

DECISION

Dr. Vesper 1275
**THE COMPTROLLER GENERAL
OF THE UNITED STATES 8473**
WASHINGTON, D. C. 20548

FILE: B-191991

DATE: December 1, 1978

MATTER OF: Norbert J. Bengtson -- Violation of
Service Agreement

DIGEST: Employee, who was reimbursed for relocation expenses incident to transfer while employed by Postal Service, failed to remain with Postal Service for 12 months and transferred to Department of the Interior. Employee must repay expenses for violating service agreement since Postal Service employees are not covered under provisions of 5 U.S.C. §§ 5724 and 5724a which require only "Government service" rather than service with a particular agency.

This action is in response to a request for a decision from Lynn A. Greenwalt, Director, Fish and Wildlife Service, Department of the Interior, concerning the liability of Mr. Norbert J. Bengtson, an Interior employee, to repay relocation expenses paid to him by the United States Postal Service. We have also been requested by the Postal Service to review this matter. The Postal Service believes Mr. Bengtson is indebted in the amount of \$1,611.81 for failing to complete 12 months of service with the Postal Service after his transfer between Postal Service duty stations.

The record indicates that Mr. Bengtson, while employed by the Postal Service, transferred from Springfield, Illinois, to Milwaukee, Wisconsin, effective March 26, 1977. In connection with this transfer, Mr. Bengtson signed an agreement to remain in the Postal Service for a period of 12 months following the effective date of his transfer. Mr. Bengtson later transferred to the Fish and Wildlife Service effective September 9, 1977, and the Postal Service has requested repayment of the relocation expenses due to Mr. Bengtson's violation of the service agreement. The question is whether the Postal Service can require an employee to remain in its service for 12 months after his transfer as opposed to remaining in Government service in order to fulfill his obligation under the employment agreement.

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As pointed out by the Fish and Wildlife Service, our Office has held that under the authority of 5 U.S.C. § 5724(i) an agency may only require an employee to remain in the Government service rather than in the service of the agency for 12 months following the effective date of his transfer. 51 Comp. Gen. 112 (1971); and 50 *id.* 374 (1970). See also *Finn v. United States*, 192 Ct. Cl. 814 (1970). However, the Postal Service believes that Mr. Bengtson does not come within the coverage of 5 U.S.C. §§ 5724 and 5724a which govern relocation expenses for most Federal employees. Those sections authorize payment of relocation expenses of an "employee", which is defined in section 5721(2) as "an individual employed in or under an agency". The term "agency" is defined in section 5721(1) as including an "Executive agency", which is defined by 5 U.S.C. § 105 as including an "independent establishment". However, that term is defined in section 104 as meaning an establishment in the executive branch "other than the United States Postal Service". Thus, the Postal Service is not an "agency" within the meaning of 5 U.S.C. § 5721(1) and Postal Service employees are not covered by the provisions of 5 U.S.C. §§ 5724 and 5724a.

Under the provisions of the Postal Reorganization Act of 1970, Pub. L. 91-375, 84 Stat. 719, no Federal laws (with certain exceptions) dealing with officers or employees of the Postal Service were to remain applicable on or after July 1, 1971. See 39 U.S.C. § 410 (1976). It appears that the "government service" provision did continue in effect as a Postal Service regulation until 1972 when the appropriate Postal Service regulations were changed to require 12 months service with the Postal Service as a condition for payment of relocation expenses. Thus, in view of the authority of the Postal Service to fix compensation and benefits for its employees under 39 U.S.C. § 1003 and in view of the fact that the provisions of 5 U.S.C. §§ 5724 and 5724a are not applicable to Postal Service employees, we conclude that it is within the authority of the Postal Service to obligate its employees to remain in the Postal Service for a period of time following transfer and to require repayment if the agreement is violated for reasons other than those acceptable to the Postal Service.

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Accordingly, we conclude that Mr. Benqtson is indebted to the Postal Service for the relocation expenses which have been paid to him.

R. G. Kim
Deputy Comptroller General
of the United States