



IN REPLY
REFER TO: B-192733

Released

OCT 18 1978

The Honorable M. Hanson Moore
House of Representatives

Dear Mr. Moore:

This is in response to your request that this Office review the claim of d/b/a Duke's Party Rentals, Baton Rouge, Louisiana, against the Science and Education Administration (SEA), United States Department of Agriculture (Agriculture) for the loss of 6 chairs which SEA rented from him. Agriculture has determined that there was no culpable negligence on the part of the United States and has denied the claim under the Federal Tort Claims Act, 28 U.S.C. §§ 2671 et seq.

SEA entered into an agreement with Duke's Party Rentals on April 20, 1978, for the rental of 30 chairs. The chairs were used for a training course conducted by SEA in an open area at one end of its building. The building itself consists of individual research laboratories, none of which were large enough to accommodate 30 chairs. After the course was held on Friday, April 21, 1978, Agriculture employees stacked the chairs and secured the doors to the building in which the chairs were stored.

The only means of access to the grounds surrounding the building is through a locked gate one-quarter mile from the building. This gate is manned by a security officer. On weekends, access to the building itself is by key. Keys have been only issued to authorized individual researchers.

Security guards patrolled the area surrounding this SEA building and reported no unusual events over the course of the weekend in question. On Monday, April 24, 1978, the chairs were returned to place of business. However, as the chairs were being unloaded, it was noticed that 6 chairs were missing. After internal investigation proved fruitless, the Federal Bureau of Investigation was called in but was also unable to discover who was responsible for the loss of the 6 chairs.

We have held consistently that lease agreements between the Federal Government and private parties are governed by the general law of bailments. 23 Comp. Gen. 907 (1944) (lease of truck by Government established

bailment for hire); 55 id. 356 (1975) (lease of typewriter by Government established bailment for mutual benefit). The Government in such instances is required to exercise only ordinary care in the use of the leased property. The Government may be held to a higher standard of care if the lease agreement so provides or if the risk of loss is specifically allocated to the Government under the lease agreement. 23 Comp. Gen. 907, 908 (1944); 55 id. 356, 358 (1975). We have been advised that there is no such clause in the lease agreement in question. In the absence of such a contractual provision, the Government is liable for losses only when the claimant reasonably establishes that damage to the bailed property was proximately caused by the failure of the Government to exercise due care. 23 Comp. Gen. 907, 909 (1944).

With respect to the instant claim, there is no evidence showing that the Government failed to exercise due care in the handling of the bailed property. The chairs were locked in a Government building at the conclusion of the training course Friday afternoon, under good security conditions, pending their return to _____ on Monday morning.

The Department of Agriculture has treated the claim by Duke's Party Rentals for reimbursement for the loss of the 6 chairs as cognizable under the Federal Tort Claims Act, 28 U.S.C. §§ 2671 et seq. (1976). We believe it is more properly considered as a claim under the contract which, for the reasons just discussed, must be denied. However, reviewing this alternative method of handling this claim, we might note that Government liability under the Federal Tort Claims Act is also predicated initially on a finding by the responsible agency that its employee's negligent act was the proximate cause of a claimed loss. Once the agency makes this determination, no other agency can review this decision because the responsible agency's conclusions regarding liability under the Federal Tort Claims Act is "final and conclusive on all officers of the Government." 28 U.S.C. § 2672 (1976). This Office has no authority to review this determination. The only recourse available to a dissatisfied claimant is to appeal to the responsible agency for reconsideration or to file suit in Federal District Court.

Accordingly, we are not aware of any basis on which we can allow claim.

We are sorry we can not be of more assistance in this matter.

Sincerely yours,

R. F. KRALLER

[Deputy Comptroller General
of the United States