

DECISION



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

FILE: B-181853

DATE:

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AUG 23 1976

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MATTER OF:

Michael B. McClellan -- Travel and Transportation expenses

DIGEST:

1. Reimbursement for transportation of household goods is not allowance or benefit as those words are used in Federal Employees International Organization Service Act, as amended. 5 U.S.C. § 3582(b) (1970).
2. Federal employee who transfers to international organization under section 4 of Federal Employees International Organization Service Act, as amended, is an employee of the international organization, not of the Federal Government, but has reemployment rights with the Federal Government if application is made within 5 years after being hired by the international organization. 5 U.S.C. § 3582(b) (1970).
3. Reimbursement for transportation of household goods by employee transferring or being reemployed by Federal Government under section 4 of Federal Employees International Services Act is not authorized. 5 U.S.C. § 3582(b) (1970).

This decision is in response to an appeal from a settlement by our Transportation and Claims Division, Claim Number Z-2539549, February 7, 1975, which denied reimbursement for transportation of household goods claimed by Mr. Michael B. McClellan subsequent to his employment by an international organization under the Federal Employees International Organization Service Act.

Mr. McClellan accepted a 2-year appointment with the International Atomic Energy Agency (IAEA) under the provisions of section 4 of the Federal Employees International Organization

Service Act, as amended, 5 U.S.C. § 3582 (1970), while an employee of the Office of Equal Opportunity (OEO) in December of 1971. The transfer to IAEA was effective January 1, 1972, and Mr. McClellan moved his family and household goods to Vienna, Austria, where IAEA is located. Subsequent to the arrival of Mr. McClellan and his family in Austria, his wife and daughter became ill and, pursuant to medical advice, he requested that IAEA terminate his appointment effective December 31, 1972, and provide transportation for his family and household goods to the United States. IAEA honored Mr. McClellan's request by terminating his employment as requested, but informed him that since he had completed only 1 year of a 2-year appointment, IAEA regulations only allowed for reimbursement for shipment of 1,650 kilograms (kg.) of goods. Mr. McClellan shipped 4,365 kg. of household goods home and paid for 2,715 kg. of that shipment.

Mr. McClellan requested reemployment by OEO under section 4(b) of the Act, 5 U.S.C. § 3582(b) (1970), and that request was honored. After he resumed working with OEO he submitted a claim for reimbursement of the expenses he had to pay for transporting his household goods back to the United States. OEO denied his claim and, at his request, forwarded it to our Transportation and Claims Division for consideration. The Settlement Certificate to Mr. McClellan, dated February 7, 1975, disallowed his claim because his service agreement with IAEA provided the only basis for reimbursement of his transportation expenses and that agreement was subject to IAEA's provisional staff regulations and staff rules.

Mr. McClellan also referred to sections 3343, 3582, 5722, and 5729 of title 5, United States Code, and the provisions of paragraph 1.11 of Office of Management and Budget (OMB) Circular Number A-56. Based on our response to his claim for reimbursement under the above cited references, Mr. McClellan has appealed the disallowance of his claim to our Office with a further explanation of why he believes he should be reimbursed under the above sections and others.

The Federal Employees International Organization Service Act, Pub. L. 85-795, 72 Stat. 959, was initially submitted to the Congress as a proposed bill by the Secretary of State. S. Rep. No. 1836, 85th Cong., 2d Sess. 3 (1958); H.R. Rep. No. 2509, 85th Cong., 2d Sess. 5 (1958). In the committee reports which accompanied the resulting bill, S. 4004, 85 Cong., the stated purpose of the bill was to authorize Federal agency heads to detail employees to

international organizations and to authorize transfer of Federal employees to international organizations, without loss of Federal employment rights and benefits. S. Rep. at 2; H.R. Rep. at 1. It was agreed that details would be generally made for relatively short assignments on specialized problems, while transfers would be used for longer periods involving general activity. S. Rep. at 3; H.R. Rep. at 2. If a Federal employee were to be offered employment by an international organization and resigned from the Federal Government in order to accept such an offer, he nevertheless would retain certain rights and benefits for a maximum of 3 years. These included Federal retirement and life insurance if proper payments were made, Compensation Act coverage, service credit, and an option to retain accumulated leave. In addition, employees who were not congressional employees were to be given a right to be reemployed by their former employing agencies. S. Rep. at 2; H.R. Rep. at 3-4. An employee who was transferred was also to be entitled, "upon reemployment, to the rate of basic compensation to which he would have been entitled had he remained in Federal service." H.R. Rep. at 4. There is no mention in either report that the rights and benefits conferred on transferees included travel expenses. Rather, it appears that if an international organization desired to appoint a Federal employee, then that organization would be responsible for the employee's transportation and travel. Section 4 of the Act makes no mention of travel expenses. 72 Stat. 960-961.

Section 3 of the Act, 72 Stat. 959-960, deals with details and, in contrast with section 4, explicitly mentions travel expenses. Subsection 3(d) provides that details may be made without any reimbursement by the international organization to the United States or pursuant to an agreement to reimburse the United States for compensation, travel expenses, and allowances or any part thereof incurred in the performance of duties required by the detail.

It is a long-established principle that where a particular provision appears in a statute, the failure to include that same provision in another section of the statute is not inadvertent but rather a planned omission. Kentucky ex. rel. Hancock v. Ruckelshaus, 362 F. Supp. 360, 365 (W.D. Ky. 1973). Since travel expenses are expressly mentioned in regard to detailed employees in section 3, but are not mentioned in regard to transferees in section 4, we must conclude that it was the intention of the Congress that all travel expenses incurred by a transferee were to be borne by the international organization.

