

DECISION



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

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FILE: B-107243

DATE: SEP 16 1975

MATTER OF: Pegasus, the Flying Country Club - Retroactive
Charges for Reimbursable Inspection Services
Rendered by U.S. Customs Service

DIGEST:

1. In 1972 and 1973 flying club arranged aircraft flights and paid for required overtime services of Customs Service inspectional employees pursuant to 19 U.S.C. § 267. In 1974 Customs Service billed the club for additional overtime salary payments resulting from retroactive pay increases from October 1, 1972, to January 6, 1973. Parties in interest are not liable for the charges stemming from a retroactive pay increase since generally accounts billed and paid for at prevailing rates may not be subsequently reopened and statute does not explicitly require retroactive salary increases to be paid for by parties in interest. 31 Comp. Gen. 417 (1952) and B-107243, November 3, 1958, shall no longer be followed.
2. Comptroller General decision stating that parties in interest who use overtime services of Customs Service inspectional employees are not required to pay for employees' retroactive salary increase reflects a change in construction of the law. Therefore, the decision is not retroactive, but is effective from the date of its issuance. In the circumstances present in this case, our Office would offer no objection to collection action being terminated under 4 C.F.R. § 104.3.

This is an advance decision to the Secretary of the Treasury concerning the propriety of retroactive charges for reimbursable services rendered by the U.S. Customs Service to Pegasus, the Flying Country Club, St. Louis, Missouri, resulting from a retroactive pay increase for Federal employees.

The record shows that Pegasus, the Flying Country Club, is a club which organizes aircraft flights on behalf of its members. During the period October 11, 1972, to January 2, 1973, incident to the performance of some of these flights, Pegasus was required to use the inspectional services of the Customs Service. Under 19 U.S.C. § 267 (1970), parties in interest using such services are required to reimburse the Customs Service for overtime compensation paid to employees of the Customs Service in connection with

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such services at rates prescribed by the Secretary of the Treasury. Under standard procedures, Pegasus was billed for the reimbursable services and paid for them.

However, subsequent to these events, Customs Service officers and employees received a retroactive pay increase for the period from October 1, 1972, to January 6, 1973. This retroactive pay increase was a result of the court's decision in National Treasury Employees Union v. Nixon, 492 F.2d 587 (D.C. Cir. 1974). President Nixon had suspended a pay increase for Federal employees for the period from October 1, 1972, to January 6, 1973, but the court declared that the President had a constitutional duty to grant the pay increase. Thereafter, the President complied with the court's decision, and a retroactive pay increase was awarded Federal employees.

On October 1, 1974, the Customs Service sent out supplemental bills to the parties in interest who had used its services during October 1, 1972, through January 6, 1973, to recover the additional cost of the retroactive pay increases for the employees who had performed the inspectional services. Two supplemental bills were sent to Pegasus. The additional charges ranged from \$0.92 to \$4.92 per item, the total additional bills being \$24.64 and \$13.78.

Pegasus challenged these retroactive charges, contending that it is impossible for it to go back to each member for the small amount required. According to its chairman, Pegasus charges its passengers a fee which includes the cost of the customs services provided. Pegasus then closes its books on each flight when all charges have been paid. Pegasus argues that it is improper for the Customs Service to subsequently pass back retroactive pay increases when the services rendered were billed and paid for at the prescribed rate in effect at the time they were performed.

The Customs Service states that Pegasus was billed for the retroactive pay increase pursuant to our decision in 31 Comp. Gen. 417 (1952), which held that when Customs Service employees received a retroactive pay increase in 1951, the parties in interest for whom the Customs Service had performed reimbursable-type services during the period affected by the increase were liable to the Government for reimbursement of the additional amounts payable to the employees, whether or not the parties had

already paid or been billed for the services at the old rates. The above decision was based on the statute permitting the rendition of inspectional services at night or on Sundays and holidays upon the condition that the private interests requesting the services reimburse the United States for the extra compensation for overtime services payable to customs officers and employees performing such services. 19 U.S.C. § 267 (1970), supra. In decision B-107243, November 3, 1958, we affirmed the 1952 decision.

We note that, although 19 U.S.C. § 267, supra, provides that the parties in interest shall pay the extra compensation to the appropriate customs officer and he in turn shall pay it to the various customs officers and employees involved, the United States Government is ultimately obligated to pay the extra compensation under 19 U.S.C. § 267, supra, regardless of any nonpayment by the parties in interest. United States v. Myers, 320 U.S. 561 (1944). Therefore, the customs officers and employees involved will not suffer any loss if the parties in interest do not pay for retroactive pay increases. See 31 Comp. Gen. 417, 420, supra.

The rule stated in our decision 31 Comp. Gen. 417, supra, requiring additional billings for retroactive pay increases does not rely on any explicit statement in the law nor in the legislative history. Rather, the decision stated that no reason was suggested or apparent why the obligation of the parties in interest to reimburse the Government should not include the additional amounts payable to employees as retroactive pay increases. 31 Comp. Gen. 420, supra.

Upon further consideration of the matter, we find that billing the parties in interest, such as Pegasus, for retroactive pay increases creates an undue burden on them since it is difficult or impossible for them to prorate the bills and charge small amounts to their customers or passengers long after the service has been rendered and the bill has been paid. Moreover, such billing for retroactive pay increases runs contrary to the general legal principle that accounts should be final after billings and payments have been made in accordance with the rates in effect at the time the services are rendered. Although Congress, by statute, has required the parties in interest to pay for the extra compensation of overtime services of customs officers

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and employees when their services are required at night, on Sundays, or on holidays, we do not believe that Congress intended to impose retroactive charges on the parties in interest. Since Congress did not explicitly provide that parties in interest should be billed for the retroactive pay increases of the officers and employees whose services were used, we now hold the parties in interest are not liable for the charges stemming from a retroactive pay increase.

Since our decision of today reflects a change in construction of the law, it will not be given retroactive effect. Accordingly, this decision shall be treated as effective from the date it is issued. B-178084, April 21, 1975, 54 Comp. Gen. ____; 52 id. 99, 105 (1972); 36 id. 84 (1956); 27 id. 686, 688 (1948). In the circumstances present in the Pegasus case, however, our Office would offer no objection to collection action being terminated under 4 C.F.R. § 104.3.

In view of the above our decisions 31 Comp. Gen. 417 (1952), supra, and B-107243, November 3, 1958, shall no longer be followed.

R.F. KELLER

[Deputy] Comptroller General
of the United States