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B-146111, Jul. 6, 1961

Number: B-146111

Date: 1961-07-06

B-146111, JUL. 6, 1961

TO ADMINISTRATOR, FEDERAL AVIATION AGENCY:

YOUR LETTER OF JUNE 12, 1961, REQUESTS OUR DECISION CONCERNING THE PROPRIETY OF REFUNDING A COLLECTION AND A WITHHOLDING OF COMPENSATION AGAINST THE INDEBTEDNESS OF GERALD L. WATERS, AN EMPLOYEE OF THE FEDERAL AVIATION AGENCY, FOR EXPENSES INCURRED BY THE GOVERNMENT UNDER THE GOVERNMENT EMPLOYEES TRAINING ACT OF JULY 7, 1958, 5 U.S.C. 2301 19.

THE AMOUNT OF $60 WAS COLLECTED FROM MR. WATERS AND $147.42 WAS WITHHELD FROM HIS COMPENSATION BECAUSE OF HIS VIOLATION OF A TRAINING AGREEMENT BY VOLUNTARILY RESIGNING FROM THE AGENCY, PRIOR TO HIS SERVING THE REQUIRED PERIOD OF TIME UNDER THE AGREEMENT MADE PURSUANT TO THE ACT, FOLLOWING THE COMPLETION OF A TRAINING COURSE RECEIVED THROUGH NON-GOVERNMENT FACILITIES MADE AVAILABLE TO HIM AT GOVERNMENT EXPENSE. AFTER A SEPARATION FROM THE SERVICE OF APPROXIMATELY 7 MONTHS, MR. WATERS HAS NOW BEEN REEMPLOYED BY THE AGENCY.

SECTION 11, SUBSECTIONS (A) AND (C) OF THE GOVERNMENT EMPLOYEES TRAINING ACT PROVIDES, IN PART, AS FOLLOWS:

"SEC. 11. (A) EACH EMPLOYEE WHO IS SELECTED FOR TRAINING BY, IN, OR THROUGH A NON-GOVERNMENT FACILITY UNDER AUTHORITY OF THIS ACT SHALL, PRIOR TO HIS ACTUAL ASSIGNMENT FOR SUCH TRAINING, ENTER INTO A WRITTEN AGREEMENT WITH THE GOVERNMENT TO THE EFFECT THAT (1) AFTER THE EXPIRATION OF THE PERIOD OF HIS TRAINING, HE WILL CONTINUE IN THE SERVICE OF HIS DEPARTMENT FOR A PERIOD AT LEAST EQUAL TO THREE TIMES THE LENGTH OF THE PERIOD OF SUCH TRAINING UNLESS HE IS INVOLUNTARILY SEPARATED FROM THE SERVICE OF HIS DEPARTMENT * * *.

"/C) IF ANY EMPLOYEE * * * FAILS TO FULFILL HIS AGREEMENT TO PAY TO THE GOVERNMENT THE ADDITIONAL EXPENSES INCURRED BY THE GOVERNMENT IN CONNECTION WITH HIS TRAINING, A SUM EQUAL TO THE AMOUNT OF SUCH ADDITIONAL EXPENSES OF TRAINING SHALL BE RECOVERABLE BY THE GOVERNMENT FROM SUCH EMPLOYEE OR HIS ESTATE (1) BY SETOFF OF ACCRUED SALARY, PAY, COMPENSATION, AMOUNT OF RETIREMENT CREDIT, OR OTHER AMOUNT DUE SUCH EMPLOYEE FROM THE GOVERNMENT AND (2) BY SUCH OTHER METHOD AS MAY BE PROVIDED BY LAW FOR THE RECOVERY OF AMOUNTS OWING TO THE GOVERNMENT. THE HEAD OF THE DEPARTMENT CONCERNED MAY, IN ACCORDANCE WITH REGULATIONS OF THE COMMISSION, WAIVE IN WHOLE OR IN PART ANY RIGHT OF RECOVERY UNDER THIS SUBSECTION, IF IT IS SHOWN THAT SUCH RECOVERY WOULD BE AGAINST EQUITY AND GOOD CONSCIENCE OR AGAINST THE PUBLIC INTEREST.'

BECAUSE OF MR. WATERS' REEMPLOYMENT YOU NOW PROPOSE, UNDER THE PROVISIONS OF SECTION 11 (C) OF THE ACT TO WAIVE ANY RIGHT OF RECOVERY BY THE GOVERNMENT

RESULTING FROM HIS VOLUNTARY RESIGNING FROM THE SERVICE PRIOR TO HIS COMPLETING THE NECESSARY CONTINUOUS PERIOD OF SERVICE REQUIRED UNDER SECTION 11 (A) AND THE AGREEMENT WHEN HE SHALL COMPLETE THE REQUIRED SERVICE AS AN EMPLOYEE OF THE AGENCY.

WE UNDERSTAND THAT BOTH THE AMOUNT OF $60 AND THE AMOUNT OF $147.42 WITHHELD FROM COMPENSATION HAVE NOW BEEN COVERED INTO THE TREASURY OF THE UNITED STATES FOR CREDIT TO MISCELLANEOUS RECEIPTS. THESE AMOUNTS WHICH WERE COLLECTED PRIOR TO A DETERMINATION TO WAIVE THE INDEBTEDNESS WERE AT THAT TIME A PROPER RECOVERY WITHIN THE PROVISIONS OF THE ACT AND MAY NOT BE CONSIDERED AS HAVING BEEN ERRONEOUSLY RECEIVED AND COVERED INTO THE TREASURY SO AS TO BE AVAILABLE FOR A REFUND. SEE B-143743, SEPTEMBER 14, 1960, COPY ENCLOSED. IN A-27376, MARCH 12, 1930, REFERRED TO BY YOU, NO ACTUAL RECOVERY OR OFFSET TANTAMOUNT TO RECOVERY HAD BEEN ACCOMPLISHED, THERE BEING ONLY A TENTATIVE WITHHOLDING PENDING A DECISION AS TO WAIVER. THEREFORE, ON THE PRESENT RECORD, THAT DECISION WOULD NOT BE FOR APPLICATION HERE.