

DECISION

19043
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-201771

DATE: August 6, 1981

MATTER OF: James F. Brown - Relocation Expenses

- DIGEST:
1. Under the Postal Reorganization Act of 1970, which established the independent Postal Service and excluded the Postal Service from the definition of an "executive agency" for purposes of title 5 of the United States Code, former Postal Service employees who obtain new positions with executive agencies must be considered new agency employees who are not eligible for reimbursement of the relocation expenses authorized by 5 U.S.C. 5724 and 5724a for agency employees transferred from one official station or agency to another for permanent duty. 58 Comp. Gen. 132 (1978).
 2. Former Postal Service employee who transferred to new position in Florida with the Federal Aviation Administration (FAA) must refund the relocation expenses erroneously paid incident to his move from Georgia to Florida, notwithstanding that FAA officials misadvised him about his entitlements. The United States is not bound by the mistakes of its agents or officials, and persons receiving money erroneously paid by a Government agency or official acquire no right to the money but are instead liable to make restitution. 59 Comp. Gen. 28 (1979).

Mr. James F. Brown requests reconsideration of the determinations made by our Claims Division on June 12, 1980, that (1) he became lawfully indebted to the United States in the amount of \$4,830.39 as the result of his receipt of erroneously paid relocation allowances when he was employed by the Department of Transportation in 1976; and (2) he may not be relieved of his obligation to refund those erroneous payments. In view of the facts presented, and the applicable provisions of law, we sustain our Claims Division's determinations in this matter.

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By letter dated June 8, 1976, Mr. Brown was advised of his selection for the position of electronics technician at Jacksonville International Airport, Florida, with the Federal Aviation Administration (FAA). At that time Mr. Brown was an employee of the Postal Service at Woodstock, Georgia. FAA officials advised Mr. Brown to report to Jacksonville on June 28, 1976, and that the FAA would pay the expenses of his move from Georgia to Florida. The relocation expenses paid to Mr. Brown or reimbursed on his behalf incident to that move totaled \$4,830.39.

Several years later in a letter dated March 20, 1980, the FAA informed Mr. Brown that a Postal Service employee transferred to a position with an executive agency of the United States Government is ineligible for relocation allowances. He was informed that he erroneously had been given relocation allowances in 1976 when he left the Postal Service in Georgia to accept an appointment in Florida with the FAA, and that he was liable to refund those allowances. Mr. Brown did not promptly remit the amount claimed, and in April 1980 the FAA commenced collection action by deducting \$50 from each of his biweekly paychecks.

In communications with our Office, Mr. Brown expressed dissatisfaction with the way he had been treated. He indicated that when he was appointed to his position with the FAA in 1976, he relied in good faith on the assurances made to him that the FAA would pay the expenses of his move from Georgia to Florida. He said that because he was advised that the FAA would cover the costs of moving his household goods on a Government Bill of Lading and the realtor's fee for selling his home, he agreed to do it "their" way. If he had known he was to be held personally responsible for the relocation expenses, he would have handled things much differently. He claims that he would have moved his own furniture and sold his home without using a realtor in order to minimize his costs. Consequently, he does not feel that he is in any way responsible to repay the costs incurred or reimbursed for his move. Furthermore, he feels it was improper for money to be withheld from his pay without his permission as a means of collecting his alleged debt.

However, as previously indicated, by settlement certificate issued on June 20, 1980, our Claims Division determined

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that Mr. Brown was liable to repay those expenses incurred or reimbursed by the Government for his 1976 move from Georgia to Florida, and that the collection action to liquidate his resulting debt could not be waived. Mr. Brown has since questioned the correctness of those determinations.

Provisions of law authorizing executive agencies of the Government to pay the travel, transportation, and relocation expenses of an agency employee transferred from one official station or agency to another for permanent duty, are contained in sections 5724 and 5724a of title 5, United States Code. In Matter of Postal Service Employees, 58 Comp. Gen. 132 (1978), and Matter of James A. Schultz, 59 Comp. Gen. 28 (1979), we held that a person working for the Postal Service who accepts an appointment to a new position with an executive agency is not eligible for reimbursement of relocation expenses under 5 U.S.C. 5724 and 5724a. Essentially, we noted that 5 U.S.C. 104 and 2105, as amended by the Postal Reorganization Act of 1970, Public Law 91-375, 6(c)(2) and (4), 84 Stat. 775, exclude the Postal Service from the definition of "executive agency" and direct that an employee of the Postal Service is not to be deemed an "employee" for purposes of title 5 of the United States Code except as otherwise expressly provided by law. We also noted that 5 U.S.C. 5721 specifically precludes Postal Service workers from being regarded as "agency employees" for purposes of 5 U.S.C. 5724 and 5724a. We therefore had no alternative but to conclude that 5 U.S.C. 5724 and 5724a have no application to persons working for the Postal Service who obtain positions with executive agencies. Rather, we concluded that those persons must be considered as analogous to new agency employees who are not entitled to the relocation allowances authorized for transferred employees.

In the above-cited decisions we recognized that there had been certain misunderstandings concerning the effects of the Postal Reorganization Act of 1970, which created the new independent Postal Service. As a result, many former Postal Service employees who obtained employment with executive agencies after 1970, like Mr. Brown, received erroneous advice concerning their relocation entitlements and erroneously were paid relocation allowances. We held that they were nevertheless obligated to refund the erroneous payments. That conclusion was required under the fundamental rule of law that persons

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receiving money erroneously paid by a Government agency or official acquire no right to the money and are liable to make restitution. In that connection, we noted that although the prior misunderstanding or misinformation about the matter was regrettable, that alone could not furnish a proper basis for allowing the former Postal Service employees to keep the erroneous payments, since the Government is not responsible for or bound by the mistakes of its agents or officials, and no legal authority exists which might otherwise serve as a basis for waiving collection of the erroneous payments.

We recognize that Mr. Brown relied on the misinformation given to him concerning his entitlement to relocation benefits in incurring expenses incident to his move from Georgia to Florida that eventually amounted to \$4,830.39. However, as indicated above, the misleading advice he was given by agency officials may not serve as a lawful basis for relieving him of his liability, since the Government cannot legally be bound by their mistakes. Moreover, as indicated, no lawful authority exists which would otherwise permit Mr. Brown's refund obligation in the circumstances to be overlooked or waived. It is therefore our view that Mr. Brown became lawfully indebted to the United States in the amount of \$4,830.39 as the result of the relocation costs erroneously reimbursed or incurred on his behalf in 1976, and that he may not be relieved of his obligation to refund that amount.

With respect to the additional question raised regarding the propriety of the action taken by the FAA to collect Mr. Brown's debt through deductions from his pay without his permission, 5 U.S.C. 5514(a) provides in pertinent part that:

"(a) When the head of the agency concerned or his designee determines that an employee * * * is indebted to the United States because of an erroneous payment made by the agency to or on behalf of the individual, the amount of the indebtedness may be collected in monthly installments, or at officially established regular pay period intervals, by deduction in reasonable amounts from the current pay account of the individual. * * *"

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Under this provision the involuntary setoff of \$50 against Mr. Brown's salary each pay period to collect his debt is lawful and proper. Compare Matter of Collection of Debts, 58 Comp. Gen. 501 (1979).

Accordingly, the determinations made by our Claims Division in this matter are sustained.

A handwritten signature in black ink, reading "Milton J. Arolov". The signature is written in a cursive style with a large initial "M".

Acting Comptroller General
of the United States