

**PRORATING OF AMOUNT APPROPRIATED BY CONGRESS FOR THE PAYMENT
OF A CLASS OF CLAIMS.**

Where Congress appropriates a specific amount for the payment of a class of claims, not otherwise legal claims against the United States, and the amount thus appropriated is less than the aggregate of said claims, the accounting officers should take no action with respect to the certification for payment, in whole or in part, of any of said claims until Congress shall have expressly authorized a prorating or made an additional appropriation.

Comptroller Downey to the Auditor for the Interior Department, July 27, 1915:

You submit for my approval, disapproval, or modification your decision of the 19th instant making an original construction of a statute as follows:

"The Secretary of the Interior, in the exercise of the authority conferred upon him by the joint resolution of August 24, 1912 (37 Stat., 643), has found and certified to the Secretary of the Treasury amounts due to certain claimants aggregating \$15,556.96, being \$3,556.96 in excess of the sum appropriated and available for the payment of such claims.

"The claims with the findings of the Secretary of the Interior and other papers have been sent to this office for settlement.

"The act making the appropriation and vesting the authority exercised is in the following words:

“That there be, and is hereby, appropriated out of any moneys in the reclamation fund in the Treasury the sum of forty-two thousand dollars, or so much thereof as may be necessary, for the payment of and to be paid to those persons who have and hold and who have presented, or may present, claims remaining unpaid, on account of labor, supplies, materials, or cash furnished to the contractor or the subcontractor and used in the construction of the Corbett Tunnel, as a part of the Shoshone irrigation project, in the State of Wyoming, under any contract or contracts let for that purpose by the Government of the United States; and the Secretary of the Interior is hereby authorized and directed to forthwith, and as soon as may be, investigate, hear evidence about, determine, and declare the several amounts due and remaining unpaid, if any, on account thereof, and to whom so due, and to certify the amounts due to the Secretary of the Treasury, who is hereby authorized to pay the several amounts so ascertained to the persons entitled to the same.”

“I have decided to certify for payment that portion of each claim that will effect a pro rata distribution of the \$42,000 appropriated and to disallow the amounts claimed and approved in excess for the reason that they are not authorized charges against the United States.”

The conclusion of the auditor as stated in the last paragraph of his submission certainly can not be approved. The auditor can have no authority to “disallow” any part of any of these claims. It is exclusively for the Secretary of the Interior to “determine and declare the several amounts due.” He having thus determined and declared the amounts due and to whom, as directed by the law, some one else may be required to determine whether those amounts can be paid and to what extent, but that does not indicate an authority to “disallow” within the ordinary sense of that term.

But in order that consideration of the question may not hinge on a technical construction of the auditor's holding, it is assumed that he contemplated simply certifying for payment such proportionate part of each allowed claim as the amount of the appropriation bears relatively to the total of the allowed claims, a pro rata payment on all the claims of the full amount of the appropriation without, in fact, any attempt at a disallowance of the portions of the claims remaining unpaid or any other action on his part affecting or tending to affect the status of the claimants as to the unpaid portions of their claims.

From this standpoint even I am unable to satisfy myself as to the authority for the proposed proceeding. Congress has appropriated money for the payment of certain claims, it has directed the Secretary of the Interior to investigate, determine, and declare the several amounts due and to whom, and to certify to the Secretary of the Treasury the amounts due, and it has authorized, in effect directed, the Secretary of the Treasury “to pay the several amounts so ascertained to the persons entitled to the same”; that is, to the persons to

whom found due by the Secretary of the Interior and in the amounts by him found.

The facts submitted as to the excess of the amount of the allowed claims over the amount of the appropriation indicate conclusively that the Secretary of the Treasury can not do what Congress has directed—pay the several amounts, etc. There is apparently no priority. Is there authority to prorate?

It is noticeable that in the legislation itself there is no word indicative of an intention on the part of Congress to apply the amount of the appropriation otherwise than in satisfaction of these claims in full. If applied on the claims, but not in full payment, the excess of allowed claims over appropriation necessarily remain unpaid allowed claims.

Since the payment of these claims may be regarded as somewhat in the nature of a gratuity, Congress, had it so wished, might have provided that if the allowed claims were in excess of the appropriation it should be applied pro rata thereto, and such pro rata payment accepted by the claimants in full. But it did not so provide, and, in the absence of agreement on the part of the claimants so to do, the Treasury can not impose on the claimants a condition of acceptance in full in connection with a pro rata payment. Such being the case, the payment pro rata of the appropriated money would mean the use of the money without the accomplishment of the declared purpose, viz, payment of the allowed claims, leaving Congress to repudiate payment of the unpaid portion of claims which it had directed should be paid or to appropriate more money.

It may be argued that Congress intended this money to be used in the payment of these claims and that application thereof pro rata is an application to the intended purpose, but such an assumption is merely an assumption without the ability to point to anything in the law authorizing it.

The fact seems to be that there was no “legislative intent” whatever with reference to a pro rata payment, either in full or in partial payment, and any conclusion as to the legislative intent under such circumstances is without foundation and the merest guesswork. The use of the words “or so much thereof as may be necessary,” in connection with the appropriation, may be formal and hence not of particular significance, but all the known facts indicate that Congress expected that the amount of money appropriated would pay all the claims in full, and so intended. If something else had been intended the reasonable assumption is that Congress would have availed itself of the abundance of the language at its command to indicate in the law that intention. In fact, no intention seems to have existed with reference to these claims except payment in full

by the use of the appropriation made, or so much thereof as might be necessary, and that is impossible.

It may be that there is authority in the Secretary of the Treasury to make pro rata payment on these claims. I do not dispute it, even though I do not believe it. I know of no authoritative holding to that effect nor of any precedent not founded on a tenable construction of the particular law in question.

I am unwilling to authorize the payment of this considerable amount of money on a mere guess as to what Congress might have directed had it been in possession of the facts indicating that what it really directed to be done could not be accomplished with the money made available. Rather than spend the money without accomplishing the declared purpose, I am of the opinion that action should be suspended until Congress shall declare its wishes by directing a pro rata payment to be accepted in full or by appropriating the additional amount necessary to full payment.

The decision of the auditor is therefore disapproved.

Possibly it should be added that if for any reason the Secretary of the Interior shall have occasion to modify his findings and any such modification shall bring the total of determined and certified claims within the appropriation, payment may then, of course, be made.
