

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**

WASHINGTON, D. C. 20548

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FILE: B-186474

DATE: JUN 15 1976

MATTER OF: Reimbursement of Government Driver for Voluntary
Payment of Accident Claim

DIGEST: Although Federal Tort Claims Act does not specifically authorize reimbursement of Government employees for amounts paid from personal funds in satisfaction of tort claims cognizable by Government under Act, exception can be made under unusual circumstances. When it has been determined that award would have been made in amount stated if claim had been presented, and when a full release of all claims against United States has been obtained from injured party, reimbursement may be authorized.

Pursuant to 31 U.S.C. § 82d, we have been requested by an authorized certifying officer of the Department of the Interior, Mining Enforcement and Safety Administration, to render an advance decision as to the propriety of payment of a claim in the amount of \$132.53 submitted by Mr. Steve F. Yurkovich, Coal Mine Inspector, Mining Enforcement and Safety Administration, U.S. Department of the Interior.

According to the certifying officer, Mr. Yurkovich was in an accident while operating a Government vehicle in the scope of his employment. In the accident, a vehicle operated by Ms. Della Tedrow was damaged. The Regional Solicitor, Philadelphia, Department of the Interior, opined that the Government employee was negligent, and that if a tort claim had been presented by Ms. Tedrow, an award in the said amount would have been made by the Department. In fact, however, Mr. Yurkovich paid Ms. Tedrow for the damage from his personal funds, in the amount of \$132.53. He has obtained a release of all claims against the United States arising from the accident from Ms. Tedrow and now seeks reimbursement for the amount paid by him.

The Federal Tort Claims Act, as amended, 28 U.S.C. § 2671-80 (1970) provides for administrative settlement of tort claims arising in the United States from the negligent or wrongful act or omission of a Government employee while acting within the scope of his office or employment. 28 U.S.C. § 2672. The injured party may file a claim under the provisions of the Act, or may proceed against the employee. However, should the injured party elect to proceed against the United States under the act for damage to property resulting from the operation by any employee of the Government of any motor vehicle, while

acting in the scope of his employment, 28 U.S.C. § 2679(b) makes the claim or action against the United States exclusive of any remedy against the employee. The purpose of 28 U.S.C. § 2679(b) is to protect employees of the Government from personal liability for torts committed by them involving the operation of motor vehicles, while acting within the scope of their employment. Henderson v. United States, 429 F.2d 583 (10th Cir., 1970).

Nothing in the Federal Tort Claims Act specifically authorizes reimbursement of a Government employee who voluntarily pays a tort claim cognizable by the Government under the act. It is well settled that no employee of the Government can create a valid claim in his favor by paying an obligation of the United States from his own funds. 33 Comp. Gen. 20 (1953); 13 id. 424 (1938). However, some exceptions have been recognized.

Reimbursements have been permitted where personal funds were expended in the Government's interest under urgent and unforeseen emergencies (33 Comp. Gen. 20 (1953)). Reimbursement has been permitted where the expenditure was made, in a foreign country, in order to facilitate the conduct of the Government's business in circumstances which could be said to be an unforeseen emergency--to avoid the possibility of detention of the driver by local police and to obtain the release of the impounded Government vehicle. B-177331, December 14, 1972.

We said in B-177331 that payment of claims by employees from their personal funds:

"* * * in expectation of reimbursement from the Government should * * * be very strongly discouraged, and should never, under any circumstances, be condoned in the case of tort claims arising in the United States. * * *"

The basis for that caveat concerning claims arising in the United States was that payment by an employee of a claim, with subsequent reimbursement to him by the United States, would render the statutory release provision, 28 U.S.C. § 2672, ineffective. 28 U.S.C. § 2672 provides in pertinent part:

"The acceptance by the claimant of any such award, compromise, or settlement [by the United States] shall be final and conclusive on the claimant, and shall constitute a complete release of any claim against the United States and against the employee of the government whose act or omission gave rise to the claim, by reason of the same subject matter."

Where award, compromise, or settlement is not made by the United States, the claimant is not barred by section 2672 from assertion of a claim against the United States arising out of the same incident. Such situations must be avoided.

In the present case, however, the claimant has executed a release which protects the United States from any further claims. The release serves the same function as the statutory release provision in 28 U.S.C. § 2672. Since the purpose of the Federal Tort Claims Act is to protect employees of the Government from personal liability for torts committed by them in the scope of their employment, and since the United States has been formally released from all liability, an exception can be made in this instance and the reimbursement to Mr. Yurkovich approved, based on the administrative determination that the claim would have been paid--and in the amount indicated--if it had been presented in the proper manner as contemplated by the cited statutes.

This decision is not to be considered as a precedent for similar requests for reimbursement. Voluntary payments of Government obligations from personal funds must be very strongly discouraged, and the general rule remains that reimbursement will not be authorized.

R.F. KELLER

Action Comptroller General
of the United States