

DECISION

184-P Easternwood
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-201598**DATE:** June 15, 1981**MATTER OF:** John M. Taylor--Leases settlement costs**DIGEST:**

Employee who enters into 1-year lease when on notice that he will be transferred in 4 to 6 months may not be reimbursed lease termination expenses payable under penalty clause of lease. Authority to reimburse lease termination expenses is intended to compensate costs employee did not intend to incur at time he executed lease and which he would not have incurred but for his transfer, not costs employee could have avoided or costs incurred knowingly after being advised that transfer would occur.

The Chief Finance and Budget Officer of the Federal Highway Administration, U.S. Department of Transportation, has asked us to determine whether Mr. John M. Taylor may be reimbursed lease settlement costs at his old duty station which arose incident to a permanent change of duty station. Although Mr. Taylor initially provided no documentation showing that the lease settlement costs had actually been incurred, the documentation has now been provided so that the only issue remaining is whether Mr. Taylor may be reimbursed expenses associated with breaking a 1-year lease which was entered into at a time when he had knowledge that he would be reassigned in 4 to 6 months. The Finance and Budget Officer suggests that, in order to avoid unnecessary expenses, Mr. Taylor should have entered into a short-term occupancy agreement with no penalty for departure. We find that the penalty expenses associated with early departure in this case may not be reimbursed.

Mr. Taylor began his first permanent duty assignment under Federal Highway Administration's Highway Engineer Training Program in the spring of 1980 in St. Paul, Minnesota. From the outset he was advised that the first phase of the training under the career development program would last only about 4 months and that he would thereafter be transferred to a different location to begin the second phase of training and development. Even though Mr. Taylor knew he would be reassigned from St. Paul well before 1981, he entered into a lease of a townhouse for a year beginning in April 1980 and running through March 1981. The lease contained provisions

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that a deposit of \$175 would be forfeited upon any non-performance of the lease (such as early departure) and that early departure would, at the lessor's option, obligate Mr. Taylor for any difference between the rent that would have been payable under the lease and the net rent recovered by lessor by means of rerenting the premises. Mr. Taylor was transferred early in August 1980, and the lease settlement costs questioned consist of the forfeited \$175 security deposit and an additional \$583 representing rent for one and two thirds months the townhouse was vacant before being rerented.

The authority for payment of residence transaction expenses incurred in connection with relocations is contained in Chapter 2, Part 6 of the Federal Travel Regulations (FTR) (FPMR 101-7) (May 1973). Paragraph 2-6.1 provides as follows:

"Conditions and requirements under which allowances are payable. To the extent allowable under this provision, the Government shall reimburse an employee for expenses required to be paid by him * * * for the settlement of an unexpired lease involving his residence * * *."

The conditions under which lease settlement costs are reimbursed are further defined in paragraph 2-6.2h, which states:

"h. Settlement of an unexpired lease. Expenses incurred for settling an unexpired lease (including month-to-month rental) on residence quarters occupied by the employee at the old official 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. * * *

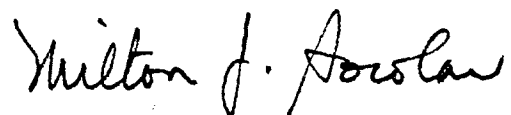
In early July of 1980, Mr. Taylor gave the lessor notice of his August departure. The Finance and Budget Officer states that this notice was given promptly after Mr. Taylor had definite knowledge of the date of his transfer and there is no indication that his best efforts were not extended to mitigate damages. In fact the Federal Highway Administration has indicated that Mr. Taylor complied with all the provisions of paragraph 2-6.2h. Nevertheless, they question whether Mr. Taylor may be reimbursed termination expenses under the provisions of a 1-year lease that he executed with the knowledge that he would be transferred within a few months and, thus, with the certainty that he would incur the lease termination costs claimed.

Under the particular circumstances, we agree with the agency's view that the lease termination costs claimed should have been avoided in the first instance and may not be reimbursed even though Mr. Taylor may have complied, in a technical sense, with the obligation to minimize those costs once incurred. The authority of 5 U.S.C. 5724a(a)(4) to reimburse expenses of settling an unexpired lease is intended to compensate the employee for costs he did not intend to incur at the time he executed the lease and he would not have incurred had he not been transferred within the period of his intended occupancy. Thus, an employee may not be reimbursed for expenses chargeable at the expiration of a lease. 48 Comp. Gen. 469 (1960). Where an employee executes a 1-year lease with the knowledge that his occupancy will terminate within a few months and that he will be subject by the terms of that lease to a penalty for early termination, those anticipated termination expenses are not the type that are intended to be reimbursed under FTR paragraph 2-6.2. Because they are costs he knew would be incurred they are akin to expenses chargeable at the expiration of a lease and may not be reimbursed.

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This case is not to be regarded as a departure from our holding in Juan R. Rodriguez, B-190677, July 6, 1978. In that case we held that an agency may not adopt a policy restricting its employees' right to recover lease termination costs by requiring them to obtain leases that provide no penalty when the employees have given 30 days notice of departure. The Rodriguez case involved an agency-wide policy that affected all transferred employees. It did not involve an employee who entered into a lease for a term after having received definite notice that he would be transferred before the expiration of that lease. To the extent that the costs claimed by Mr. Taylor could and should have been avoided in view of the facts known to him at the time he executed the lease, they are similar to the real estate expenses for which reimbursement was denied in Warren L. Shipp, B-196908, May 28, 1980. In Shipp we held that an employee who had not contracted to sell his former residence at the time he received notice of retransfer to the former duty station where that residence was located was under an obligation to avoid unnecessary expenses and could not be reimbursed for real estate sale expenses subsequently incurred.

For the reasons stated above, the lease termination costs claimed by Mr. Taylor may not be reimbursed.



Acting Comptroller General
of the United States