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**DECISION**



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

FILE: B-114817

DATE: December 18, 1979

MATTER OF: Railroad Retirement Board's [authority to make setoffs from the Regional Rail Transportation Protective Account] 253

DIGEST: The Railroad Retirement Board may set off reimbursements due to railroads from the Regional Rail Transportation Protective Account described in 45 U.S.C. § 779 (1976) against amounts owed to the Board by the railroads under the Railroad Unemployment Insurance Act. Board's right of setoff derives from common law right of the Government to retain moneys otherwise due debtors in satisfaction of their debts. Although the withheld protective account reimbursements will be transferred to Board's insurance fund, this does not constitute violation of Protective Account statutory authority forbidding protective account funds to be used for insurance payments. Protective funds are being used for proper purposes but merely being withheld to satisfy independent debt.

The Railroad Retirement Board (Board) has asked whether it may withhold reimbursements due to the National Railroad Passenger Corporation (Amtrak) and payable from the Regional Rail Transportation Protective Account (Protective Account) pursuant to 45 U.S.C. § 779 (1976), to offset unpaid claims of the Board against Amtrak under section 12(o) of the Railroad Unemployment Insurance Act (RUIA), 45 U.S.C. § 362(o) (1976). The Board plans to transfer the withheld reimbursements from the Protective Account to its Railroad Unemployment Insurance Account. We conclude the Board can make those setoffs. 753

The question arose when the Board paid sickness benefits for work-related injuries to an employee of Amtrak and then served notice upon Amtrak of its right of reimbursement. For various reasons, Amtrak refused to make full reimbursement but eventually, the Board and Amtrak settled the matter. However, in the expectation that the issue may be raised again, the Board still seeks a decision on the propriety of offsetting amounts due to various railroads and payable from the protective account to discharge debts owed by the same railroads to the Board as reimbursement for sickness benefits. The problem, as both Amtrak and the Consolidated 6180

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Rail Corporation (ConRail) see it (both railroads submitted comments at our request), is that section 509 of the Regional Rail Reorganization Act of 1973 (3R Act), supra, which established the Protective Account, provides specifically that:

"\* \* \* the Regional Rail Transportation Protective Account . . . shall [not] be charged for any amounts of benefits paid to a protected employee under the provisions of the Railroad Unemployment Insurance Act or any other income protection law or regulation."

We do not think this provision applicable. The Board contemplates setting off moneys which would be due to ConRail, Amtrak and other recipient entities as reimbursements from the Protective Account. The moneys the Board intends to transfer to the Railroad Unemployment Insurance Account are not for benefits payable under the RUIA but for payments properly payable from the Protective Account. Instead of mailing the payments to the railroads, however, and hoping that the railroads will then be in a position to discharge the unrelated debts they owe to the Board, it seeks to apply the funds belonging to its debtors which it has in hand to extinguish their debts.

It is well settled that the United States' right of setoff "is but the exercise of the common law right which belongs to every creditor, to apply the unappropriated moneys of his debtor, in his hands, in extinguishment of debts due to him." United States v. Munsey Trust Co., 332 U.S. 234, 239 (1947), citing Gratiot v. United States, 40 U.S. (15 Pet.) 336, 370 (1841). We have held that setoff may be made by Federal agencies, B-170119, December 14, 1976, (in the absence of a prohibitory statute or agreement) so long as the debt is legally valid and the agency determines the setoff is otherwise proper. B-141048, February 11, 1960; 46 Comp. Gen. 178, 182 (1966). Thus, for example, we have approved setoffs against moneys owed the Veterans Administration (VA) by the State of Missouri as a result of surpluses from a federally funded farm training program and trade classes, B-141048, February 11, 1960; against moneys owed the United States by the State of Texas as a result of reimbursements due from Federal funds under the 1954 Emergency Hay Program, B-143573, July 22, 1960; and, in numerous instances involving overpayments to contractors, e.g., B-168619, January 14, 1970. We have also held that moneys of the debtor in the hands of the United States may properly be set off in liquidation of an independently established debt to the United States. 41 Comp. Gen. 179, 180 (1961); B-141048, February 11, 1960.

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Accordingly, we conclude that the Board may set off against reimbursements payable from the Protective Account to entities such as ConRail and Amtrak, amounts owed to the Board by these entities for RUIA reimbursements.

A handwritten signature in black ink, reading "Milton J. Rowland". The signature is written in a cursive style with a large, prominent initial "M".

For the Comptroller General  
of the United States