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The various provisions of the Act were codified in title 5 of the U.S. Code. That title was enacted into positive law by Public Law 89-554, September 6, 1966, and the sections of the Act were placed in various sections of the title. Section 3 of the Act, concerning details to international organizations, was designated section 3343, 80 Stat. 425, and was placed within chapter 33 relating to examination, selection, placement, and detail of civil service employees. That chapter has a section which deals with transfers, 3351, 80 Stat. 426, but the transfers referred to are only those between positions in the competitive service. Sections 2, 4, and 5 of the Act were designated as subchapter IV of chapter 35 which deals with retention preference, restoration, and reemployment after service with an international organization. While the wording and arrangement of the Act were slightly changed to conform to the requirements of codification, the intent remained the same and there is no mention of travel expenses for transferees, 80 Stat. 429-431.

Section 502(d)(3) of the Foreign Assistance Act of 1969, Pub. L. 91-175, 83 Stat. 825-826, amended section 3582(b) of title 5 (concerning the rights of transferring employees) by adding the following pertinent sentence to the section.

"On reemployment, he is entitled to be paid, under such regulations as the President may prescribe and from appropriations or funds of the agency from which transferred, an amount equal to the difference between the pay, allowances, post differential, and other monetary benefits paid by the international organization and the pay, allowances, post differential, and other monetary benefits that would have been paid by the agency had he been detailed to the international organization under section 3343 of this title. * * *"

As noted above, section 3343 of title 5, referred to in the above quoted excerpt, was originally section 3 of the Act. That section deals with employees detailed to international organization and subsection (c), as amended, provides in pertinent part the following:

"An employee detailed under subsection (b) of this section is deemed, for the purpose of preserving his allowances, privileges, rights, seniority, and other benefits, an employee of the agency from which detailed, and he is entitled to pay, allowances, and benefits from funds available to that agency. * * *"

The above excerpt is the source of the language which was used in subsection 3582(b), supra, to describe, generally, the payment equalization rights of a reemployed transferee. It thus becomes necessary to determine what is meant by the above phrase "pay, allowances, and benefits" as used in subsection 3343(c). These would include, inter alia: basic pay; retirement coverage, rights, and benefits; employment-connected disability and death coverage, rights, and benefits; accumulated and accrued current annual and sick leave credit; post allowance; transfer allowance for extraordinary, necessary, and reasonable expenses, not otherwise compensated for, incurred while establishing residence in a foreign area; separate maintenance allowance where required; education allowance; and quarters allowance where appropriate. The transfer allowance is only payable normally where there is a significant climate change. These and other allowances and benefits are noted in chapter 59 of title 5. 5 U.S.C. §§ 5901-5947. However, there is no mention of transportation or travel expenses either in chapter 59 or in subsection 3343(c). Additionally the implementing regulations in pertinent part provide at 5 C.F.R. § 352.310(a)(3) as follows: "Travel and subsistence expenses, transportation of effects, and leave are not considered monetary benefits for purpose of this section."

The only mention of travel expenses in section 3343 is that contained in subsection (d), as noted above. This refers to reimbursement to the United States for the expense of detailing an employee and provides that employees may be detailed with or without reimbursement by the international organization. Subsection 3343(e) provides that an employee detailed to an international organization may be paid or reimbursed by the organization for allowances or expenses incurred in line of duty without regard to a criminal law prohibiting acceptance of such monies from other than the United States for performance of duties. 18 U.S.C. § 209 (1970). Since travel expenses are included only in terms of reimbursement of the detailed employee or the United States, and not in that section dealing with other monetary benefits, we must

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conclude that travel expenses are not "other monetary benefits" as used in subsection 3582(b) dealing with rights of a transferee.

Mr. McClellan's submission to our Office specifically objected to one sentence in the Settlement Certificate which denied his initial claim. That sentence was the following:

"In addition, you did not transfer back to OEO as you terminated your relationship with that agency upon your transfer to the international agency."

He feels that this sentence reveals a lack of clarity and that we should review it.

When an employee of the Federal Government transfers to an international organization, he does so within the context of sections 3581 through 3584 of title 5, United States Code. It is clear within the context of these sections that upon transfer the individual is no longer an employee of the United States Government. He has become an employee of the international organization. However, there are still entitlements running from the United States Government to the individual. Among these entitlements is the right to be "reemployed" as defined by subsection 3581(5). This right must be exercised within 5 years or any authorized extension after entering the employment of the international organization. If an individual should fail to exercise that right of being reemployed within the stated time period then all entitlements between him and the United States Government are severed. Accordingly, while an individual is an employee of an international organization he cannot be an employee of the United States Government.

Finally, with respect to reimbursement of travel, transportation, and subsistence expenses as provided by chapter 57 to title 5, 5 U.S.C. 5701-5751, such expenses are normally authorized to be reimbursed only to employees of an agency of the United States Government.

Accordingly, Mr. McClellan's questions with respect to whether transferees under section 3582 of title 5 are still employees

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of the Federal Government and are entitled to reimbursement for travel expenses under section 5729 of title 5 must be answered in the negative and his appeal is denied.

R. F. KELLER

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Comptroller General
of the United States