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**DECISION**



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

FILE: B-189652

*addressee*  
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DATE: November 10, 1980

MATTER OF: Alaska Railroad Reimbursement of \$152,000 [tort  
claims settlement] from the Permanent Indefinite  
Appropriation

**DIGEST:**

Payments of over \$100,000 made prior to May 4, 1977, pursuant to settlements under the Federal Tort Claims Act cannot be reimbursed from the permanent indefinite appropriation, 31 U.S.C. § 724a. B-189652, July 17, 1979 affirmed.

The Department of Transportation asks that we reconsider that part of our decision, B-189652, July 17, 1979, which disallowed reimbursement from the permanent indefinite appropriation (31 U.S.C. § 724a) of a \$152,000 tort settlement negotiated between the Alaska Railroad and Anthony Anzevino. For the reasons given below we affirm our decision.

The claim in question is one of a number that arose from a collision on July 5, 1975 between two Alaska Railroad trains. For the most part, the claims, including the Anzevino claim, were settled and paid by the Railroad in 1976. In B-189652, July 17, 1979, the question presented was whether the claims arising from the accident were payable from the permanent indefinite appropriation for payment of judgments and settlements established by 31 U.S.C. § 724a or from Alaska Railroad funds. We concluded that tort claims against the Railroad could not be paid out of its funds since the provision of the Alaska Railroad Statute (60 Stat. 304) which authorized payment by the Railroad had been repealed by the Federal Tort Claims Act (60 Stat. 846-47). Moreover, even though the Railroad did not follow the procedural requirements for payment under the Federal Tort Claims Act, we agreed to permit reimbursement from the judgment appropriation (31 U.S.C. § 724a) for both the voluntary presettlement claims and settlement claims in excess of \$2,500 but under \$100,000 since the source of payment might have been unclear to the Railroad and the claims could have been paid under 31 U.S.C. § 724a had they been properly presented.

On the other hand, we denied reimbursement of the \$152,000 Anzevino settlement "since the permanent appropriation was not available for payments in excess of \$100,000 at the time the payments were made \* \* \*." We said that if the Railroad desired reimbursement for payments in excess of \$100,000, it must seek the funds from the Congress.

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In its request for reconsideration, the Department urges that we permit reimbursement of the Anzevino settlement from the permanent indefinite appropriation for the following reasons: (1) when we considered the earlier request, the \$100,000 ceiling on 31 U.S.C. § 724a payments had been removed and thus, reimbursement would have been proper; (2) a special appropriation for the \$152,000 is not feasible since the Department of the Treasury advised that it no longer submits individual settlements to Congress for a special appropriation as part of supplemental appropriation requests, and House and Senate Appropriations Committees are reluctant to consider appropriation requests for individual claims since committee staff are of the view that tort claims submitted for payment under the Federal Tort Claims Act after May 4, 1977, should be paid from the permanent indefinite appropriation; (3) the rationale for allowing certification of the other claims applies to the Anzevino claim; and, (4) reimbursement from the permanent indefinite appropriation is needed to enable the Alaska Railroad to continue paying its operating expenses.

Although we appreciate the Department's concerns both about the impracticability of seeking an appropriation for the \$152,000 settlement and the Railroad's need of that money for its operating expenses, and we agree that, in substance, the rationale for permitting reimbursement of the Anzevino settlement is the same as that for the other settlements, the law in effect at the time the payments were made requires that we deny reimbursement of the \$152,000 from the permanent indefinite appropriation.

Prior to the May 4, 1977 amendment, 31 U.S.C. § 724a provided in pertinent part:

"There are appropriated, out of any money in the Treasury not otherwise appropriated, and out of the postal revenues, respectively, such sums as may on and after July 27, 1956 be necessary for the payment, not otherwise provided for, as certified by the Comptroller General, of final judgments, awards, and compromise settlements (not in excess of \$100,000, or its equivalent in foreign currencies at the time of payment in any one case) which are payable in accordance with the terms of sections 2414, 2517, 2672, or 2677 of title 28 \* \* \*." (Emphasis added.)

The regulations for processing claims under the Federal Tort Claims Act contained a similar provision:

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"Payment of an award, compromise, or settlement in excess of \$100,000 shall be obtained by the agency by forwarding Standard Form 1145 to the Bureau of Accounts, Department of the Treasury, which will be responsible for transmitting the award, compromise, or settlement to the Bureau of the Budget for inclusion in a deficiency appropriation bill." 28 C.F.R. § 14.10(a) (1977).

The May 4, 1977 amendment to section 724a deleted the \$100,000 limitation. After that date, otherwise proper Federal Tort Claims Act settlements above \$100,000 also were payable from the permanent indefinite appropriation. The corresponding provision in the administrative procedures was changed to reflect the amendment. 28 C.F.R. § 14.10(a)(1979).

We think the crucial time in this case is when the \$152,000 settlement payment was made by the Railroad, not when the request for reimbursement was presented to the General Accounting Office. Since the Alaska Railroad made the payment prior to the amendment of section 724a, we are bound by the version of section 724a then in effect. Moreover, nothing in the amendment to 724a or its legislative history suggests that the amendment was to apply retroactively to payments made prior to May 4, 1977. See 2 Sutherland Statutory Construction § 41.04 (4th Ed. 1973). Thus, we find no legal basis for permitting reimbursement from the permanent indefinite appropriation, 31 U.S.C. § 724a, for payments of over \$100,000 pursuant to settlements under the Federal Tort Claims Act made prior to May 4, 1977. Accordingly, we cannot permit reimbursement of the \$152,000 Anzevino settlement.

*Harry R. Van Cleave*

For the Comptroller General  
of the United States