

DECISION



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

FILE: B-180634

DATE: JUL 30 1974

MATTER OF: **Enforceability of Service Agreement after transfer has been cancelled**

DIGEST: Department of the Treasury employee who was paid relocation expenses incurred in connection with a proposed transfer which was cancelled is legally obligated to refund relocation expenses paid when he separated from Government service prior to the expiration of 12 months from the date of cancellation, since cancelled transfer expenses are payable as though originally-contemplated transfer occurred and employee was retransferred to original duty station. Entitlement to receive and retain transfer expenses is contingent upon satisfaction of agreement to remain in Government service 12 months after cancellation notification under the provisions of 5 U.S.C. 5724(1).

This matter is before us based upon a request by the Bureau of Alcohol, Tobacco and Firearms (ATF) of the Department of the Treasury, for a decision concerning the necessity for further collection efforts against ^{*}to recover payments made to him for relocation expenses incurred prior to the cancellation of a proposed transfer.

On August 4, 1972, Mr. _____, who was employed by ATF as a Special Agent in its St. Louis, Missouri Office, was asked by his superior, James Harmon, Chief Special Investigator, if he would accept a promotion and transfer to Washington, D.C., to the position of Explosives Analyst. On September 1, 1972, Mr. _____ was interviewed for that position and was advised not to incur any transfer-related expenses until the required travel authorization was issued. Mr. _____ requested that he be given a \$2,100 advance to defray his moving expenses. On that day Mr. _____ signed a Service Agreement which provided, in pertinent part:

"I agree to remain in the employ of the United States Government for a period of not less than twelve months after the date on which I report for duty at the official station shown above.

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"If I violate this agreement by resigning or otherwise separating from the service of the United States Government without authority, or if I am removed for cause (as distinguished from a reason beyond my control and acceptable to the United States Government) before the end of the twelve-month period, I will repay the United States Government a sum of money equivalent to that expended by it for travel, transportation, and/or other expenses incident to relocating me at the above-mentioned post of duty." (Emphasis supplied.)

On September 5, 1972, Mr. _____ received Form 4253 "Authorization for Moving Expenses." On September 7, 1972, Mr. _____ household goods were picked up for shipment to Alexandria, Virginia, and were placed in temporary storage at St. Louis, Missouri. The following day settlement for the sale of Mr. _____ residence took place and he went on leave with his family, in preparation for his transfer. On September 14, 1972, Mr. _____ received a \$2,100 travel advance. On about the same day, he spoke with Mr. Harmon who informed him that the prospects for his transfer "looked bad." Mr. _____ returned to St. Louis, and, on September 21, 1972, his household goods were delivered to a new residence which Mr. _____ had leased. Although he was never officially notified, Mr. _____ transfer was in fact cancelled, and he returned to his position in the St. Louis Office of ATF.

On January 2, 1973, Mr. Kuhns filed a claim with ATF for reimbursement of the expenses he had incurred as a result of the cancelled transfer. The expenses claimed were:

Sales commission from sale of residence	\$1,596.00
Storage and shipment of household goods	937.24
Miscellaneous moving expenses	200.00
	<u>\$2,733.24</u>
Less travel advance	<u>2,100.00</u>
	\$ 633.24

The claim was disallowed by ATF and on February 14, 1973, Mr. _____ submitted the same claim to this Office. After recomputing the amount of the claim using the commuted rate schedule for the transportation of the household goods it was allowed in the total amount

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of \$2,908.28 less \$339.20 in Federal Withholding Tax and \$2,100 Travel Advance, for a net settlement to Mr. of \$449.08, as evidenced by Settlement Certificate Z-2504400 of April 18, 1973. This settlement was issued based on our holding in E-170259, September 15, 1970, that expenses incurred in complying with a change-of-station order prior to its cancellation may be reimbursed to the extent they would have been payable had the transfer been consummated.

On June 23, 1973, Mr. resigned from Government service. The circumstances causing his resignation were apparently not beyond his control and acceptable to the agency. Since the resignation occurred less than 12 months after the proposed reporting date for Mr. transfer, ATF sought reimbursement of the amounts paid him on the basis of the Service Agreement signed by Mr. on September 1, 1972. Mr. has refused to make any payment, and the Department of the Treasury has requested a decision as to the necessity for further collection efforts.

