

**DECISION**

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

50741 97286  
JUN 3 1975

FILE: B-182999

DATE:

MATTER OF:

William T. Burke--Real Estate Expenses and Temporary  
Quarters Allowance--Status of Okinawa

DIGEST:

Employee who was separated due to RIF while stationed in Okinawa, and was reemployed within one year in Washington, D.C., claims reimbursement of real estate expenses and additional temporary quarters allowance. Statute and regulations require that both old and new duty stations be in United States, its territories or possessions, Canal Zone or Puerto Rico in order to receive this reimbursement. Okinawa was not territory or possession of United States before its reversion to Japan because Japan had retained residual or de jure sovereignty under Peace Treaty. Therefore, disallowance of claim is sustained.

This matter concerns a request for reconsideration of Settlement Certificate No. Z-2559247, issued by our Transportation and Claims Division on August 27, 1974, disallowing Mr. William T. Burke's claim for reimbursement of real estate expenses and additional Temporary Quarters Allowance (TQA) incident to reemployment after a reduction in force (RIF) and a transfer.

According to the record before us, prior to March 1972, Mr. Burke was employed with the Joint United States/Japan Preparatory Commission that negotiated the terms for the reversion of the Ryukyu Islands, including Okinawa, to Japan. Apparently at the conclusion of these negotiations, Mr. Burke was separated due to a RIF. Within a year of his separation, he was able to obtain employment with the Department of the Army, in the Washington, D.C. area, and was entitled to be reimbursed for certain relocation expenses, in accordance with 5 U.S.C. § 5724a(c) (1970). All points at issue between Mr. Burke and the Army, regarding the benefits to which he was entitled, have been settled except for Mr. Burke's contention that he is entitled to be reimbursed for real estate expenses and for an additional 30 day period of TQA.

Reimbursement of real estate expenses and payment of TQA are authorized by 5 U.S.C. § 5724a(a) (1970) which provides, in pertinent part, that:

PUBLISHED DECISION  
54 Comp. Gen.....

"(3) Subsistence expenses of the employee and his immediate family for a period of 30 days while occupying temporary quarters when the new official station is located within the United States, its territories or possessions, the Commonwealth of Puerto Rico, or the Canal Zone. The period of residence in temporary quarters may be extended for an additional 30 days when the employee moves to or from Hawaii, Alaska, the territories or possessions, the Commonwealth of Puerto Rico, or the Canal Zone. \* \* \*

"(4) Expenses of the sale of the residence (or the settlement of an unexpired lease) of the employee at the old station and purchase of a home at the new official station required to be paid by him when the old and new official stations are located within the United States, its territories or possessions, the Commonwealth of Puerto Rico, or the Canal Zone. \* \* \*"

At the time of Mr. Burke's transfer, this authority was implemented by the statutory regulations, Office of Management and Budget Circular No. A-56, Revised August 17, 1971, specifically sections 4.1a and 8.2b, and the departmental regulations, 2 Joint Travel Regulations paras. C 8251-2 (change 75, December 1, 1971) and C 8350 (change 77, March 1, 1972). We have held, with respect to real estate expenses, that the language in the statute requires that both the old and new duty stations be located in the places enumerated. 47 Comp. Gen. 93 (1967). For purposes of eligibility for the additional 30 days of TQA, the employee must have moved to or from the enumerated places which, in this subsection, do not include continental United States. Therefore, the narrow issue presented here is whether or not Okinawa is a "territory or possession" of the United States within the meaning of this particular statute.

The United States' control over Okinawa and the rest of the Ryukyu Islands was recognized by the Treaty of Peace with Japan, 3 U.S.T. 3169, TIAS 2490, which was signed on September 8, 1951, ratified by the United States Senate on March 20, 1952, and proclaimed by the President on April 28, 1952. Article III of the Treaty provides that:

"Japan will concur in any proposal of the United States to the United Nations to place under its trusteeship system, with the United States as the sole administering authority, Nansei Shoto south of 29° north latitude (including the Ryukyu Islands and the Daito Islands), Nanpo Shoto south of Sofu Gan (including the Bonin Islands, Rosario Island and the Volcano Islands) and Parece Vela and Marcus Island. Pending the making of such a proposal and affirmative action thereon, the United States will have the right to exercise all and any powers of administration, legislation and jurisdiction over the territory and inhabitants of these islands, including their territorial waters."

