13946 PLM-1 Mr. Heitz

DECISION

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

FILE: B-196795 DATE: June 5, 1980

MATTER OF: Dr. William Post, Jr. - Failure to Fulfill Overseas Service Agreement - New Appointee

DIGEST: Claimant was selected for appointment to position in Puerto Rico and signed 12-month service agreement. Agency paid travel and transportation expenses, but after arrival in Puerto Rico, he refused job and left without performing any duties. He is liable for amounts paid by agency since he failed to fulfill agreement for reasons not beyond his control. Service agreement is not contractual but is statutory condition for new appointee. Also, since statute specifically refers to individuals selected for appointment, appointment itself is not necessary before obligation is incurred.

[Recovery of Payments

This action is in response to a request from the United States Department of Agriculture for a decision whether it should continue collection efforts against Dr. William Post, Jr., to recover payments made to him for travel and transportation expenses.

Dr. Post was offered and accepted a position as a GS-11 Research Wildlife Biologist with the Forest Service, United States Department of Agriculture, in Luquillo, Puerto, Rico. The offer advised Dr. Post that he would receive a cost-of-living allowance (COLA) of 12.5 percent, in addition to his base salary, and that he would be required to occupy Government quarters adjacent to the parrot aviary at Luquillo. The offer also stated: "If the Government pays for your move, you must sign an agreement to remain in the Government service for one year from your duty reporting date."

Dr. Post accepted the position on November 27, 1978, and agreed to report to duty on December 18, 1978. He also signed a request for travel authorization with the usual service agreement statement as follows:

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> "I agree to remain in the service of the Federal Government for 12 months following the effective date of my transfer or appointment, unless separated for reasons beyond my control and acceptable to the Government. In case I violate this agreement, any moneys expended by the United States on account of my move described above shall be recoverable from me as a debt due the United States."

Dr. Post also requested transportation and storage of a private vehicle, and an advance of funds.

Dr. Post arrived prior to his reporting date of December 18, and met with an agency official on his reporting date to express dissatisfaction with a number of his conditions of employment. Among the items he expressed concern about were the condition of his apartment, the lack of office or laboratory space, the supervisory setup, and the withdrawal of the COLA of 12.5 percent. Apparently, because of these concerns, Dr. Post left Puerto Rico later without performing any duties and without any further processing of his appointment papers.

The agency says that there was a valid basis for some of his concerns; however, others were not so valid. Dr. Post apparently applied for the position on the basis of base salary alone, and he had visited the worksite before. In fact, Dr. Post had lived and worked in Puerto Rico before for several years under similar conditions, and this prior service was considered by the agency as a basis for offering him the position. The agency also says that it showed instant response in correcting the conditions in the apartment and the need for laboratory facilities was not clear since the work did not call for laboratory experimentation. Further, the COLA was not entirely withdrawn, but was reduced to 5 percent by Federal Personnel Manual Letter 591-30, December 19, 1978.

The agency made a travel advance and paid expenses in connection with Dr. Post's appointment to Puerto Rico as follows:

Travel	$ 625.00
Transportation of Motor Vehicle	884.00
Storage of Motor Vehicle	134.00
Transporation of Household Goods	2,276.10
Total	$3,919.10

The agency billed Dr. Post for the above amount on the basis that he had not fulfilled his service agreement and that his failure to do so was not beyond his control. He has refused to pay, alleging a breach of contract because of the withdrawal of the COLA and because of the other unsatisfactory conditions alleged above.

The authorization for the payment by the Government of the travel and transportation expenses of new appointees to posts of duty outside the United States is statutory. See 5 U.S.C. § 5722 (1976) which provides in pertinent part that:

> "(a) Under such regulations as the President may prescribe and subject to subsections (b) and (c) of this section, an agency may pay from its appropriations--
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> > "(1) travel expenses of a new appointee and transportation expenses of his immediate family and his household goods and personal effects from the place of actual residence at the time of appointment to the place of employment outside the continental United States; and
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> * * * * *

> "(b) An agency may pay expenses under subsection (a)(1) of this section only after the individual selected for appointment agrees in writing to remain in the Government service for a minimum period of--
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> * * * * *
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> "(2) 12 months after his appointment, * * *; unless separated for reasons beyond his control which are acceptable to the agency concerned. If the individual violates the agreement, the money spent by the United States for the expense is recoverable from the individual as a debt due the United States."

