



The Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

Matter of: Daniel R. Russo - Reimbursement of Relocation  
Expenses of Reinstatee  
File: B-226000  
Date: January 11, 1988

### DIGEST

An employee who was reinstated with the FBI after a break in service of 6 years, took the oath of office in Buffalo, New York, which was designated as his "headquarters," and he then was sent for new agents' training in Quantico, Virginia. At the completion of his training he was advised that he was being transferred directly to New York City and that he would be reimbursed relocation expenses from Buffalo to New York. After his arrival in New York the employee was informed that he had been given erroneous advice and was entitled only to the allowances for transportation of dependents and household goods authorized by 28 U.S.C. § 530. The employee's claim for the additional relocation expenses and interest on loans may not be allowed since Buffalo was not his permanent duty station for relocation allowance purposes, and the Government cannot be bound by the erroneous advice of its agents.

### DECISION

This decision is in response to a request from Mr. Daniel R. Russo, an employee of the Federal Bureau of Investigation (FBI), for reconsideration of the determination of our Claims Group (Z-2863058, October 6, 1986) by which his claim for certain relocation expenses and interest paid on a loan was denied. For the reasons explained below, we must affirm that determination.

### BACKGROUND

Mr. Russo was employed by the FBI as a Special Agent from June 1972 to October 1977 when, while under orders transferring him from Detroit, Michigan, to New York, New York, he resigned for personal reasons. In December 1982, he requested reinstatement as a Special Agent and by a letter

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dated May 3, 1983, was informed that he had been reinstated and was to take the oath of office in the FBI's Buffalo office, which was the closest office to his home in Jamestown, New York. Mr. Russo took the oath of office on May 16, 1983, and on May 17, 1983, reported to the FBI Headquarters in Washington, D.C., to begin 13 weeks of new agents training at Quantico, Virginia.

The Assistant Attorney General for Administration, Department of Justice, has advised us that at the time Mr. Russo reported for training it was the FBI's policy to return newly appointed and reinstated Special Agents to the office where they were sworn in for a period of 6 months prior to assigning them to "a more permanent duty station." The FBI considered that this practice would then qualify that office as the new agents' first permanent duty station, and upon their subsequent transfer the agents could receive reimbursement for relocation expenses allowed incident to a permanent change of station. Mr. Russo stated that at the time he reported for training it was his understanding that he would return to Buffalo for 6 months and then receive a transfer which would qualify him for relocation expense reimbursement.

While the other members of his training class were given the option of returning to the office where they had taken their oaths of office or proceeding directly to another assignment, Mr. Russo was not given the option of returning to Buffalo. During his training he was involved in an administrative inquiry which resulted in his suspension without pay for 2 weeks after his graduation from training school--from September 17 to September 30, 1983. At the time he was notified of this action he was also informed that he was to be transferred directly to the New York office for permanent duty. Mr. Russo was told that his assignment to New York was not part of the disciplinary action but was due to the fact that, with his prior FBI service, he would help meet the Bureau's need for experienced agents in the New York office and because he had received reassignment orders to the New York office prior to his resignation in 1977.

By a letter dated August 12, 1983, however, Mr. Russo was informed that his "headquarters" was changed from Buffalo, New York, to New York, New York. The letter stated:

"[T]ravel and transportation expenses and applicable allowances and benefits for you and your dependents incidental to this transfer as provided by the Administrative Expenses Act of

1946, as amended, General Services Administration Federal Travel Regulations dated May 1973, and implementing regulations issued by this Bureau, shall be paid to you or on your behalf."

At the time Mr. Russo received this letter he was also provided with an FBI guidebook, given to all transferred employees, outlining the relocation allowances to which an employee is entitled under the provisions of the Federal Travel Regulations and FBI procedures.

By a letter dated September 14, 1983, Mr. Russo received a travel advance in the amount of \$4,248.83 which he was advised was to be used for mileage, per diem and/or temporary quarters. Mr. Russo reported for duty at the New York office on October 3, 1983. He requested and subsequently received authorization from the Special Agent in Charge of the New York office for a househunting trip by his wife.

On November 23, 1983, Mr. Russo was informed that, as a reinstated agent completing new agents' training, he was not entitled to full relocation benefits but only to reimbursement of expenses for his travel and the transportation expenses of his family and household goods from Jamestown, New York, to New York, New York. Such reimbursement is authorized by 28 U.S.C. § 530 (added by Pub. L. 98-86 § 1, Aug. 26, 1983, 97 Stat. 492).

