

Charles Browne
Civ. Pers.

00845

DECISION



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

B-186702

FEB 9 1977

FILE: Bruce H. Baker - Transfer and home
DATE: leave expenses after break in service
MATTER OF:

DIGEST: Employee of Forest Service stationed in Alaska, who had break in service of 2 1/2 months within 1 year of signing overseas tour renewal agreement, may not have home leave and return transportation entitlements reinstated. 51 Comp. Gen. 52 (1971). However, employee is entitled to have debt for cost of home leave travel setoff against travel entitlements remaining from original overseas service agreement, as is provided by FTR para. 2-1.5h(4)(a) (May 1973).

By a letter dated June 7, 1976, Ms. Orris C. Huet, an authorized certifying officer at the National Finance Center of the Department of Agriculture, requested an advance decision regarding reinstatement of home leave and relocation entitlements of Mr. Bruce H. Baker following a break in service. Mr. Baker, an employee of the Forest Service, was stationed in Alaska at the time the break in service occurred.

The record shows that Mr. Baker signed a 2-year employment agreement on September 23, 1972, in conjunction with a transfer to the Forest Service Regional Office in Juneau, Alaska. The employee completed his initial agreement on November 7, 1974. Prior to taking home leave between tours of duty outside the continental United States, the employee signed a renewal agreement, as is required by the Federal Travel Regulations (FPMR 101-7) para. 2-1.5h (1)(b) (May 1973). In December 1974 the employee and his immediate family traveled to the continental United States at Government expense for home leave under a Travel Authorization dated November 18, 1974.

On November 14, 1975, the employee separated from the Forest Service to accept a position with the State of Alaska. The cost incurred by the employee in connection with his home leave was deducted from the employee's final payment.

On February 1, 1976, approximately 2 1/2 months following his separation, Mr. Baker was reinstated by the Forest Service. On February 3, 1976, Mr. Baker signed an employment agreement for

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duty outside the continental United States for a minimum period of employment of 12 months and designated Delaware, Ohio, as his address of record. This is the address of record used by Mr. Baker prior to his separation 2 1/2 months earlier. In addition, Mr. Baker requested that his rights to return transportation for himself, his immediate family, and his household effects be reinstated and that his rights to home leave between tours of duty be reinstated.

The certifying officer submits the following questions regarding the matter:

- "1. Is the employee entitled to return rights under his previous agreement since he did not request a travel authorization or establish a return date at the time of termination?
- "2. If No. 1 is answered in the affirmative, then will the effective date used for leave between tours of duty be based on the old or new agreement?
- "3. If No. 1 is answered in the negative, then will the employee be entitled to benefits established in FTR 2-1.5, as a result of having signed a new two year agreement at the time he was reemployed?
- "4. May the employee regain the \$1,592.58 deducted from his previous final pay since the employee is currently employed by a Federal agency?
- "5. If No. 3 is answered in the affirmative, then will any time served on the non-completed tour of duty be credited to the agreement signed at time employee was reemployed?"

In our decision 51 Comp. Gen. 32 (1971) we considered the effect of a 15-day break in service on the entitlements of an employee who had signed a 12-month service agreement incident to a transfer, when the break in service occurred during the period covered by the agreement. In that decision we stated that " * * * as a general rule, such required period of service must be performed continuously without a break in service. Otherwise, the Government's obligation with respect to the various 'transfer' expenses would not be definitely established since such obligation would be dependent upon whether or not the separated employee eventually returned to Government service at a later date."

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Thus, we held that upon reinstatement the employee was not entitled "to recover the travel expenses refunded to the agency at the time of his resignation."

In light of the above, questions 1 and 4 are answered in the negative; and since question 1 was so answered, it is unnecessary to respond to question 2.

With regard to question 3, FTR para. 2-1.5g(3) (May 1973) permits an employee hired outside the continental United States to enter into a service agreement and to designate as his residence an address in the continental United States with agency approval. Under the circumstances in this case, it does not appear that the agency's acceptance of Mr. Baker's designation of Delaware, Ohio, was unreasonable. Accordingly, question 3 is answered in the affirmative. In view of our answer to questions 1 and 4, question 5 is answered in the negative.

Notwithstanding the above, the record indicates that at the time Mr. Baker was separated on November 14, 1975, he was entitled to return transportation to the continental United States for himself, his family, and his household effects. At the same time he was indebted to the United States for the cost of home leave transportation. FTR para. 2-1.5h(4)(a) (May 1973) permits a setoff of the employee's home leave debt against any unused entitlements accruing to the employee from his original overseas service agreement. This apparently was not done in the instant case. Accordingly, the agency should determine the allowances due Mr. Baker from his original service agreement and, using the setoff formula of FTR para. 2-1.5h(4)(a), refund to the employee any excess amount withheld from his final payment at the time of his separation.

R. J. KELLER

Deputy
Comptroller General
of the United States