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DECISION



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

FILE: B-187213

DATE: October 1, 1976

MATTER OF: Thomas B. Cox - Transportation of
Household Effects Incident to Training

DIGEST: Employee may not be reimbursed for transportation of household effects from training location to duty station where authorizing official refused to issue travel orders for payment of such expenses based on employee's execution of agreement at beginning of training whereby he agreed to bear indirect costs of training, such as travel and transportation. Since authorizing official's refusal to issue orders was neither arbitrary nor capricious, that exercise of his discretion is properly within purview of authority for payment of training expenses under 5 U. S. C. § 4109 (1970).

This action involves the appeal by Mr. Thomas B. Cox, a Department of the Navy employee, from Claims Division Settlement Certificate No. Z-2583156, July 14, 1976, denying his claim for reimbursement of expenses incurred in transporting his household effects from Pittsburgh, Pennsylvania, to Annapolis, Maryland. The relocation of his household to Annapolis in July of 1973 occurred upon the completion of a 3-year period of training at the Carnegie-Mellon University in Pittsburgh.

Denial of Mr. Cox's claim by our Claims Division was predicated on the fact that the Navy had refused to issue travel orders authorizing reimbursement of the transportation expenses claimed. While not taking exception to the conclusion that such orders were not issued, Mr. Cox does question the basis upon which approval was withheld. Specifically, he points out that the issuance of orders for reimbursement for transportation of household effects was recommended by his superiors but that their recommendation was not acted upon favorably by the Civilian Personnel Officer having ultimate approval authority. He believes that the basis relied upon by the Civilian Personnel Officer for refusing to approve the recommended orders is inadequate. In this regard he suggests that if there is no prohibition against reimbursement for transportation expenses incident to training and if the reasons

B-187213

relied upon by the Civilian Personnel Officer for refusing to execute the requested orders are not "compelling," he is perforce entitled to the reimbursement claimed.

The record shows that beginning September 15, 1970, Mr. Cox was assigned to long-term training at the Carnegie-Mellon University. In connection with that training, which was originally anticipated to last 2 years, he executed a training agreement which provided as follows:

"1. I understand that during my work at Carnegie-Mellon University towards a Ph. D. degree, in accordance with my development plan, the Navy will provide no financial aid in excess of the cost of the following:

"a. One full year of salary

"b. University tuition

"c. University fees

"d. Books and supplies

"2. All other indirect costs, such as moving expenses and travel, shall be borne by me."

In accordance with that agreement, Mr. Cox was paid full salary for the first year of training, commencing in September 1970. Effective September 7, 1971, he was placed in a non-pay status. However, the Navy continued to bear his tuition expenses as per the agreement for the second year. Before the completion of his second year of training, it became apparent that Mr. Cox would be unable to complete the research work he had undertaken without the extension of his training period for an additional year. Mr. Cox was ultimately continued in a non-pay training status until July 2, 1973, with the additional tuition paid by the Navy.

The record indicates that there were procedural irregularities in regard to the extension of Mr. Cox's training assignment to July 2, 1973. In addition to the fact that an amended training

B-187213 .

agreement was not executed, the extension was not effected in accordance with 5 C.F.R. § 410.506, providing for an exception to 5 U.S.C. § 4106(a)(3) (1970) which limits training periods to 1 year during the employee's first 10 years of Government service. In this latter regard we note that in Mr. Cox's case and in the cases of individuals similarly situated, the irregularity has been corrected by retroactive waivers of the requirements of the cited provisions granted February 24, 1975, by the Civil Service Commission.

In January 1973, in preparation for his reassignment to duty in Annapolis, Mr. Cox and his superiors apparently discussed the subject of the Navy paying the cost of moving his household effects from Pittsburgh to Annapolis. That discussion resulted in a request for payment of his moving expenses by his superior, which request was endorsed by the division and acting department heads, and the initiation of travel orders to authorize payment of those expenses. However, the Civilian Personnel Officer who was authorized to approve transportation expenses in connection with training refused to sign the proposed orders.

In a memorandum dated October 23, 1973, the Civilian Personnel Officer explained the basis for his refusal to authorize payment of the expenses of transportation of Mr. Cox's household effects. Among other reasons he cited the agreement Mr. Cox executed at the commencement of the training period providing that he would bear indirect costs, including those of travel and transportation.

The authority for payment of expenses of training is contained at 5 U.S.C. § 4109 (1970). Discretionary authority to pay all or part of the necessary expenses of training, including those for transportation of household effects, is vested in the heads of agencies as follows:

"(a) The head of an agency, under the regulations prescribed under section 4118(a)(8) of this title and from appropriations or other funds available to the agency, may--

* * * * *

"(2) pay, or reimburse the employee for, all or a part of the necessary expenses of the

B-187213

training, without regard to section 529 of title 31, including among the expenses the necessary costs of--

* * * * *

"(B) transportation of immediate family, household goods and personal effects, packing, crating, temporarily storing, draying, and unpacking under section 5724 of this title * * * when the estimated costs of transportation and related services are less than the estimated aggregate per diem payments for the period of training."

The Federal Personnel Manual, chapter 410, subchapter 6, provides that the head of each agency has the authority to determine what are necessary training expenses and to pay all or any part of those expenses in accordance with applicable statutory and regulatory limitations. Subchapter 6-4 thereof further recognizes that it is within the authority of the agency head to require that the employee himself bear certain of the expenses of training. That subchapter provides in pertinent part as follows:

"The head of each agency is required to establish the procedure he considers necessary to protect the Government's interest * * *. They may wish, for example, to pay for certain types of training (e. g., correspondence courses) only upon completion of the training, or to require employees to share the costs of training under certain circumstances. * * *"

In accordance with our holding in 51 Comp. Gen. 777 (1972), Civilian Manpower Management Instruction 410.6 delegates authority to approve training and training expenses to the head of each activity. In the case of the Naval Ship Research and Development Center, Bethesda, Maryland, that authority, insofar as it involves expenses for other than local travel and transportation, is redelegated to the Civilian Personnel Officer.


Since the discretion to authorize travel and transportation expenses in connection with training is vested in the Civilian

B-187213

Personnel Officer, it is not within the jurisdiction of this Office to question the exercise of that authority except insofar as it may be arbitrary or capricious. A review of the record in this case indicates that the Civilian Personnel Officer viewed the agreement signed by Mr. Cox upon initiation of training as establishing the employee's responsibility to bear associated travel and transportation cost. That agreement was signed in contemplation of a training assignment for 2 years and it might be argued that, as a technical matter, it did not establish the responsibilities of the Government vis-a-vis those of Mr. Cox with respect to the third year of his training. However, the cost of transportation of household goods from Pittsburgh to Annapolis was a one-time expense that would have involved substantially the same expense whether it was incurred at the end of the second or third year. Also, a proper agreement covering the third year of training was not obtained. Therefore, we believe that the Civilian Personnel Officer could reasonably conclude that the agreement evidenced the Navy's intent with respect to reimbursement of those transportation expenses, regardless of the duration of the period of training.

As we have indicated, the question of the correctness of the Civilian Personnel Officer's exercise of his discretionary authority is not one of how compelling we view his articulated basis for the determination in question, but whether that determination is rationally based so as not to be arbitrary or capricious. Since we cannot conclude that the Civilian Personnel Officer's determination in this case was either arbitrary or capricious, we find no basis for reimbursement to Mr. Cox for the cost of transporting his household effects from Pittsburgh to Annapolis.

In view of the above we hereby affirm the disallowance of his claim.


Deputy Comptroller General
of the United States