

DECISION



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

Bureau 119243

FILE: B-205811

DATE: August 18, 1982

MATTER OF: Panama Canal Commission

DIGEST: There is no authority for the Panama Canal Commission to pay the difference between the cost of shipping an employee's privately owned vehicle on a Military Sealift Command vessel and the lower cost previously charged employees for shipment on a Commission operated vessel (now decommissioned) on grounds that Panama Canal Treaty of 1977 and Panama Canal Act of 1979 state that terms and conditions of employment should not be less favorable than before the Treaty entered into force. Terms and conditions of employment with regard to transportation benefits are those entitlements recognized by statute and do not extend to the privilege of a permissive shipment of personal belongings on a space-available basis.

The Administrator of the Panama Canal Commission has requested our decision as to whether the Commission may waive a portion of its claim against a Commission employee for the cost of shipping the employee's privately owned vehicle, under the Commission's auspices, aboard a Military Sealift Command vessel from New Orleans, Louisiana, to the Republic of Panama. The employee had originally shipped his vehicle to New Orleans aboard the Commission operated S/S CRISTOBAL. The amount in question is the difference between the cost charged the employee for return shipment of the vehicle aboard a Sealift Command vessel (\$2,006.45) and the rate applicable had the vehicle been returned aboard the CRISTOBAL (\$355.50). The Sealift Command vessel was used because the CRISTOBAL was decommissioned while the employee was in the United States. The shipment in question here was not for an authorized replacement vehicle and was not related to recruitment or repatriation travel or transportation authorized under 5 U.S.C. § 5724a or applicable Federal Travel Regulations. Instead, it was for the purpose of returning the vehicle to Panama from the United States where the employee had shipped it for his use while on leave.

The circumstances that give rise to this request are as follows. Between October 1979 and September 1981 the

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Panama Canal Commission, an appropriated fund agency in the executive branch of the United States Government, operated its own cargo vessel, the S/S CRISTOBAL, on a regular schedule between New Orleans, Louisiana, and Cristobal, Panama. Prior to October 1979, the ship was owned and operated by the Commission's predecessor, the Panama Canal Company, a corporate agency and instrumentality of the United States (2 C.Z.C. § 61, 76A Stat. 8) which was disestablished by the Panama Canal Act of 1979, Public Law 96-70 93 Stat. 452, on October 1, 1979.

In addition to Commission cargo, the CRISTOBAL carried official cargo for other United States Government agencies operating in the Republic of Panama. On a space-available basis Commission employees also were authorized to ship personal cargo aboard the CRISTOBAL at their own expense. Employees were billed for such shipments at a special rate which did not recover the full costs to the agency for the cargo service provided to the employees.

After October 1, 1979, due to changes brought about by the Panama Canal Treaty of 1977 between the United States and the Republic of Panama, and agreements related thereto, the volume of cargo destined for the Canal declined to the point where the Commission's supervisory board decided that continued operation of the CRISTOBAL no longer could be justified. The ship, therefore, was decommissioned in September 1981 and the Commission began shipping its cargo on vessels contracted for by the Military Sealift Command.

The interservice agreement between the Commission and the Sealift Command permits agency employees to ship personal cargo (e.g., privately owned vehicles, pleasure boats, and household goods) under Commission auspices aboard Sealift Command vessels. The Commission is billed by the Command and then obtains reimbursement from its employees. Since September 21, 1981, when the Commission began using these vessels, employees have been billed on a cost-recovery basis. This has resulted in a marked increase in rates and created the situation involved here.

As is indicated above, a Commission employee shipped his vehicle space-available aboard the CRISTOBAL at personal expense to the United States to use the vehicle

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while on leave in the summer of 1981. He was billed at the "employee rate" of \$355.50. While the employee was on leave, the CRISTOBAL was decommissioned and the employee used a Sealift Command vessel for the return shipment of his vehicle. He was billed on a cost-recovery basis in the amount of \$2,006.45 for the return transportation. The employee has requested that the difference between the cost of his original shipment and the cost of the return shipment be waived.

The general waiver statute applicable to Federal employees is found at 5 U.S.C. § 5584 and permits waiver of amounts "arising out of an erroneous payment of pay or allowances, other than travel and transportation expenses and allowances and relocation expenses under section 5724a" of title 5. The matter on which waiver is requested in this case does not appear to have arisen out of an erroneous payment and it is a transportation expense. Accordingly, the waiver statute is not applicable to this situation.

