

**DECISION**



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

**FILE:** B-212502

**DATE:** July 12, 1984

**MATTER OF:** Raymond F. Montero

**DIGEST:** Government-owned truck was stolen from a Government parking lot after the Forest Service employee to whom the truck was assigned left it in the lot unlocked and with the keys under the seat. Forest Service Board of Survey found that the employee's "willful disregard" for the protection of Government property was a substantial factor in causing the loss. GAO sustains Forest Service finding since it has a rational basis and was made in accordance with applicable regulations.

Mr. Raymond F. Montero, an employee of the Forest Service, U.S. Department of Agriculture, requests review of a Forest Service Board of Survey decision finding him liable for the loss of a Forest Service truck. We find no reason to overturn the Board of Survey decision, and therefore sustain the holdings of the Board and of the appeals officers finding Mr. Montero liable, due to his negligence, for the value of the truck, minus the sales proceeds.

On October 12, 1982, Forest Service warehouseman Montero parked his assigned vehicle, a 1978 Chevrolet Luv Pickup, in a Federal parking lot in Petersburg, Alaska, and left work for the night. The doors were unlocked and the keys were left inside the truck under the seat.

The truck was stolen from the lot that night and severely damaged by its submersion in salt water at the foot of the city boat ramp. The next morning, the truck was recovered from the water.

A Forest Service Board of Survey convening on November 23, 1982, found Mr. Montero negligent and liable for the depreciated value of the truck, less estimated salvage value.

The Board of Survey held, in relevant part, as follows:

"The determination of negligence in this case is the fact that you left the key inside the vehicle. By doing so, you willfully

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disregarded the potential risk of theft and were therefore negligent of properly securing Government property."

This finding was affirmed by three appellate levels within the Forest Service--the Forest Supervisor, the Regional Forester, and the Deputy Chief, Forest Service. Mr. Montero was found liable for the sum of \$1,191.31, which amount was reduced to \$636.31 in the appellate process by reducing the depreciated value of the truck and subtracting the sales price rather than the estimated salvage value. Having exhausted all available appeals within the Forest Service, Mr. Montero submitted the matter to us.

#### GAO Jurisdiction and Scope of Review

The General Accounting Office is authorized to review this matter under its general authority to settle "all claims of or against the United States Government." 31 U.S.C. § 3702(a) (1982).

In Government employee liability cases resulting from loss or damage to Government property, our Office engages in a narrow review of agency actions. We determine, first, whether the agency asserting a claim against its employee has statutory authority to do so, or is acting under appropriate administrative regulations. See, e.g., 25 Comp. Gen. 299 (1945); B-208108, July 8, 1983.

Our Office then asks whether those regulations are reasonable, and whether the agency followed the regulations in the individual case.

As we stated in B-208108, July 8, 1983:

"If an agency has held an employee liable consistent with its regulations - for example, by finding him negligent - we will not substitute our judgment for that of the investigating authority, and will overturn the finding only if we conclude that it lacks a rational basis."

#### Discussion

The Department of Agriculture has issued the Agriculture Property Management Regulations (APMR) establishing Boards of Survey, delineating responsibilities of the Boards, and determining standards for employee negligence. The relevant provisions provide as follows:

"(B.2) \* \* \* In determining whether the employee's act or failure to act was negligent conduct, the Board shall conclude:

\* \* \* \* \*

"(iv) If it is determined that the employee failed to take reasonable action under circumstances to prevent a loss of property which he/she should have anticipated and that the failure to do so was a material and substantial factor in bringing about the loss, the Board shall find the employee liable and shall determine the amount to be charged the employee for the loss." APMR § 104-50.106.

The Forest Service has supplemented these regulations with its own provisions in the Forest Service Manual (FSM) defining employee negligence. FSM § 6411.11--2(f)(2). This section reads, in relevant part, as follows:

"(2) \* \* \* In order to assess financial liability, the board [of Survey] must determine if the degree of negligence is particularly extreme and would therefore constitute willful disregard by the employee.

"Willful disregard means that the employee either was indifferent to the potential harm or was aware that harm was quite certain to follow. It also means that the employee disregarded a known risk, or a risk so obvious that the employee must be considered to have been aware of it and so great as to make it highly probable that harm would follow.

"\* \* \* Leaving property in a place where it is likely to be stolen may, depending on the circumstances, be willful disregard of the property." (Emphasis added.)

The Board of Survey followed these regulations when it considered Mr. Montero's claim and found that by leaving his keys inside the unlocked truck in an area with a known history of vandalism, he "willfully disregarded the potential risk of

theft."<sup>1/</sup> In our view, the finding of negligence has a rational basis, considering the facts in this case.

Furthermore, the appellate-level reviewers--Forest Supervisor, Regional Forester and Deputy Chief of Forest Service--correctly applied the "willful disregard" standard, as well.<sup>2/</sup> Therefore, the administrative regulations were correctly followed at both the Board of Survey and appellate levels.

### Conclusion

In view of the existence of Department of Agriculture and Forest Service regulations establishing employee liability for negligent loss or damage to Government property, the reasonableness of the regulations, the Board of Survey and appellate level compliance with the regulations, and the rational basis for the decision, this Office sustains the determination of the Board of Survey.

*Milton J. Fowler*

Acting Comptroller General  
of the United States

<sup>1/</sup> In his various statements, Mr. Montero admits that he left the keys in the unlocked vehicle. Also, although there apparently had been no prior thefts of Government vehicles from the parking lot in question, the record indicates that Mr. Montero was aware that there had been prior acts of vandalism. We think the Forest Service acted properly in treating theft and vandalism as within the same scope of risk for purpose of this case.

<sup>2/</sup> In Mr. Montero's July 20, 1983 letter to us, he suggests that the standard for liability had changed from "willful neglect" to "normal prudent employee" during the course of his appeal. In fact, the relevant regulatory standards for employee liability have not changed since 1980. The current Department of Agriculture regulations have been in effect since December 3, 1980, and the relevant Forest Service regulations have been in effect since August 1979. APRM § 104-50.106; FSM 6411.11--2(f)(2). However, even if the standard had changed, the change to a more "liberal" standard after Mr. Montero had been found liable under the stricter standard would not help Mr. Montero's position in this case since lack of normal prudence may be presumed to be included in a finding of "willful neglect."