

DECISION



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

FILE: B-210600

DATE: September 18, 1984

MATTER OF: Northwest Airlines, Inc.

DIGEST:

1. Under the Federal Claims Collection Act, a government claim for the value of unused airline tickets may be satisfied by means of administrative setoff within 10 years after accrual of the claim.
2. Where a calculation of the amount of unreimbursed ticket refunds due the government from an airline is based solely on amounts owed by other airlines and the subject airline's estimated revenues, the government has not established a certain or liquidated amount owed as required under the regulations and collection of the amount thus may not be accomplished by administrative set-off.

Northwest Airlines, Inc. requests review of a settlement action taken by the General Services Administration (GSA) in the form of a Certificate of Indebtedness dated November 9, 1982. The Certificate advised of GSA's determination that Northwest owed the government \$283,780, and that this amount would be collected by setoff from sums otherwise due Northwest from the government. The setoff amount represents GSA's calculation of the value of unused transportation (i.e., unused or downgraded airline tickets) purchased with Government Travel Requests (GTRs) between September 1, 1975 and June 30, 1978. GSA determined the government was entitled to refunds for these unused services. Northwest maintains that this setoff action is improper and asks that GSA be directed to stop withholding these funds and to refund any amount already setoff. We sustain the claim.

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Specific procedures for recovering refunds for unused airline tickets are set forth in 41 C.F.R. § 101-41.210, et seq. Under these procedures, a government traveler submits any unused or partially used ticket, along with the GTR (which is issued by the agency to the traveler as the means of purchasing airline tickets), to his agency. (Northwest states that alternatively, it may furnish the traveler a refund form in exchange for the ticket and that this form then is turned over to the agency.) The agency uses either the ticket/GTR or the refund form to complete Standard Form 1170 ("Redemption of Unused tickets"), and submits the form to the carrier for the refund.

GSA became aware in 1980 that some agencies had not followed the refund procedures and that the government thus had not been reimbursed for all unused travel between 1975 and 1981. By letter of September 25, 1981, GSA demanded that Northwest refund all amounts due for unused travel during that 6-year period notwithstanding the government's failure to submit the standard forms. Northwest refunded \$418,561 based on a review of its own records. Since these records went back only 3 years, however, Northwest advised GSA it would not refund amounts for the period September 1, 1975 to June 30, 1978 without some form of government documentation as to precisely the amount of refunds due. As GSA also was without records for this 3-year period, it determined the amount due from Northwest by: (1) estimating the value of government travel on Northwest from 1975 to 1978 by calculating three other airlines' ratio of government travel revenue to total passenger revenue and then multiplying this ratio by Northwest's total passenger revenue; (2) calculating the ratio of the other airlines' value of unused tickets to their government travel revenue; and (3) applying this unused ticket ratio to Northwest's estimated government travel revenue for the 3 years. This calculation yielded the sum of \$283,780. When Northwest refused to remit this amount, GSA initiated the setoff action in issue.

Northwest challenges the setoff on two grounds. First, it argues that the time limitation on recovery of unused ticket refunds has run and that recovery thus now is barred. Northwest cites as principal support for its

position 31 U.S.C. § 3726 (1982) (formerly 31 U.S.C. § 244), which establishes a time limitation of 3 years for applying setoff to recover amounts paid to a carrier in excess of the rate allowed under a tariff on file with the Civil Aeronautics Board (CAB). It also cites its tariff and applicable transportation regulations as imposing a 3-year limitation. Northwest further challenges the setoff on the ground that GSA has not proven with sufficient certainty either that refunds are in fact due for the 3 years, or the amount of the refunds due.

The courts and our Office have held that the government has the same common law right "which belongs to every creditor, to apply the unappropriated monies of his debtor in his hands, in extinguishment of the debts due him." United States v. Munsey Trust Co., 332 U.S. 234 (1947); H.C. Wear & Associates, Inc., B-196064, Nov. 18, 1980, 80-2 CPD ¶ 362. The Debt Collection Act of 1982, 31 U.S.C. § 3711, et seq., provides at section 3716(c) that administrative setoff cannot be used to collect claims that have been outstanding more than 10 years, or are specifically covered by a different statute governing the use of administrative setoff. Since GSA's claim, initiated in 1981, was for refunds going back only 6 years, its use of setoff here is not barred by the 10-year limitation.^{1/} See The Department of Labor--Request for Advance Decision, B-211213, April 21, 1983, 83-1 CPD ¶ 429.

Neither, we think, is GSA's claim barred by the statute on which Northwest relies, 31 U.S.C. § 3726, which limits only setoffs to recover charges in excess of tariff rates. Since the rates charged the government are not the basis for seeking the refunds, they do not, in our opinion, fall under this statutory limitation. See B-153862, June 1, 1982. We similarly find that neither Northwest's tariff nor the transportation

^{1/} GSA actually argues that the 6-year statute of limitations for contract actions should apply here. 28 U.S.C. § 2415. This argument ignores the specific limitation on use of setoff in 31 U.S.C. § 3716(c).

regulations have the effect of restricting the government's use of administrative setoff to recover refunds for unused airline tickets.

We conclude that GSA's use of setoff to recover unused ticket refunds for the period September 1975 to June 1978 is not time barred. At the same time, however, we conclude that GSA has not established the amount of refunds due with the certainty required for collecting debts by setoff.


The Federal Claims Collection Standards, the regulations implementing the Debt Collection Act, direct agencies to collect by setoff "claims which are liquidated or certain in amount." 4 C.F.R. § 102.3 (1984). We have specifically held that calculation of the amount of overpayments under a contract solely by extrapolation of sample data does not satisfy the "liquidated or certain" requirement. Artech Corporation, 56 Comp. Gen. 963 (1977), 77-2 CPD ¶ 207. We find this decision controlling in the situation here. While it is not our position that formulae derived from statistical data can not be used to calculate the amount of a claim, we believe GSA's calculation of the amount due from Northwest based solely on ratios developed from the experience of other airlines resulted in a figure too conjectural in nature to be considered certain or liquidated. GSA's formula depends on a presumption that Northwest and the other airlines hold precisely the same amount of unreimbursed refunds as a percentage of government travel revenue. The record contains no evidence that this is a valid presumption. Because the ratios used by GSA are not based on Northwest's own unused ticket experience, GSA's calculations are less certain than the method in Artech, where an actual statistical sample of the overpayments was multiplied out to arrive at the total debt.

GSA cites numerous court opinions standing for the proposition that damages need not be proved with certainty in every instance in order to recover. It is not our intent to rule otherwise. We hold here only that the calculation used by GSA did not establish the amount of the refunds due with the level of certainty called for under regulations governing the use of setoff.

B-210600

We conclude that GSA's use of setoff based on this formula is impermissible, and reverse its settlement action. GSA should discontinue its setoff against monies due Northwest and refund to Northwest any amounts already withheld. Northwest requests interest on the amounts withheld by GSA. Such interest is not recoverable, however, where, as here, the government has not statutorily or contractually agreed to be liable for interest. See United States v. Louisiana Hotel Co., 329 U.S. 585 (1980); 45 Comp. Gen. 169 (1965).

The claim is sustained.

for 
Comptroller General
of the United States