The administrator asks whether it is possible to continue to authorize employees to ship their vehicles at the lower rate under the provisions of the Panama Canal Treaty of 1977 as implemented by the Panama Canal Act of 1979, Pub. L. 96-70, 93 Stat. 452. Paragraph 2(b) of Article X of the Treaty states that "terms and conditions of employment to be established [by the United States for the Commission] will in general be no less favorable to persons already employed by the Panama Canal Company or Canal Zone Government prior to entry into force of this treaty, than those in effect immediately prior to that date." The terms and conditions of employment referred to in paragraph 2(b) of Article X of the Treaty are specified in section 1231 of the Act, 93 Stat. 468, to include "transportation and repatriation benefits."

In this regard the Administrator states:

"The employee in question was employed by the Panama Canal Company prior to October 1, 1979 and is now employed by the Commission. Under the aforementioned treaty and statutory provisions, he, therefore, is entitled to the same transportation benefits after October 1, 1979, with the Commission as he enjoyed before that date with the Company. Given that proposition, it could be contended that he

is entitled to continue shipping personal cargo under agency auspices at a special, reduced employee rate. If that is the case, the agency could waive a portion of its claim against the employee, and others similarly situated."

"The matter is not entirely free from doubt, however, because the law and regulations governing travel and transportation in the Federal service generally do not address any type of shipments with which we are here concerned. See Chapter 57 of Title 5, U.S. Code and Chapter 2 of the Federal Travel Regulations. Stated in its simplest terms, then, the issue appears to be whether Article X of the 1977 Treaty with Panama and section 1231 of Public Law 96-70 continued the Canal agency's authority to extend to its employees certain travel and transportation benefits which are not contemplated by other existing law and regulations."

The transportation of employees' vehicles to the United States for use while they were on leave at a low rate on the CRISTOBAL was in the nature of a privilege which could be extended to the employees, apparently with no direct cost to the Commission as long as the CRISTOBAL was being operated. The "subsidized rate" for employee shipments was a matter of allocating the cost of operating the vessel and involved no direct payment by the Commission. We have examined the relevant provisions of the Panama Canal Act of 1979 and its legislative history and find nothing to suggest that the "employee benefits" specified in the Act were intended to include continuation of such a privilege by the Commission, especially since it would require payments by the Commission for the transportation of employees' vehicles on other vessels after it found it could no longer justify operating the CRISTOBAL. Instead, it appears that the benefits intended to be continued were similar to those granted to Federal employees by existing statutes. The employee benefits set forth in section 1231 of the Act are:

- (A) rates of basic pay
- (B) tropical differential


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- (C) premium pay and night differential
- (D) reinstatement and restoration rights
- (E) injury and death compensation benefits
- (F) leave and travel
- (G) transportation and repatriation benefits
- (H) group health and life insurance
- (I) reduction-in-force rights
- (J) an employee grievance system, and the right to appeal adverse and disciplinary actions and position classification actions
- (K) veterans' preference eligibility
- (L) holidays
- (M) saved pay provisions, and
- (N) severance pay benefits.

These benefits are similar to those traditionally authorized by statute for other Federal employees. A discussion of these employee benefits in S. Rep. No. 330, 96th Cong., 1st Sess. 58 (1979), gives no indication that the employee benefits were intended to go beyond those generally recognized benefits extended to Federal employees. In fact the Act specifically makes many of the named benefits applicable to Commission employees in the same manner as they are applicable to other Federal employees by changes to the United States Code. See for example, section 1231(d), section 3302(c), and section 1224 of the Panama Canal Act. Accordingly, we find that "transportation and repatriation" as used in section 1231 of the Act refers to transportation as authorized by chapter 57 of title 5 and governed by the Federal Travel Regulations. Thus, there is no authority under section 1231 to transport or subsidize the transportation of an employee's vehicle for his personal use while on leave.

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As is indicated above, the type of benefit which this employee used in originally transporting his automobile to the United States was in the nature of a privilege not an entitlement. It was contingent on a number of factors including the availability of unused space on a vessel previously operated by the Commission and involved no direct expenditure of Commission funds. As a result of this contingency, no right to shipment can vest in the employee. Matter of Ogburn, B-183408, May 3, 1976. Further, since there was no statutory entitlement to ship a vehicle for personal use under these circumstances prior to the 1977 Treaty or the 1979 Act, there is no authority under section 1231 for payment of the additional costs incurred by the employee.

for 
Comptroller General
of the United States