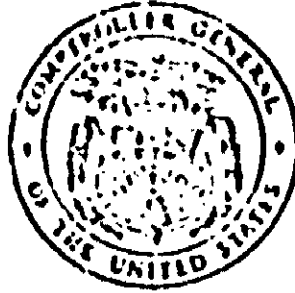


DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20540

FILE: B-205352

DATE: June 10, 1982

MATTER OF: Thomas J. King - Reemployment from
international organization - Real estate
expenses

DIGEST:

Civilian employee of Department of Navy was separated from his position in San Francisco for transfer to international organization, i.e., United Nations, in Geneva, Switzerland, under 5 U.S.C. § 3581, et seq. Incident to his reemployment with the Department of the Navy pursuant to 5 U.S.C. § 3582(b), he was transferred from San Francisco to Kittery, Maine. Employee may be reimbursed for his relocation expenses under 5 U.S.C. §§ 5724 and 5724a and specifically for expenses of his residence purchase in Maine. See Patrick V. Vail, B-196294, June 1, 1981.

The Navy Accounting and Finance Center, Washington, D.C., has appealed from that part of our Claims Group's Settlement Certificate, Z-2805179, November 5, 1979, which authorized reimbursement of certain real estate expenses incurred by Mr. Thomas J. King, a civilian employee of the Navy, incident to his transfer in 1976 from California to Maine. For the reasons set forth below, we hold that those real estate expenses may be reimbursed.

Mr. King was an employee of the Naval Ship Systems Command, San Francisco, California, on January 31, 1972, at which time he transferred to a position with the United Nations (U.N.) in Geneva, Switzerland, for a period not to exceed October 31, 1976. Prior to the completion of his scheduled term with the U.N., Mr. King sought reemployment with the Navy under 5 U.S.C. § 3582(b) (1976). Although Mr. King's previous position in San Francisco was unavailable at the time of his request for reemployment, he was offered a position, which he accepted, with the Portsmouth Naval Shipyard in Kittery, Maine.

On November 5, 1979, our Claims Group decided, in part, that Mr. King was entitled to reimbursement for travel expenses for himself and his family from California to Maine, household goods transportation

B-205352

expenses, expenses for temporary quarters, and expenses incurred in connection with the purchase of a residence at his new duty station, i.e., Kittery. Mr. King did not sell a residence in connection with his move from California to Maine, but our Claims Group concluded that even if he had, he would not have been entitled to reimbursement for the expenses incurred incident to the sale. This conclusion was based on our decision B-166678, May 23, 1969, which closely resembled Mr. King's case.

Following a review of the record and the applicable laws and regulations, we are in accord with the conclusions of our Claims Group in every respect, save one. Contrary to our Claims Group, we would conclude that Mr. King would be entitled to reimbursement for the expenses incurred incident to the sale of a residence, if he had sold a residence in connection with his relocation from California to Maine.

This conclusion is based upon a decision rendered after our Claims Group issued its settlement certificate to Mr. King. In our decision Patrick V. Vail, B-196294, June 1, 1981, we overruled, in part, our decision in B-166678, supra, to the extent that it concerned the reimbursement of expenses incurred in the sale of an employee's residence. We held that a Federal employee who transfers to an international organization under the provisions 5 U.S.C. §§ 3581 et seq., may be entitled to reimbursement for expenses of selling a residence upon separation from the international organization, and reemployment by the Federal Government, if he is not reemployed at his former duty station. In so ruling, we distinguished between Federal employees who are transferred overseas by a Government agency and later transferred back to the United States, and those Federal employees who transfer to an international organization and are later reemployed by their former Federal agency. The former remain employees of the Federal Government when they are relocated overseas, and they may not be reimbursed for expenses incurred in selling old residences or in buying new residences, because under 5 U.S.C. § 5724a(a)(4), both the old and new duty stations must be located within the United States.

B-205352

The latter--those employees who transfer to international organizations and are later reemployed--become employees of the international organization who retain certain reemployment rights with their former Federal agency.

In Vail we reasoned that:

"Although section 3582(b) [5 U.S.C.] does not specifically require reemployment at the individual old's duty station, we believe that Congress intended former employees to be reemployed whenever possible at the locations from which they transferred to the international organization. Therefore, in the event that an agency is unable to reemploy the person at the same duty station, we concluded [sic] that the person is entitled, upon reemployment at a different location, to be reimbursed the travel and relocation expenses authorized under 5 U.S.C. § 5724 and § 5724a. The prohibition against reimbursement of residence transaction expenses on overseas transfers in § 5724a(a)(4), therefore, does not apply to a person reemployed after separation from an international organization because he does not have an 'official station' overseas within the meaning of that section."

Thus, with respect to his transfer from California to Maine, Mr. King's entitlements to change of station benefits are governed by those provisions of 5 U.S.C. §§ 5724 and 5724a, and the implementing regulations of volume 2 of the Joint Travel Regulations (2 JTR) as they apply to employees transferred within the conterminous United States. His entitlements are not governed by those provisions of 5 U.S.C. § 5722, which apply to Government employees who transfer to or from a Government position overseas.

Thus, in light of our decision in Vail, we conclude that the decision in B-194423, March 31, 1980, does not apply to the case of Mr. King as was suggested by the Navy

B-205352

Accounting and Finance Center in its letter of March 24, 1981, requesting reconsideration of our Claims Group's Settlement Certificate. That case applies only to Federal employees who are transferred to or from an overseas post while remaining in the employ of the Federal Government.

Chapter 14, 2 JTR entitled "Allowances for Expenses Incurred in Connection With Real Estate Transactions and Unexpired Lease" applies to Mr. King's claim. He is entitled to real estate expenses in connection with the sale and purchase of a residence so long as he satisfies the conditions and limitations enumerated in 2 JTR paras. C14000 - C14002 and C14004, except that it would be unnecessary for him to prove that a home in California, if he claimed selling expenses, had been his "actual residence" as required by 2 JTR para. C14000-1(3). Vail, B-196294, supra.

Finally, we note that in its letter of March 24, 1981, the Navy Accounting and Finance Center stated:

"* * * we are aware that the employee [Mr. Thomas J. King] may be entitled to additional expenses incurred not to exceed direct travel from Geneva, Switzerland to Kittery, Maine * * *."

This statement is incorrect and indicates a misunderstanding by the Finance Center of our Claims Group's settlement of November 5, 1979. It was explicitly stated by our Claims Group that,

"[n]o entitlement exists to reimbursement by the Navy for travel expenses incurred by the King family in returning to California after serving with the United Nations.

"* * * Mr. King should be reimbursed by your agency for relocation expenses in connection with the move from California to Maine. * * * He may also be paid travel expenses incurred by himself and his family, transportation of household goods, and TOSE according to regulations governing transfers within the United States." (Emphasis supplied.)

It was not intended that Mr. King's reimbursement for travel expenses should "not exceed direct travel from Geneva, Switzerland to Kittery, Maine." Instead it was intended that Mr. King would be fully reimbursed for all allowable travel expenses that any other civilian employee of the Navy would be entitled to upon being relocated from California to Maine. His prior employment by the United Nations and the expense of his travel from Geneva to the United States have no bearing on the amount of travel expenses to which he is entitled now. The expenses for travel between Geneva and the United States are the responsibility of Mr. King and the U.N., not the Navy.

Accordingly, for the reasons stated above, the Navy's appeal from our Claims Group's settlement is denied and Mr. King is entitled to the relocation expenses authorized under 5 U.S.C. §§ 5724 and 5724a, including the expenses of purchasing a residence in Maine.

for Milton J. Aowlan
Comptroller General
of the United States