

DECISION

11477
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

PLM
II

Request for Reimbursement of

FILE: B-194555

DATE: September 21, 1979

MATTER OF: Donald L. Feedback - Relocation Expenses *involving* Lease Termination

DIGEST: Claimant on transfer from Denver, Colorado, to Tracy, California, was forced to break his lease in Colorado, and paid lease termination expenses. The claimant and his landlord negotiated the amount of the settlement of the lease. Since claimant reduced his possible liability, the amount paid constitutes a reasonable effort to settle his outstanding obligation. Claimant may be reimbursed these expenses under 2 JTR para. C 14003.

The issue is whether Mr. Donald L. Feedback, an employee of the Defense Logistics Agency, Defense Depot Tracy, California, is entitled to be reimbursed for expenses incurred for settling an unexpired lease at the time of his transfer. For the following reasons Mr. Feedback is entitled to be reimbursed for these expenses. He may not be reimbursed, however, for the additional rent charged as a result of his remaining in his apartment beyond the date upon which he had agreed to vacate that apartment. DLB02826

The question was presented by letter of March 21, 1979, from Mr. R.G. Bordley, Chief, Accounting and Finance Division, Office of the Comptroller, Defense Logistics Agency. This request was forwarded to our Office by the Per Diem, Travel and Transportation Allowance Committee and has been assigned PDTATAC Control No. 79-8.

By Travel Order No. 91/77CY, Mr. Feedback was transferred from Denver, Colorado, to Tracy, California, with a reporting date of August 26, 1977. Previously, Mr. Feedback had executed a rental agreement calling for rent of \$250 per month for an apartment in Golden, Colorado, for a term expiring on November 19, 1977. The claimant has submitted a penciled in copy of the lease provided by his landlord. The explanation for not submitting the original is that it was lost in the move.

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As a result of the transfer Mr. Feedback could not comply with the terms of his lease agreement. In order to terminate his lease Mr. Feedback agreed to pay \$355. The record contains a statement on the letterhead of Mr. Feedback's apartment complex signed by a person who is identified as the Resident Property Manager, stating that Mr. Feedback will vacate his apartment on August 18, 1977, and listing \$355 for "unexpired lease" and \$30 for "three day rent." We have been informally advised, however, that this figure was negotiated between the claimant and the property manager taking into consideration the amount of time left on the lease and the amount of time the property manager felt it would take to relet the apartment.

For employees of the Department of Defense reimbursement for the cost of settling an unexpired lease at the employee's old duty station incident to a change of station is governed by paragraphs C 14003 and C 14005 of Volume 2 of the Joint Travel Regulations (2 JTR). Paragraph C 14003 provides for the reimbursement of such expenses when:

- "1. applicable laws or the terms of the lease provide for payment of settlement expenses,
- "2. such expenses cannot be avoided by sub-leasing or other arrangement,
- "3. the employee has not contributed to the expense by failing to give appropriate lease termination notice promptly after he has definite knowledge of the proposed transfer,
- "4. the broker's fees or advertising charges are not in excess of those customarily charged for comparable services in that locality."

Paragraph C 14003 also provides that each item must be supported by documentation showing that the expense was, in fact, incurred and paid by the employee. In addition, 2 JTR para. C 14005 requires that the claim be supported by: (1) a copy of the lease; (2) documentation of the attempts to avoid penalty costs; and (3) itemization and explanation of the penalty costs.

The terms of Mr. Feedback's lease do not contain a specific provision for the payment of liquidated damages in the event of early termination. We have held, however, that the first condition for reimbursement is not to be interpreted as requiring such a provision. Matter of Edward J. Jason, B-186035, November 2, 1976. Under Colorado law, a landlord does not have a strong duty to mitigate damages when there has been a premature termination of a lease. Thus, it was possible for Mr. Feedback to have been liable for the remainder of the rent due under the lease.

Also, there was nothing Mr. Feedback could have done to avoid the penalty costs since the terms of the lease prohibited the tenant from assigning, subletting, or transferring the apartment. Mr. Feedback states that he attempted to find out if the apartment had been relet after he had vacated it. He explains that his attempts were unsuccessful since at the time he left, the management and ownership were in the process of change and when he called back to find out if the transfer had taken place he "could not attain the phone numbers or location."

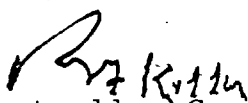
The latter two conditions of 2 JTR para. C 14003 are not applicable to the present situation. Moreover, the fact that Mr. Feedback has submitted a penciled in copy of his lease rather than the original copy if of no consequence, since the provisions of the lease relating to assignment and subletting were part of the printed form, and the note from the Resident Property Manager verified the amount of the payment. Therefore, since Mr. Feedback successfully negotiated with the landlord for a reasonable payment in compromise of the outstanding term of the lease and was prohibited from subletting by the terms of the lease, he may be reimbursed for his lease termination expenses under 2 JTR para. C 14003. See: Matter of Edward J. Jason, supra and Matter of Jeffrey S. Kassel, 56 Comp. Gen. 20 (1976).

Intertwined with his claim for lease termination expenses is Mr. Feedback's claim for rent charged for 3 extra days. We have been informally advised that he was charged this because he gave notice that he was going to vacate on August 15, 1977, but remained until August 18, 1977. This charge was simply rent for quarters that had

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been occupied as a permanent residence, and such rent is not reimbursable.

Accordingly, the voucher is returned for further processing in accordance with the above.


Deputy Comptroller General
of the United States