The regulations implementing the above statutory provisions appear in the Federal Travel Regulations (FPMR 101-7, (May 1973). Para. 2-1.5a(1)(b) expressly provides that, "[i]n case of a violation of such an agreement, including failure to effect the transfer, any funds expended by the United States for such travel, transportation, and allowances shall be recoverable from the individual concerned as a debt due the United States."

The 12-month Government service obligation created by the provisions of 5 U.S.C. § 5722(b)(2) and implemented by the Federal Travel Regulations is not contractual, but is a statutory condition precedent to the payment of a new appointee's travel and transportation expenses. Cathryn P. White, B-195180, October 24, 1979; 57 Comp. Gen. 447 (1978); 54 Comp. Gen. 71 (1974); Finn v. United States, 192 Ct. Cl. 814 (1970); Denning v. United States, 132 Ct. Cl. 369 (1955). In the Finn case, the Court of Claims characterized the nature of the obligation of an employee created under a service agreement executed pursuant to a similar provision in 5 U.S.C. §5724(i) as a "contractual obligation" but made it clear that the execution of a service agreement by an employee to remain in the Government service for 12 months is a condition

precedent to the payment of travel and transportation expenses. If the agreement is violated the agency must recover any amounts expended as a debt, unless the individual satisfies the service obligation or is separated for reasons beyond his control and acceptable to the agency.

Since we are dealing with a statutory rather than a contractual obligation, we do not need to consider the merits of Dr. Post's contention that the Government's action constituted a breach of contract that would relieve him of his statutory obligation.

The agency also points out that Dr. Post did not complete his appointment papers or receive any pay. However, it is not necessary that an individual be appointed before an agency may pay the travel and transportation expenses. Although section 5722(a) refers only to "new appointees," the language of section 5722(a) is specifically made subject to implementing regulations and to subsections (b) and (c) of section 5722. Section 5722(b) states that an agency may pay expenses under subsection (a) "only after the individual selected for appointment agrees in writing to remain in the Government service for a minimum period of * * * 12 months after his appointment * * * unless separated for reasons beyond his control which are acceptable to the agency concerned." If the agreement is made, subsection (b) further provides that, if the individual violates the agreement, the expenses paid by the agency are recoverable as a debt due the United States. In our opinion, section 5722(a) when read together with section 5722(b) clearly covers individuals selected for appointment" as well as "new appointees."

In the present case, Dr. Post was an individual selected for appointment and he did sign the 12-month service agreement. Hence the Forest Service was authorized to pay his expenses under section 5722(a).

The record shows that Dr. Post did not complete the service obligation and the agency has determined that his failure to complete the required service was not for reasons beyond his control. We find no error in the agency's determination. Therefore, the money spent by the United States for travel expenses and the transportation and storage of Dr. Post's motor vehicle and household goods is recoverable from him as a debt due the United States under the provisions of 5 U.S.C. § 5722(b) and the implementing regulations.

Dr. Post also received a travel advance of $625. This Office has always considered travel expense advancements in the nature of a loan. 54 Comp. Gen. 190 (1974). Thus, the money was loaned to Dr. Post for the purpose of traveling to Puerto Rico in connection with his appointment. Such amount must be recovered from him since he failed to remain in the Government service for 12 months and now has no allowable travel expenses. See 5 U.S.C. § 5705 (1976).

Accordingly, the Forest Service should take such action as is necessary to recover from Dr. Post the amounts paid for his travel, storage, and transportation expenses.

Milton J. Socolar

For The Comptroller General
of the United States