

DECISION

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

909
60890
MAR 24 1976

FILE: B-185513

DATE:

MATTER OF: Laura A. Johnston - Reimbursement of damages to personal property while on official duty

98922

DIGEST:

1. Where NLRB employee's private automobile sustained damages incident to NLRB service when struck by truck which left scene of accident, and such automobile was not covered by insurance while used for business purpose, claim under Federal Tort Claims Act may not be paid since claim by employee against United States is not within purview of that Act. 28 U.S.C. §§ 1346(b), 2671-2680 (1970).
2. Where NLRB employee's private automobile sustained damages incident to NLRB service when struck by truck which left scene of accident, and such automobile was not covered by insurance while used for business purpose, claim under Military Personnel and Civilian Employees' Claims Act of 1964 may properly be considered for payment at discretion of Chairman of NLRB or his designee. GAO has no jurisdiction to consider claims for loss of, or damage to, personal property under such Act. 31 U.S.C. §§ 240-243 (1970).

This matter was submitted for an advance decision by James A. Stepien, an Authorized Certifying Officer at the National Labor Relations Board (NLRB). The question presented is whether a voucher dated August 20, 1975, in the amount of \$371.50, in favor of Ms. Laura A. Johnston, a NLRB Field Examiner in the Pittsburgh, Pennsylvania regional office, representing the amount of damages incurred by her when her private automobile was struck by a hit-and-run driver while her vehicle was being used on official NLRB business, may properly be paid under provisions of either the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671-2680 (1970), or the Military Personnel and Civilian Employees' Claims Act of 1964, 31 U.S.C. §§ 240-243 (1970).

The submission indicates that Ms. Laura A. Johnston was in Erie, Pennsylvania, on official NLRB business on July 8, 1975. At approximately

0 98922 - 498922

0

7:30 p.m. her vehicle was parked in the parking lot of the Holiday Inn-South, her place of lodging. While so parked, the vehicle was struck by a refuse truck which proceeded to leave the scene of the accident, and the accident was reported to Laura A. Johnston by a witness who was unable to identify the owner or license number of the truck. Damages to the right rear bumper, quarter panel, and facing in the amount of \$371.50 were sustained. There is no indication of any negligence on the part of Ms. Johnston. A claim was filed with Ms. Johnston's insurance carrier, but payment was denied because the vehicle was rated only for pleasure use and not for business purposes. Ms. Johnston filed a claim for reimbursement with the NLRB, but the claim was denied because she had been reimbursed on a mileage rate basis under provisions of 5 U.S.C. § 5704 (1970). A reclaim was subsequently filed with the NLRB under provisions of the Federal Tort Claims Act. The Authorized Certifying Officer has requested an advance decision as to whether the claim may be certified for payment under the Federal Tort Claims Act or under the Military Personnel and Civilian Employees' Claims Act of 1964.

Under the provisions of 5 U.S.C. § 5704 (1970), a mileage rate authorized for the use of a privately owned automobile is in lieu of actual expenses. The only actual expenses authorized for reimbursement are parking fees, ferry fares, and bridge, road and tunnel tolls. Thus, the original claim for reimbursement of damages to Ms. Johnston's automobile was properly disallowed since a mileage allowance for the use of a privately owned automobile is a commutation of all the expenses of operating such automobile and precludes reimbursement in addition thereto for any actual expenses incurred other than those expenses specifically enumerated in 5 U.S.C. § 5704 (1970). B-174669, February 8, 1972. Specifically, damages to a private automobile, sustained while engaged on official Government travel, were held to be precluded where reimbursement was made on a mileage basis in our decision at 15 Comp. Gen. 735 (1936).

The Federal Tort Claims Act, at section 2672, title 28, United States Code (1970), provides in pertinent part as follows:

"The head of each Federal agency or his designee, in accordance with regulations prescribed by the Attorney General, may consider, ascertain, adjust, determine, compromise, and settle any claim for money damages against the United States for injury or loss of property or

personal injury or death caused by the negligent or wrongful act or omission of any employee of the agency while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred: Provided, That any award, compromise, or settlement in excess of \$25,000 shall be effected only with the prior written approval of the Attorney General or his designee." (Emphasis added.)

When read in conjunction with section 1346(b), title 28, United States Code (1970), it is evident that the Federal Tort Claims Act requires first, a suit against the employee; second, liability arising for damages caused by the employee's negligent or wrongful act or omission; and third, that the United States, if a private person, would be liable. In the present case, a third, unidentified party was the cause of the damage to Ms. Johnston's vehicle, and therefore, none of the above requirements is present. Accordingly, the claim may not properly be paid under provisions of the Federal Tort Claims Act.

Section 3(a) of the Military Personnel and Civilian Employees' Claims Act of 1964, Pub. L. 88-558, approved August 31, 1964, 78 Stat. 767, as amended by section 3(b) of Pub. L. 89-185, approved September 15, 1965, 79 Stat. 789, 31 U.S.C. § 241(b) (1970), authorizes the head of an agency or his designee, under such regulations as the agency head may prescribe, to settle and pay claims by an employee of the agency for damage to, or loss of, personal property incident to the employee's service. Settlement of such a claim by the head of an agency or his designee is final and conclusive. 31 U.S.C. § 242 (1970).

With respect to whether the claimed loss was incurred incident to service, a review of the legislative history of Pub. L. 88-558, as amended, fails to reveal a specific reference to the types of claims contemplated by the legislation. B-169236, April 21, 1970. However, since the submission shows that Laura A. Johnston was using the vehicle for official business and was within the scope of her employment when the vehicle was damaged, the loss suffered might properly be considered as a loss incurred incident to service.

Moreover, the fact that a claim for damages to a private vehicle cannot be reimbursed under the provisions of 5 U.S.C. § 5704 (1970) does not preclude settlement under the provisions of 31 U.S.C. §§ 240-243

B-185513

(1970). See B-174669, February 8, 1972. We point out that under the provisions of Pub. L. 88-558, as amended, it is not within the jurisdiction of our Office to consider claims for loss of, or damage to, personal property of employees of the NLRB. See B-169236, April 21, 1970, and B-180161, January 8, 1974. Accordingly, any such claim is for consideration at the discretion of the Chairman of the NLRB or his designee, and settlement thereof, if made in accordance with the provisions of the above-cited act, would be final and conclusive.

E.F. KELLEY

Deputy Comptroller General
of the United States