appropriation from which this settlement could be paid. It was only after an 8-month delay that a means was found to effect payment. Likewise, we have had several small labor claims go to judgment against our military forces in the courts of Italy simply because of lack of funds from which a compromise settlement could properly be disbursed.

"The attached draft bill would obviate this difficulty and simplify the procedure for the payment of nearly all compromises effected by the Attorney General. It would add a new paragraph to section 2414 of title 28, United States Code, providing that compromises effected by the Attorney General or any person authorized by him shall be settled and paid in the same manner as judgments in like causes. It refers to the compromise of only those claims as to which litigation is imminent and does not affect any existing statutory authority of the General Accounting Office or other agency to adjust and settle claims. * * *

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The Department of Justice has now furnished the required certification that it is in the interest of the United States to pay the compromise settlement. The certification is included in the attached letter dated July 31, 1969, signed by William D. Ruckelshaus, Assistant Attorney General. Accordingly, the amount due under the compromise settlement is for settlement by the General Accounting Office in accordance with 28 U.S.C. 2414 and payment from the permanent indefinite appropriation provided by 31 U.S.C. 724a. See B-167093-O.M., June 6, 1969, and B-148111-O.M., February 14, 1962.

R. F. KELLER

General Counsel

COMPROMISE
Payment

Procedure simplification

Enclosure