

INCIDENT ISSUE

02053 - [A1052044]

[Claim for Payment for Perishable Goods]. B-167877. April 14, 1977. 3 pp.

Decision re: Rene Santoni; by Robert P. Keller, Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).
Contact: Office of the General Counsel: General Government Matters.

Budget Function: National Defense: Department of Defense - Procurement & Contracts (058).

Organization Concerned: Department of the Navy.

Authority: 18 Comp. Gen. 980. 31 Comp. Gen. 340. 49 Comp. Gen. 44.

44. B-183803 (1976). *Angarica v. Bayard*, 127 U.S. 251.

Seaboard Air Line Ry. Co. v. United States, 261 U.S. 299.

Smyth v. United States, 302 U.S. 329. *United States v. Hotel Co.*, 329 U.S. 595.

Monsieur Andre Robert requested, on behalf of the claimant, reconsideration of an earlier settlement, which disallowed a claim for payment for fruits and vegetables allegedly delivered to the USS HARBORHEAD. The claim may be paid since there is satisfactory evidence of delivery and of nonpayment of the claim. No interest or attorney's fee may be paid on the claim, however, since there is no statute or authorized contract providing therefor. (Author/SC)

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Jessica Botaford
CGA

DECISION



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

FILE: B-187877

DATE: April 14, 1977

MATTER OF: M. Rene Santoni

DIGEST: Claim for payment for fruit and vegetables which merchant asserts were delivered to USS HARDHEAD may be paid since there is satisfactory evidence of delivery, and of non-payment of the claim. However, no interest or attorney's fee may be paid on the claim since there is no statute or authorized contract providing therefor.

This decision is in response to a request by Monsieur Andre Robert, on behalf of Monsieur Rene Santoni, for reconsideration of our Claims Division's settlement of July 28, 1976, which disallowed M. Santoni's claim for payment for fruits and vegetables he allegedly delivered to the USS HARDHEAD.

Claims may be paid even though Government records are not available but only if the claimant furnishes clear and satisfactory evidence of the validity of his claim and that it has not been paid. See 18 Comp. Gen. 920 (1939); 31 *id.* 340 (1952), and B-183803, January 14, 1976. Our Claims Division disallowed the subject claim on the grounds that M. Santoni had not presented such satisfactory evidence. For the reasons discussed below, we reverse that determination.

The file contains copies of two purchase orders (Order and Inspection Report (4270), Navsup Form 48(9-PT) (Rev. 12-65)) dated August 1, 1970, and August 3, 1970, by which the USS HARDHEAD apparently requested M. Santoni to deliver various types of fruits and vegetables. M. Santoni claims that the order dated August 3 was handed to him by the contracting officer after he delivered the requested product and that the order dated August 1 was sent to him by the commanding officer of the USS HARDHEAD in response to a letter he wrote to the commanding officer complaining that he had not received payment. The August 1 order bears no signature while the August 3 order, the one under which M. Santoni is claiming, bears the signature of the contracting officer.

The record shows that on or about August 20, 1970, a copy of the August 3 order, requisition number V05465-0215-9109, was sent to the USS ALBANY for payment together with two other supply orders,

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requisitions V05465-0215-0093 and 0094. Pay vouchers covering requisitions V05465-0215-0093 and 0094 were returned to the USS HARDHEAD but apparently no voucher was returned for requisition V05465-0215-9109. The Federal Records Center confirms that payment was made on the other two requisitions but has no record of payment on requisition V05465-0215-9109.

Navsup Form 48 contains a space for an inspector's signature and the language above that space appears in pertinent part as follows:

"I certify that the supplies or services listed in the 'Quantity Accepted' column were inspected and accepted
* * *."

Although the quantity accepted column was completed on the August 3 order and the form was signed by the contracting officer, the USS ALBANY did not make payment on the order.

We have been informally advised, however, that the contracting officer does not ordinarily sign Navsup Form 48 until delivery has been made. The fact that the August 3 order was signed lends support to M. Santoni's contention that delivery was made. The signature of the contracting officer on the August 3 order, together with the evidence that the order was sent to the USS ALBANY for payment, leads us to believe that the produce was delivered and was accepted by the Government. There being no evidence of payment, M. Santoni's claim for the produce delivered on the August 3 order may be paid. We note in this regard that there may be an error in the computation of the amounts due for Item 9 involving 220 units of potatoes at .80 francs per unit. While there is some indication in the file that M. Santoni is also claiming under the August 1 order, no claim can be allowed thereon since it does not bear an authorized signature.

M. Santoni is also claiming interest from August 1970 on the amount due him and is requesting reimbursement for attorney's fees. It is well settled that the payment of interest by the Government on its unpaid accounts or claims may not be made except when interest is provided for in legal and proper contracts or when allowance of interest is specifically directed by statute. See Angarica v. Bayard, 127 U.S. 251; United States v. North American Transportation and Trading Co., 253 U.S. 330; Seaboard Air Line Ry. Co. v. United States, 261 U.S. 299; Smyth v. United States, 302 U.S. 329; United

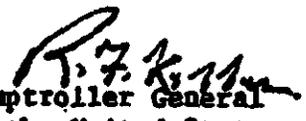
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States v. Hotel Co., 329 U.S. 585. At page 260 of the Angarica case, the United States Supreme Court held that:

"* * * the United States are not liable to pay interest on claims against them, in the absence of express statutory provision to that effect. It has been established, as a general rule, in the practice of the government, that interest is not allowed on claims against it, whether such claims originated in contract or in tort, and whether they arise in the ordinary business of administration or under private acts of relief, passed by Congress on special application. The only recognized exceptions are, where the government stipulates to pay interest and where interest is given expressly by an act of Congress, either by the name of interest or by that of damages."

Since there is neither a statutory nor a contract provision authorizing the payment of interest, M. Santoni is not entitled to interest. For the same reason, M. Santoni is not entitled to reimbursement for attorney's fees. The general rule is that the employment and payment of an attorney is a matter between the claimant and the attorney and, in the absence of statutory provision or a valid agreement based on a statutory provision, there is no authority for the payment of an attorney's fee by the Government. 49 Comp. Gen. 44 (1969).

Payment is authorized to M. Santoni in accordance with the above.


Deputy Comptroller General
of the United States