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DECISION

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

FILE: B-190186

DATE: MAR 6 1978

MATTER OF: Federal Aviation Administration Community Club-Application of Military Personnel and Civilian Employees' Claims Act of 1964

DIGEST: Claim submitted by Federal Aviation Administration employees' Community Club for damage to recreational equipment by typhoon which struck clubhouse in Guam is not cognizable under Military Personnel and Civilian Employees' Claims Act of 1964, as amended, 31 U.S.C. §§ 240-243 (1970 Supp. IV, 1974). Employee association is not a proper claimant under the Act.

Mr. Roy C. Kastner, an authorized certifying officer of the United States Department of Transportation (DOT) asked whether a claim of the Federal Aviation Administration (FAA) Community Club of Finegayan, Guam, for wind and water damage to its recreational items of property is cognizable under the provisions of the Military Personnel and Civilian Employees' Claims Act of 1964, as amended, 31 U.S.C. §§ 240-243 (1970 and Supp. IV, 1974).

According to the certifying officer, the FAA Community Club is a social, welfare, and recreational association for the benefit of FAA employees and their families on the United States Territory of Guam. The club is located in a Government building adjacent to FAA family living quarters in Finegayan, Guam. On May 21, 1976, various recreational items in the clubhouse such as ping pong tables, stereos, and pool tables, which had been donated by the club members or purchased with club funds, were damaged when a typhoon struck the island. In accordance with the DOT procedure for claims under the 1964 Act, (DOT Order 2770.9), an "Employee Claim for Loss or Damage To Personal Property" was submitted by Mr. Ron Larsen, an FAA employee and officer of the club.

The Military Personnel and Civilian Employees' Claims Act of 1964, which provides the statutory basis for Mr. Larsen's claim, authorizes the head of an agency or his designee to settle and pay claims up to $13,000 for damage or loss of personal property incident to an employee's service.

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We are advised in the submission that Mr. [illegible]'s claim was duly investigated and recommended for payment in the amount of $2,[illegible]. The claim, however, was denied by the Regional Counsel, APO-7, pending a determination by this Office that the claim is cognizable under the 1964 Act. At his request, the certifying officer submitted that question for an advance decision.

As pointed out in a September 7, 1977, letter to the Resident Director of the FAA Community Club by the Regional Counsel:

> "The sine qua non of claims allowability under P. L. 88-558 [the Military Personnel and Civilian Employees' Claims Act of 1964] is that the claimant be 'a civilian officer or employee of that agency * * *.' The FAA Community Club does not appear to meet that basic eligibility requirement."

The 1964 Act contains a provision, at 31 U.S.C. § 242, which states:

> "Notwithstanding any other provision of law, the settlement of a claim under sections 240 to 243 of this title is final and conclusive."

It is not, therefore, within the jurisdiction of our Office to consider the merits of claims for damage to, or loss of, the personal property of employees of the Department of Transportation. In the absence of any overall policies prescribed by the President pursuant to 31 U.S.C. § 241(b)(1), such claims are for consideration under the regulations of the employing agency. B-187913, February 9, 1977. However, we have been asked a threshold question—whether the claim in question is cognizable under the statute at all.

Specifically, the issue is whether the FAA Community Club, as an independent entity, is a proper claimant under the Military Personnel and Civilian Employees' Claims Act of 1964. We do not believe that Congress intended that the claims of employee associations for loss or damage to their property fall within the purview of the Act, and we therefore hold that the claim of the [illegible] club, filed on its behalf by one of its officers, is not cognizable under the statute. The purpose of the Act is to compensate a Government employee who suffers detriment as a result of subjecting his personal property to a risk of loss "incident to his service" with the United States. 31 U.S.C. § 241(b)(1). However, none of the property lost in the typhoon belonged to any employee of the FAA.

B-[illegible]

None of the indicia of individual ownership appeared to be present. The bylaws indicate, for example, that if a club member leaves [illegible] or drops his membership in the club for any other reason, he has no right of ownership of any of the club equipment and materials. Even at dissolution of the club, which is the only time an individual has any right at all to separate ownership of the club property "residual assets after payment of all debts will be distributed among the members in good standing on the date of dissolution." (Bylaw [illegible]). Therefore, we believe that no individual employee possesses any property interest which he has put at risk in the service of the United States. In other words, the club's loss cannot be equated with a personal property loss suffered by an employee individually. We do not believe that the Act was intended to protect undivided interests in property by a group of employees collectively, nor does it cover the property interests of an entity such as a club or organization, even though the membership is made up entirely of Government employees. Therefore, we agree with the Regional Counsel that the claim of the Community Club is not cognizable under the Act.

R. F. KELLER

Deputy Comptroller General
of the United States