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D. Stolzenberg

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DECISION



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

FILE: B-190790

DATE: May 18, 1978

MATTER OF: Jeffrey L. Wartluft - Reimbursement of Fine

DIGEST: Forest Service employee paid fine to Virginia State Court because Government truck that he was driving exceeded maximum weight limitation. He may be reimbursed by Government since the fine was imposed upon him as agent of Government and was not the result of any personal wrongdoing on his part.

This is in response to a letter from David L. Olexer, an authorized certifying officer of the U.S. Department of Agriculture, Forest Service, requesting a decision whether he may certify for payment a voucher for reimbursement of a \$104.40 fine paid to the General District Court at Bland, Virginia, by Jeffrey L. Wartluft, a Forest Service employee.

Mr. Wartluft drove a Forest Service truck from Virginia to West Virginia when the truck was found to be overweight on the rear axle at the weigh scales at Bland, Virginia. The truck had been loaded with logs by Mr. Wartluft and several other Forest Service employees who had no way of checking the weight at the time the truck was loaded. Although the truck was underweight in total, it was overweight on the rear axle by 2,000 pounds. The overweight citation was thus the result of improper loading rather than overloading the entire truck. The fine was paid from personal funds by Mr. Wartluft and his work unit, and Mr. Wartluft now seeks reimbursement of the amount paid.

It has been the general position of our Office that a fine imposed by a court upon a Federal employee for an offense committed while driving a Government vehicle in the performance of his official duties is the responsibility of the employee, and there exists no authority for its payment from appropriated funds, as such fine is imposed upon the employee personally. 31 Comp. Gen. 246 (1952). See, also B-186680, October 4, 1976; and B-173660, November 18, 1971.

These cases, however, dealt with fines for failure to pay parking meter fees or for exceeding a speed limit. A factor common to them is that the violation was caused by the negligent or intentional acts of the employee concerned. Thus, the imposition of the fine was on the employee personally. Even in B-173660, *supra*, where an employee claimed that an inaccurate speedometer on his Government

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vehicle caused his arrest and fine for speeding, we denied the use of appropriated funds to reimburse him for payment of the fine. Since the fine might have been the result of intentional or negligent acts on the part of the Government employee, we stated the employee could present his claim to his agency under the Federal Tort Claims Act, 28 U.S.C. 2674.

We believe that the present case may be distinguished from the line of cases discussed above. Although Mr. Wartluft assisted in loading the truck, the weight of the truck could not be checked as it had been loaded in the woods where there was no scale. Thus, the excess weight on the rear axle was not the fault of Mr. Wartluft. Furthermore, although the citation was issued in Mr. Wartluft's name, as the driver of the vehicle, it was not for any personal wrongdoing by him in operating the vehicle, as occurred in the cases cited above. Moreover, Mr. Wartluft was acting as an agent of the Government within the scope of his duties. In this connection the record indicates that the judge handling the case offered to change the citation from one against Mr. Wartluft to one against the United States. The Government representatives handling the case declined the offer. They did not wish to try the case in Federal Court because of the precedent set in Virginia v. Stiff, 144 F. Supp. 169 (W.D. Va., 1956). In that case the Federal District Court held that federally owned and operated motor vehicles are not immune from the operation of laws limiting the weight of vehicles on Virginia public highways, and that the driver of a Government truck which exceeded the maximum weight limitation was subject to a fine for violating the weight limitation statute. See 46 Comp. Gen. 624, 627 (1967).

On the basis of the foregoing, it is our opinion that, although the citation was issued in Mr. Wartluft's name, it was actually a citation against the United States, his principal. Pursuant to Virginia v. Stiff, supra, the United States is not immune from payment of a fine of this nature. Accordingly, appropriated funds may be used to reimburse the employee for paying the fine.

The certifying officer is therefore advised that the voucher may be properly certified for payment.


Deputy Comptroller General
of the United States