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Mr. Phillips Proc. Law I

DECISION



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

FILE: B-187142

DATE: December 28, 1976

MATTER OF: Victor Welsh and Larry Carter

DIGEST:

Whitney Brothers Plumbing and Heating, Inc. v. United States, 224 F. Supp. 860 (1963), held that Davis-Bacon Act does not authorize payment of underpaid workers from funds withheld from contracts other than those under which underpayments were found to be due and our Office has applied same principle to Contract Work Hours and Safety Standards Act. Accordingly, amount withheld from contract cannot be used to pay unpaid workers on another contract.

In its performance of General Services Administration (GSA) contract No. GS-08B-7855, the Alexco Company, in violation of both the Davis-Bacon Act, 40 U.S.C. § 276a (1970), and the Contract Work Hours and Safety Standards Act, 40 U.S.C. § 327, et seq., underpaid Messrs. Victor Welsh and Larry Carter. By letter of October 29, 1976, counsel for Messrs. Welsh and Carter requested that our Office authorize the payment of the unpaid wages from funds withheld from monies owed the Alexco Company under GSA contract No. GS-08B-7859.

Under both of the above-mentioned acts an amount sufficient to cover wage underpayments may be withheld from monies owed the contractor under the contract. In the present case no funds were withheld from monies owed the Alexco Company under contract No. GS-08B-7855.

We have held that the Government cannot withhold from a contractor sums due under one contract to satisfy claims of underpaid laborers for work in connection with performance of a different contract by the same contractor. The basis for this conclusion is the holding in Whitney Brothers Plumbing and Heating, Inc. v. United States, 224 F. Supp. 860 (1963), to the effect that the Davis-Bacon Act does not authorize the payment of underpaid workers

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from funds withheld from contracts other than those under which the underpayments were found. Also, see 48 Comp. Gen. 387 (1968) and B-170784, February 17, 1971, which apply the same principle to the Contract Work Hours and Safety Standards Act, 40 U.S.C. § 327-332 (1970).

Accordingly, there is no legal authority to satisfy these claims from the funds presently on deposit with our Claims Division since those funds were withheld from sums due the contractor under a contract other than the one under which the underpayments occurred.

Acting

R. F. K. H. M.
Comptroller General
of the United States