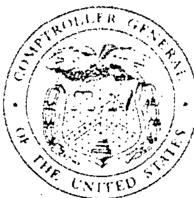
Mr. Schwimer
PLM L 14828

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

FILE: B-197634 DATE: September 3, 1980

MATTER OF: Clark E. Fontaine - Reimbursement for towing expenses

DIGEST: Employee of Federal Aviation Administration, assigned to depart on a familiarization flight, drove to the airport and was given permission to park his car behind the tower. Because of construction work in that area, his car was towed away by a local towing company. Employee may not be reimbursed the towing charges on the basis that he was using his vehicle for official business. Employee used his automobile for personal transportation to airport and under these circumstances the risk involved with parking the car must fall upon the employee.

Mr. Clark E. Fontaine appeals our Claims Division settlement (Z-2806752) dated June 12, 1979, denying his claim for reimbursement of towing expenses. Mr. Fontaine has designated the Professional Air Traffic Controllers Organization (PATCO) to be his representative in this matter.

Mr. Fontaine, an employee of the Federal Aviation Administration (FAA), was designated to depart on a "SF 160 Familiarization Flight" on February 28, 1978. Mr. Fontaine drove his privately owned vehicle (POV) to the Anchorage, Alaska, Airport. He stopped by the Anchorage International Control Tower and asked the Controller-in-Charge (CIC) whether he could park his vehicle in the tower parking lot. The CIC consented and instructed Mr. Fontaine to park behind the tower away from the normal traffic flow. Mr. Fontaine told the CIC where a key was located should a need arise to move the car. On March 1, 1978, construction work was started in the immediate area where Mr. Fontaine had parked. The Deputy Chief of the Anchorage Tower was told that Mr. Fontaine's car must be moved and he tried, but was unable, to locate the owner of the

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vehicle. He then had the vehicle moved by a local towing company.

On March 15, 1978, PATCO filed a grievance seeking reimbursement of $76 for the expenses incurred by Mr. Fontaine to reclaim his vehicle. The grievance was initially denied, but then was upheld by the Chief, Air Traffic Division, who decided that the vehicle was impounded without cause and recommended that the claim be paid. The Alaska Region Accounting Division, after consultation with legal counsel, decided that there was no legal basis for paying the claim for the following reasons. Mr. Fontaine was in a duty status during the familiarization flight but, since he was not assigned duties at the outbound destination as part of the trip, he was not in an official travel status. Under the Collective Bargaining Agreement between PATCO and FAA, Article 16, Section 10, his commuting expenses to and from the airport were not reimbursable by the Government. Therefore, use of his car was not considered incident to Government service for purpose of reimbursement. However, the FAA decided that new procedures were needed to insure that a similar incident would not happen in the future and after the grievance was filed, policies and procedures were implemented to prevent further similar incidents.

Despite the conclusion that no legal basis existed for paying the claim, the Alaska Region Accounting Division recommended to FAA headquarters that the claim be paid because the employee incurred the expense through no fault of his own and acted in a reasonable manner and because of its belief that an arbitrator would decide in favor of the claimant.

The Chief, Financial Systems Division at FAA headquarters, then submitted the claim to our Claims Division for a determination. Our Claims Division held that Mr. Fontaine could not be reimbursed because he was not using his car in the performance of official business and the Government is not liable for any costs incurred through the personal use of his car.

On appeal, PATCO has raised two lines of argument in support of Mr. Fontaine's claim for reimbursement for towing expenses. We shall discuss each argument separately.

First, PATCO disagrees with our Claims Division concerning whether or not Mr. Fontaine was using his car in the performance of official business. In this regard, PATCO points out that management admitted in the grievance settlement that Mr. Fontaine had valid approval to park his vehicle in the lot. PATCO then argues that if Mr. Fontaine had valid approval, he was using his car in performance of official business.