The statutory basis for requiring the execution of a Service Agreement of the type signed by Mr. is found in 5 U.S.C. 5724(1) which provides:

"(1) An agency may pay travel and transportation expenses (including storage of household goods and personal effects) and other relocation allowances under this section and sections 5724a and 5726(e) of this title when an employee is transferred within the continental United States only after the employee agrees in writing to remain in the Government service for 12 months after his transfer, unless separated for reasons beyond his control that are acceptable to the agency concerned. If the employee violates the agreement, the money spent by the United States for the expenses and allowances is recoverable from the employee as a debt due the United States."

The question before us is whether Mr. is obligated either under the above-quoted provision of law or on the basis of the Service Agreement to remain in the Government service for a period of 12 months notwithstanding that the contemplated transfer to Washington, D.C., did not in fact occur. Mr. is of the opinion that any

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service obligation he may have had under the agreement was contractual and hence that accomplishment of the transfer to the new duty station designated in the Service Agreement—which transfer never occurred—was a condition precedent to any obligation of service he may have had thereunder.

Service Agreements executed pursuant to statutory authority such as here involved are not contracts in the technical sense. See United States, 132 Ct. Cl. 369 (1955). In the case of United States, 192 Ct. Cl. 814 (1970), the court characterized the nature of the obligation of the employee created under a Service Agreement executed pursuant to 5724(i) as a "contractual obligation" but pointed out that execution of the Service Agreement is a condition precedent to payment of relocation expenses. In B-178595, June 27, 1973, we recognized that an employee is bound by the 12-month service obligation as a condition to payment of relocation expenses even though he did not execute a Service Agreement. Absent the execution of a Service Agreement or the actual satisfaction of the 12-month service obligation there is no authority for an employee to receive or retain relocation expense reimbursement.

We have held that the authority of 5724(i)⁺ to pay relocation expenses extends to payment of expenses incurred in complying with a change-of-station order prior to its cancellation as well as to payment of expenses incurred in connection with a consummated transfer. B-170259, ⁺supra. With respect to cancelled transfer expenses we regard the employee to be in the same position he would have been if the transfer had been consummated and he had been retransferred back to his former station. B-173460, August 17, 1971, and B-177898, April 16, 1973.

Our decisions have not specifically addressed the manner in which the condition precedent to payment under 5724(i)⁺—that the employee execute a Service Agreement—is to be met in the cancelled transfer situation, other than to indicate that execution of an agreement is an essential prerequisite to payment.

We believe the employee involved in a cancelled transfer either should be required to execute a second Service Agreement or an amendment to the original Service Agreement should be issued designating the original duty station as the new duty station. In such cases the 12-month period of required service begins to run from the date on which the employee is advised of cancellation of the originally-contemplated transfer.

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Although we recognize that the employee is obligated to remain in the service of the Government for 12 months as a condition to payment of cancelled transfer expenses regardless of whether there be a second agreement or an amendment to the original Service Agreement, execution thereof would serve to emphasize to the employee that his entitlement to receive or to retain payments in connection with the cancelled transfer is contingent upon his remaining in the service of the Government for 12 months unless separated for reasons beyond his control that are acceptable to the agency concerned.

Mr. _____ is not legally entitled to retain amounts paid to him as a result of the cancelled transfer to Washington, D.C., in view of his premature separation from the Government service. Neither his misapprehension as to his entitlement to retain the amount which he was paid nor the failure of the agency to clarify his service obligation by requiring an amendment to his original Service Agreement will legally excuse his obligation to refund the payments which he has received. It is noted, further, that the employee did receive substantial payments from the Government incident to the cancelled transfer and that he had agreed to remain in Government service for 12 months. We do not believe it unreasonable to hold that he should have been on notice that his resignation from Government service for reasons which were not beyond his control and acceptable to his agency prior to the expiration of that 12-month period would result in his liability for repayment of the amount involved.

Accordingly, the Treasury Department should take such action as is necessary to recover the amounts paid to Mr. _____ as relocation expenses incident to his cancelled transfer.

R.F. KELLER

| Deputy Comptroller General
of the United States