This information was confirmed in a letter to Mr. Russo dated December 7, 1983. He was also told that it had never been the FBI's intention to deny him relocation expenses but because he had been transferred directly to the New York office he could only be paid those expenses authorized by 28 U.S.C. § 530 and had to refund the travel advance he had received.

It appears that Mr. Russo has been reimbursed \$150.70 for his travel, \$404 for his family's transportation and \$3,388 for the cost of the transportation of his household goods. At the time he received the December 7, 1983 letter Mr. Russo had incurred only temporary quarters expenses. On April 24, 1984, he submitted vouchers in the amounts of \$1,026.55 for temporary quarters, \$404.60 for a househunting trip his wife took in January 1984, \$7,988 in expenses for the purchase of a residence on March 2, 1984, and the sale of a residence on April 2, 1984, and \$700 for miscellaneous expenses. Reimbursement of all of these vouchers was

denied. The major portion of these expenses was incurred after he received notice that he was ineligible for reimbursement.

Mr. Russo submitted a claim to the Comptroller General for reimbursement of these expenses, which amounted to \$10,119.15. In addition, he requested reimbursement of either interest on the \$10,119.15 amount or the interest charges he incurred on loans he had to take out in order to complete his move. Our Claims Group denied Mr. Russo's claim on the grounds that "an agency's erroneous actions may not serve as the basis for establishing a valid entitlement to reimbursement, since the Government cannot legally be bound by the mistakes of its agents, and no lawful authority exists which would otherwise permit payment of the relocation expenses \* \* \*." Our Claims Group further pointed out that interest can be recovered only if provided for contractually or authorized by statute.

Mr. Russo appealed this determination, stating that he believes it to be unjustifiable to deny his claim on the ground that the Government is not legally liable for the acts of its agents. He points out that unlike other employees in his training class he was not afforded a choice of transfer and was led to believe that he would receive full reimbursement for his move as it was accomplished. Furthermore, Mr. Russo states that if the Government's error had been discovered earlier, a remedy would have existed which would have prevented his claim and the financial hardship he and his family suffered.

#### ANALYSIS

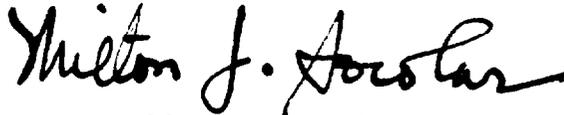
The Comptroller General has long held that an employee must bear the expense of travel to his first permanent duty station in the absence of a specific statute to the contrary. An employee's permanent duty station is the place where he performs the major part of his duties and is not a place where he is assigned merely for administrative purposes, to take an oath of office or for training. Cecil M. Halcomb, 58 Comp. Gen. 744 (1979); 60 Comp. Gen. 569 (1981). Thus, neither Buffalo, where Mr. Russo was sworn in, nor the locations where he attended training, Washington and Quantico, were his permanent stations for transfer purposes. See 60 Comp. Gen. 569, supra, applicable specifically to new FBI agents. Mr. Russo's first permanent duty station was New York City and, therefore, he had no entitlement to the relocation allowances he seeks incident to his reporting there.

A limited exception to the general rule that an employee must bear the expense of reporting to his first permanent duty station is 28 U.S.C. § 530, which authorizes paying the travel expenses of newly appointed FBI agents and the transportation expenses of their families and household goods from their place of residence at the time selection to their first duty station. Under this authority Mr. Russo was reimbursed for his travel, that of his family and transportation of his household goods from Jamestown, New York, to the New York City area.

The statutory and regulatory authorities governing reimbursement of relocation expenses provide for no additional reimbursement, and the Comptroller General has no authority to authorize payments not specifically provided for by these authorities. See 59 Comp. Gen. 28 (1979); 54 Comp. Gen. 747 (1975). Thus, regardless of what rights Mr. Russo may have had if he had been transferred to Buffalo for 6 months and then New York City, and notwithstanding that he may have received erroneous travel orders or advice, he is not entitled to additional reimbursement.

Under 5 U.S.C. § 5584, the Comptroller General is granted authority to waive certain erroneous payments made to employees if he determines that collection of those overpayments would be against equity and good conscience and not in the best interests of the United States. Until December 28, 1986, however, when that statute was amended,<sup>1/</sup> it did not apply to erroneous travel, transportation or relocation expenses allowances. The payments made to Mr. Russo, even if deemed erroneous payments, may not be considered for waiver, because they were made prior to the effective date of the amendment to the statute, December 28, 1986.

In light of the above, we must affirm the determination of our Claims Group to deny the reimbursement Mr. Russo seeks.



Acting Comptroller General  
of the United States

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<sup>1/</sup> Pub. L. No. 99-224, 99 Stat. 1741.