Under Article II of the Treaty, Japan renounced "all right, title and claim" to specified areas, but Okinawa was not one of those areas. Therefore, under the Treaty, the actual remaining relationship between Japan and Okinawa was not completely clear. In United States v. Hshi Shirawa, 123 F. Supp. 145 (D. Hawaii 1954), the court held that:

"Under Article 3 of the Treaty of Peace, Japan which previously had full sovereignty over Okinawa transferred a part of that sovereignty, while retaining the residue. That portion of the sovereignty which gives the United States 'the right to exercise all and any powers of administration, legislation and jurisdiction' under Article 3 may be labeled 'de facto sovereignty.' The residue or 'residual sovereignty' retained by Japan is the traditional 'de jure sovereignty.' What the situation will be when the United States, under Article 3, makes a proposal to the United Nations to place Okinawa under its trusteeship system and affirmative action is taken thereon is not presently material." 123 F. Supp. at 149.

It is our understanding that Okinawa was never placed within the United Nations Trusteeship system, so Japan retained "residual sovereignty" over Okinawa until it regained full sovereignty following reversion.

Okinawa's status was considered in the context of the Federal Tort Claims Act in Burna v. United States, 142 F. Supp. 623 (E.D. Va. 1956) aff'd. 240 F.2d 720 (4 Cir. 1957). In that case the issue was whether or not Okinawa was a "foreign country," within the meaning of the Federal Tort Claims Act exclusion found in 28 U.S.C. § 2680(k) (1952), which excluded from coverage under the Act, "[A]ny claim arising in a foreign country." After considering the import of the Peace Treaty, the court held that Okinawa was a foreign country within the meaning of the Act.

Title 48 of the U.S. Code is entitled "Territories and Insular Possessions." Included in that title are the basic statutory authorities for the governments of territories and possessions of the United States, including, among others, the Virgin Islands, Guam, Eastern Samoa, and the Trust Territory of the Pacific Islands, but not Okinawa or the Ryukyu Islands. The government of Okinawa, while it was under the control of the United States, was established not by statute, but by Executive Order, beginning with Executive Order 10713, 22 F.R. 4007, June 7, 1957, which was amended several times prior to the reversion of Okinawa to Japan. While not legally dispositive of the issue, this distinction is another indication that Okinawa held a status other than that of a "territory or possession of the United States." Our Office considered the status of Okinawa in B-159559, February 12, 1968, where we held that Okinawa was not a territory or possession of the United States. That case, considered the issue in relation to the efforts of the Department of the Army to procure increased electric power generation capability for the Ryukyu Electric Power Corporation.

All of Mr. Burke's contentions in support of his position that Okinawa was a possession of the United States essentially can be reduced to the argument that since the United States had full judicial, legislative and administrative control under the Peace Treaty, and since the United States relinquished all rights under the reversion treaty, there is nothing that Okinawa could have been other than a de jure and de facto possession acquired by right of conquest. That argument is answered by the court in United States v. Ushi Shiroma, supra, when it held that Japan retained residual or de jure sovereignty over Okinawa. The fact that the United States retained full control over an area is not sufficient to make that area a territory or possession of the United States. The fact that the United States occupies Guantanamo

B-182999

Bay, Cuba, under an indefinite lease, and exercises complete control over the leasehold, does not make Guantanamo Bay a territory or possession of the United States. B-178396, June 18, 1973. Mere control is not sufficient to make an area a territory or possession of the United States within the meaning of the statute under consideration here.

Accordingly, the disallowance of Mr. Burke's claim by our Transportation and Claims Division is sustained.

R.F.KELLER

| Deputy Comptroller General  
of the United States