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DECISION



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

FILE: B-206542

DATE: September 7, 1982

MATTER OF: Checker Van Lines

DIGEST:

Where temporary storage is authorized, payment for storage of household goods of member of Armed Services for a period in excess of 180 days is not authorized because applicable statute and regulation limit Government liability to 180 days. Moreover, storage company knew of and agreed to the time limit on storage authorized at Government's expense.

Checker Van Lines requests review of our Claims Group settlement of December 4, 1981, in which the Group disallowed Checker's claim for \$12,321.50 [Claims Group file No. Z-2834507-0]. The claim is for charges for the storage of personal property belonging to members of the U.S. Army.

Checker received and stored personal property belonging to members of the U.S. Army processed through the U.S. Army Transfer Station at Fort Dix, New Jersey from April 1, 1974, through October 31, 1976. Shipments were placed in temporary storage at Checker's facility, pending arrival of the owners from overseas stations. However, the shipments in question were never claimed and they remained in storage.

On June 15, 1977, Checker submitted to the Army a list of the unclaimed shipments still being stored in its facility. The Army responded on January 9, 1978, informing Checker that files on the shipments made prior to 1976 were no longer available and that mailing addresses were not available for but three of the 22 members who had property in storage. The Army also advised Checker to submit billings to cover 180 days of storage. On February 6, 1980, Checker resubmitted invoices for the full cost of the storage. The Army's

local Finance and Accounting Office then asked Checker to submit invoices covering the first 180-day period, as well as invoices covering the period in excess of 180 days. Checker complied with the request. Before any action was taken on the invoices, Checker also advised the Army that it needed authorization to dispose of the unclaimed property. On March 12, the Army notified Checker that its letter of January 9, 1978, constituted blanket authorization to dispose of the unclaimed shipments, but nevertheless it enclosed individual letters terminating storage at Government expense, effective as of six months after the shipments were placed in storage. On or about June 20, Checker received \$586.08 in payment of the invoices for the first 180-day period. Checker now maintains that it is also entitled to payment for the remainder of the time the shipments were held in storage.

The Army's decision to pay Checker for only 180 days of storage was based on its regulation relating to the temporary storage of household goods. Under the regulation members were entitled to temporary storage at Government expense for a period of 90 days in connection with any authorized shipment of household goods, but where, because of conditions beyond the control of the member, household goods in temporary storage at Government expense could not be withdrawn during the first 90 days, storage for not more than an additional 90 days could be authorized. 1 Joint Travel Regulations para. M8100-2 (Change 209, June 1, 1970). Thus, the Army paid Checker for what it determined was the maximum period of storage authorized at Government expense.

In reaching its settlement, the Claims Group pointed to this regulation and agreed with the Army that the regulation controls this situation. The Claims Group also determined that Checker was not entitled to payment on a quantum meruit basis (the reasonable value of work and labor), because the Government did not receive any benefit since storage at the Government's expense is only authorized for 180 days and Checker was paid for that storage, and the Government did not ratify the use of Checker's storage facility at its expense for more than 180 days.

Checker claims that its contracts with the Army did not include any time limitation on storage at the Government's expense and it was, therefore, entitled to payment for the entire period that goods were stored. It maintains that it notified the contracting officer at the expiration of each contract of the shipments on hand, but the contracting officer did not terminate the contractual arrangement until March 1980. Checker adds that even if it is not owed payment on the basis of the contracts, it is entitled to payment on a quantum meruit basis. It states that the Government obtained the benefit of using its storage space and it authorized this use by not acting on notification that the unclaimed shipments were still being stored. It states that the Army also ratified use of its storage space by having inspectors visit its facility at least twice a year to check that the shipments were still being stored.

Payment may be made for services rendered on a quantum meruit basis where there is no contract governing the furnishing of services, it can be established that the Government received a benefit, the price is fair and reasonable, payment would not violate a statute or regulation, and the action was ratified by an authorized contracting official of the Government. Our Office has held that under the controlling statute, 37 U.S.C. § 406, and regulation, temporary storage is at the Government's expense for only 180 days, regardless of the circumstances. 52 Comp. Gen. 213 (1973); 41 Comp. Gen. 402 (1961). Thus, there is no authority to obligate public funds beyond the 180-day period and any such expenditure would be in violation of 31 U.S.C. § 628, which provides that, except as otherwise provided by law, appropriations shall be applied solely to the objects for which they are made, and for no others. 48 Comp. Gen. 773 (1969). Since an express contract providing storage over 180 days would be illegal, an implied-in-fact contract to accomplish this purpose would also be illegal, thus precluding quantum meruit recovery, which is premised on an implied contract theory. GKS, Inc., B-187593, June 26, 1978, 78-1 CPD 461.

Moreover, payment on a quantum meruit basis may be made only where there is no formally executed contract. Here the Army and Checker apparently agreed to a series of contracts, although the terms of the contracts are unclear. The Army states that there was no contractual agreement with Checker during this period, but it also states that it entered into a standard contract with Checker, which omitted the standard clause governing the packing, crating, storage, and movement of household goods. It adds that this omission was corrected in 1979 by adding a supplemental clause which clearly limited the Government liability for temporary storage in accordance with the appropriate regulation.

Checker states that its contracts with the Army from 1973 through 1978 included clauses which provided that storage shall be furnished when ordered by the contracting officer and charges were not to commence until the sixth day after shipment was containerized or received and then charges would be applied for each 30-day period. The clauses did not place any limitation on storage charges. However, other submissions from Checker contradict this statement. In its appeal of the settlement, Checker states that although the 180-day limit was not in its contract, it notified Fort Dix of the shipments it still had on hand after 180 days. Furthermore, in a letter of February 6, 1980, sent by Checker to Fort Dix, the firm described its letter of June 15, 1977, as detailing those shipments still in its care which are "exceeding the 180 days allotted by expired contract," and in a letter of April 4, 1979, to Fort Dix, Checker stated that its billings were for items "left in our care beyond the six month stipulation of the contract."

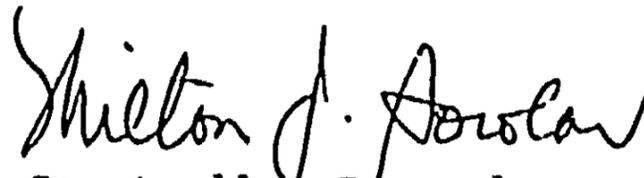
Thus, it appears it was the understanding of the parties that storage for each member was limited to 180 days at Government expense. At the very least, Checker was fully aware of the regulation and of its provision that a member is entitled to storage at the Government's expense for only 180 days and agreed to

those terms. The Army confirmed that it did not intend to pay for storage beyond that point when, in its letter of January 9, 1978, it advised Checker to submit billings for the 180-day period.

Thus, despite the alleged inaction by the Government on these accounts, Checker knew that the Government would assume liability for only 180 days of storage and that it could not look to the Government to pay for any services the firm performed subsequent to that period. At the end of the authorized 180-day period, the storage facility becomes the destination of the shipment and the nature of the storage arrangement changes from temporary to permanent. Accordingly, after 180 days Checker completed its contract with the Government and it then entered a contract with the members for any further expenses incurred.

Settlement of our Claims Group is sustained.

We also note that the statute entitling a member to storage of his household goods at the Government's expense has been recently amended to allow authorization of temporary storage in excess of 180 days. 37 U.S.C.A. § 406(b)(1) (Supp. 1982).



Acting Comptroller General
of the United States