In our opinion, the Controller-in-Charge's approval of the parking arrangement did not convert the use of the car to the performance of official business. The Collective Bargaining Agreement specifically provides, in Article 16, Section 10, that "commuting trips [to the nearest airport for familiarization trips] shall be at no expense to the government." Accordingly, Mr. Fontaine was not authorized by the FAA to use his POV for official business. He used his car for his own transportation to the airport, and the well-established rule is that an employee must bear the cost of transportation between his residence and his place of duty, absent statutory or regulatory authority to the contrary. Gilbert C. Morgan, 55 Comp. Gen. 1323, 1327 (1976); George F. Clark, B-190071, May 1, 1978.

In any event, whether he was on official business or not, Mr. Fontaine's personal liability for the costs of using his own automobile was not transmuted into Government liability simply because an agency official allowed him to park at the airport tower. The evidence shows that Mr. Fontaine requested permission to park his car there for his own convenience and he must be held responsible for any expenses incurred thereby. He had a personal understanding with the Controller-in-Charge as to the location of the car keys, but that arrangement failed to prevent the towing away of his car because of construction work. We conclude that the risk of parking at the tower must fall upon the employee. The Controller-in-Charge's approval of the parking arrangement did not transfer the risk to the Government.

The other contentions by PATCO raise the following points. The grievance was resolved by following the procedures outlined in Article 7 of the PATCO/FAA agreement, and PATCO states that the Assistant Secretary of Labor has held that a grievance settlement has the same standing

as an arbitration award and as such constitutes an extension of the parties negotiated agreement and an established term and condition of employment. Finally, PATCO argues that our decision B-180010, June 25, 1976, 55 Comp. Gen. 1197 (1976), is legal precedent for paying Mr. Fontaine's towing expenses. We disagree with PATCO's arguments for the following reasons.

The grievance was settled on August 10, 1978, prior to the effective date of the Civil Service Reform Act of 1978; therefore, the provisions of Executive Order 11491, as amended, apply. Under the Executive order we have denied implementation of arbitration awards if there is no authority to pay the award since the Order provides that all Federal Sector Collective Bargaining Agreements are subject to existing laws and regulations. See 55 Comp. Gen. 564 (1975); 54 Comp. Gen. 921 (1975). Therefore, even assuming that a grievance settlement has the same standing as an arbitration award, the issue is whether the agency has authority to use appropriated funds to pay Mr. Fontaine's towing expenses.

Finally, 55 Comp. Gen. 1197 (1976) is not a valid precedent for paying this claim. In that decision three arbitrators decided that the FAA had violated Article 47 of the PATCO/FAA agreement because the FAA had not secured parking facilities for Air Traffic Controllers at three airports. Article 47 of the agreement had incorporated by reference FAA Order 4665.3A, dated September 14, 1971, which sets forth the agency policy of providing good, close in, free or low cost parking to agency employees. The remedies furnished by the arbitrators involved the spending of appropriated funds for rental of parking spots for employees. We held that since the FAA had been delegated certain leasing authority by the General Services Administration, it had the right to directly lease parking spots. We further held that through the Collective Bargaining Agreement, FAA had exercised its discretion and, in effect, had made a determination that adequate parking accommodations for Air Traffic Controllers were required to avoid a significant impairment of the operational efficiency of the agency. We concluded that, since FAA had made such a determination, it became a nondiscretionary agency policy and the arbitration awards were valid.

However, that decision does not authorize payment of Mr. Fontaine's towing expenses. Pursuant to our decision the agency had to spend appropriated funds for parking to avoid significant impairment of the agency's operational efficiency. The FAA met that requirement and supplied adequate parking facilities, but by doing so the FAA can not be held to have agreed to be liable for the reasonable risks attendant to parking at the airports.

Under the circumstances of this case, we find no lawful authority for FAA to use appropriated funds to reimburse Mr. Fontaine for the towing expenses he incurred. Accordingly, we uphold our Claims Division settlement denying the claim for towing expenses.

Harry R. Van Cleve
For The Comptroller General
of the United States