

J. Forman
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DECISION



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

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FILE: B-193533

DATE:

FEB 15 1979

MATTER OF: Erma Dees--Claim under Military Personnel and
Civilian Employees' Claims Act of 1964

DIGEST: Military Personnel and Civilian Employees' Claims Act of 1964 provides that claim may be allowed only if use of employee's property under the particular circumstances was reasonable, useful, or proper, and if damage to employee's property was not caused wholly or partly by employee's negligence. Settlement is final and conclusive if statutory conditions are met. Claim of National Labor Relations Board employee for damage to motor vehicle resulting from accident where other participant in accident is compensated under Federal Tort Claims Act, is not cognizable under Military Personnel and Civilian Employees' Claims Act since settlement under Federal Tort Claims Act amounts to determination of employee's negligence.

Ms. Mary Ann Hawkins, an authorized certifying officer of the National Labor Relations Board (NLRB), has asked whether an employee's claim under the provisions of the Military Personnel and Civilian Employees' Claims Act of 1964, as amended (the Act), 31 U.S.C. §§ 240-243 (1976), can be paid "when negligence is a factor and the employee carries no insurance." We were informally advised by the certifying officer that the claim was submitted to her by the Tort Claims Officer, the NLRB designee for settling claims of this type, who approved payment pending a determination by our Office of the stated issue.

According to the information submitted, on April 25, 1978, the date of the accident, Ms. Erma Dees, a cooperative student employee, was engaged in conducting a representative case election for the NLRB in Xenia, Ohio. While on her way to lunch, the employee entered an intersection controlled by what she "presumed" to be a yellow caution light, and struck the left side of a vehicle entering the intersection from the right. As a result of the accident, the local police charged the employee with "Disobeying Traffic Light."

The other participant in the accident is being compensated for the damage to his vehicle of \$326.06 under the provisions of

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the Federal Tort Claims Act. The employee has no insurance to cover the damage to her vehicle and has filed a claim with the NLRB in the amount of \$980.46.

Section 3(b)(1) of the Act, 31 U.S.C. § 241(b)(1), authorizes the head of a Federal agency or his designee to settle and pay claims of up to \$15,000 for loss of or damage to an employee's personal property incident to the employee's service. Additionally, this section provides that the decision should be made "subject to any policies the President may prescribe * * * and under such regulations as the head of an agency * * * may prescribe."

31 U.S.C. § 242 provides:

"Notwithstanding any other provision of law, the settlement of a claim under sections 240 to 243 of this title is final and conclusive."

Accordingly, our Office has no jurisdiction to render decisions relative to the merits of a claim under the Act. B-187913, February 9, 1977; B-180994, June 12, 1974. However, it is proper for our Office to consider the threshold question of whether a claim is properly cognizable under the Act. B-190106, March 6, 1978. As stated in 47 Comp. Gen. 316, 318 (1967), settlement is final and conclusive "if made in accordance with the provisions of the . . . act and applicable regulations." See also B-187913, supra.

The last sentence of 31 U.S.C. § 241(b)(1), supra, provides as follows:

"* * * If the claim is substantiated and the possession of that property is determined to be reasonable, useful, or proper under the circumstances, the claim may be paid * * *." (Emphasis added.)

The certifying officer states that at the time Ms. Dees was using her private car "GSA vehicles were available." This suggests that maybe her use of her own property under those circumstances was not "reasonable, useful, or proper." Whether this statutory test was met is, of course, a matter for determination by the claimant's employing agency, and such a determination would not be subject to review by this Office.

The Act further provides that a claim may be allowed only if the loss or damage "was not caused wholly or partly by the negligent or

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wrongful act of the claimant, his agent, or his employee." 31 U.S.C. § 241(c)(3). A claim which does not meet this test is not properly "cognizable" under the Act. As indicated above, the other participant in the accident filed a claim with the NLRB under the Federal Tort Claims Act and is being compensated under that claim for the damage to his vehicle. Allowance of a claim under the Federal Tort Claims Act must be based on the "negligent or wrongful act or omission" of the employee. 28 U.S.C. § 2672 (1976). It is impossible for the employee to be negligent for purposes of the Federal Tort Claims Act and not negligent for purposes of the Military Personnel and Civilian Employees' Claims Act. Accordingly, the agency's determination that the claimant was negligent--evidenced by the Federal Tort Claims Act settlement--precludes allowance of the claim by virtue of 31 U.S.C. § 241(c)(3), and payment in these circumstances would not be proper.

R. F. KEILER

Deputy

Comptroller General
of the United States