

DECISION



THE COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D.C. 20548

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FILE: B-184164

DATE: DEC 8 1975

MATTER OF: Lewis R. Perry - Settlement of unexpired lease

DIGEST:

1. Where employee has received less than 30 days notice of transfer to new permanent duty station but has failed to furnish a copy of lease reimbursement may not be made for lease breaking expenses since proper documentation is absent. FTR para. 2-6.2h (May 1973).
2. Where employee failed to obtain copy of lease during tenancy in apartment and after leaving apartment is offered signed copy of lease for equivalent of 1 month's rent, government will not reimburse expense of obtaining signed copy since this is not normal lease-breaking expense and reasonable man would have obtained copy previously.
3. Unsigned copy of garage lease is not sufficient documentation to support expense of lease-breaking and may not be considered as evidence of terms of lease for apartment which was broken at same time. FTR para. 2-6.2h (May 1973).
4. Expenses incurred incident to breaking of lease on garage may not be reimbursed since para. 2-6.2h of FTR applies only to breaking of lease on residence quarters occupied by employee and his family at time of transfer and does not extend to a separate lease on garage for garaging an employee's automobile. Cf 47 Comp. Gen. 189 (1967); B-178343, December 26, 1973.

This decision is rendered in response to a request for an advance decision by Mr. D.F. Sloan, a Certifying Officer of the Drug Enforcement Administration (DEA) of the U.S. Department of

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Justice, concerning a claim by Mr. Lewis R. Perry, an employee of DEA, for expenses brought about by settlement of an unexpired lease in connection with a move to a new permanent duty station.

The information furnished shows that Mr. Perry entered into a lease for an apartment in Forest Hills, New York in December of 1971 and shared the apartment with another individual and each deposited \$150 to meet the deposit requirement of \$300. The term of the lease was to expire on December 1, 1973. Mr. Perry also rented garage space for his automobile at a monthly rate of \$35 plus tax and a deposit of \$35. Upon receiving the lease Mr. Perry explained that the administrative requirements of his position with DEA required that there be a clause in the lease permitting him to vacate it upon 30 days notice of a change of permanent duty station. His landlord agreed to this and took back the lease to add that clause. The lease was never returned to him even though numerous attempts were made to secure the lease agreement with the new clause written in.

Mr. Perry was notified, on or about October 5, 1973, that he was being permanently transferred to Washington, D.C. on October 26, 1973. He notified his landlord and was told that, since Mr. Perry had not provided the required 30 days notice, the lease would be terminated by the loss of his security deposit of \$150 for the apartment and \$35 for the garage. Mr. Perry conceded that this was correct and requested a copy of the lease agreement. It was not given to him and to date Mr. Perry has not received a copy. Mr. Perry submitted a claim for lease breakage expenses and that claim was disallowed by DEA because each item of expense was not supported by documentation showing that the expense was incurred and paid by the employee. Federal Travel Regulations (FPMR 101-7) para. 2-6.2h (May 1973).

Mr. Perry has subsequently communicated with his former landlord and been told that, since the lease was not properly terminated, Mr. Perry would have to pay \$150 to completely terminate the lease and, presumably, obtain a copy thereof.

The certifying officer presents Mr. Perry's feelings succinctly:

"Special Agent Perry feels that the lease breakage expenses should be reimbursed regardless of the fact that documentation cannot be furnished to

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support the expense because, as stated in his memorandum, 'the problem was caused by the government by not giving me the proper 30 day notice for a permanent change of station.'"

For purposes of this discussion, we will assume that Mr. Perry's allegation of not receiving at least a 30-day notice of permanent change of duty station is true since DEA neither confirms or denies this.

Unfortunately, the problem has not been caused by the government. There is a standing offer by the government to reimburse an employee for his expenses upon a proper showing by him of what those expenses were. Paragraph 2-6.2h of the Federal Travel Regulations (May 1973) concerning reimbursement of expenses incurred in settling an unexpired lease at the employee's old duty station provides, in pertinent part as follows:

"Itemization of these expenses is required and the total amount shall be entered on an appropriate travel voucher. This voucher may be submitted separately or with a claim that is to be made for expenses incident to the purchase of a dwelling. Each item must be supported by documentation showing that the expense was in fact incurred and paid by the employee."

The necessary documentation required by this section has not been furnished to the authorizing officials or to this Office. Since the regulation is statutory in nature and has the force and effect of law this Office is without power to waive its provisions. In the absence of such documentation Mr. Perry's claim may not be paid. B-181737, August 19, 1974; B-174098, December 8, 1971.

The Certifying Officer next asks:

"If Agent Perry may not be reimbursed for the lease breakage costs on the apartment on the basis that documentation is not provided to support the expense, would he be entitled to reimbursement if he obtained a signed copy of the lease which requires

an additional payment of \$150.00. If so, what amount would be reimbursable?"

The first part of paragraph 2-6.2h provides as follows:

"Expenses incurred for settlement of an unexpired lease (including month-to-month rental) on residence quarters occupied by the employee at the old official duty station may include broker's fees for obtaining a sublease or charges for advertising an unexpired lease. Such expenses are reimbursable when (1) applicable laws or the terms of the lease provide for payment of settlement expenses, (2) such expenses cannot be avoided by sublease or other arrangement, (3) the employee has not contributed to the expense by failing to give appropriate lease termination notice promptly after he has definite knowledge of the transfer, and (4) the broker's fees or advertising charges are not in excess of those customarily charged for comparable services in that locality."

As may be seen, the authorization for reimbursement is broad and, generally, not well defined. By implication it includes the expenses of breaking a lease where the employee is not at fault. However, where an employee has been remiss in his duties, then an expense caused thereby must necessarily fall on the individual and not on the government. Mr. Perry did not obtain a copy of his lease agreement during the 2-year period that he lived in the apartment. He now states that he can obtain a signed copy of the lease agreement for a further expense of \$150 and the certifying officer has asked if this expenditure would be reimbursable. Since the reasonable man would have obtained a signed copy of his lease upon moving in to his quarters, or as soon thereafter as practicable, it is not the duty of the government to cure Mr. Perry's failure by reimbursing him for what is not a reasonable expense. In sum, Mr. Perry may only be reimbursed for those supportable expenses which are caused by his change of duty station, not those caused by his failure to act as a reasonable man.

The certifying officer next inquires:

"With regard to the lease breakage expense on the garage space, Agent Perry has provided a

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copy of the lease which is attached. Is this sufficient documentation to support the expense? Also, if this is sufficient, can the lease be considered as a part of the lease for residence quarters, and therefore reimbursable under Section 2.6.h?"

The copy which accompanied the submission is an unsigned Agreement of Lease (Garage) and carries no legal significance. Even if a signed lease for the garage is furnished Mr. Perry would not be entitled to reimbursement of expenses incurred incident to the breaking of a lease on a garage since paragraph 2-6.2h, cited above, applies only to breaking of a lease on residence quarters occupied by the employee and his family at the time of his transfer and does not extend to a separate lease on a garage for garaging an employee's automobile. Cf. 47 Comp. Gen. 189 (1967); B-178343 December 26, 1973.

Accordingly, on the record Mr. Perry's claim may not be allowed.

R.F. KELLER

Deputy Comptroller General
of the United States