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B-159820, Sep. 30, 1966

Number: B-159820

Date: 1966-09-30

B-159820, SEP. 30, 1966

TO THE SECRETARY OF DEFENSE:

REFERENCE IS MADE TO A LETTER DATED JUNE 21, 1966, FROM THE DEPUTY ASSISTANT SECRETARY, REQUESTING A DECISION REGARDING THE CLAIM OF THE RESEARCH AND EDUCATION ASSOCIATION FOR $170 FOR SEMINAR AND REGISTRATION FEES FOR A COURSE IN MICROELECTRONICS GIVEN IN NEW YORK, NEW YORK, FROM JANUARY 31 THROUGH FEBRUARY 2, 1966.

THE ASSOCIATION BROCHURE ADVERTISING THE COURSE PROVIDED THAT RESERVATION COULD NOT BE CANCELED AFTER THE CLOSING DATE OF JANUARY 28, 1966, BUT THAT REGISTRANTS WERE ALLOWED TO SUBSTITUTE PERSONNEL. ON JANUARY 21, THE GOVERNMENT TRAINING OFFICER SENT THE ASSOCIATION A LETTER STATING THAT IN CONFIRMATION OF A PREVIOUS TELEPHONE CALL ON JANUARY 13, THE OFFICE OF THE SECRETARY WISHED TO ENROLL MR. DONALD F. SPENCER IN THE MICROELECTRONICS COURSE. THE ASSOCIATION SUBSEQUENTLY SENT A CONFIRMATION THAT MR. SPENCER WAS REGISTERED FOR THE COURSE.

MR. SPENCER PLANNED TO FLY TO NEW YORK ON SUNDAY, JANUARY 30. SATURDAY, JANUARY 29, IT BEGAN TO SNOW IN THE WASHINGTON, D.C. AREA AND WHERE MR. SPENCER LIVES SEVERAL MILES SOUTH OF MOUNT VERNON, VIRGINIA. MR. SPENCER REPORTS THAT BY SATURDAY AFTERNOON THE SNOWFALL WAS SO HEAVY THAT THE STREETS WHERE HE LIVED BECAME IMPASSABLE AND ALL TRAFFIC IN THAT AREA CEASED. THE SNOWFALL WHICH CONTINUED THROUGH SUNDAY BECAME SO HEAVY THAT THE GOVERNOR OF VIRGINIA DECLARED A "STATE OF EMERGENCY" WHICH PROHIBITED ALL VEHICLES, EXCEPT EMERGENCY VEHICLES, FROM THE STREETS AND HIGHWAYS. DESPITE THESE CONDITIONS, MR. SPENCER STATES THAT HE ATTEMPTED TO SEEK INFORMATION ON WAYS TO GET FROM HIS HOME TO THE TRAIN STATION IN WASHINGTON, D.C., SINCE HE HAD LEARNED THAT SOME TRAINS WERE OPERATING ALTHOUGH NO PLANES WERE FLYING. HE REPORTS THAT NO SNOWPLOWS WERE OPERATING IN HIS AREA AND NO TRANSPORTATION WAS AVAILABLE SINCE TAXIS AND BUSSES HAD CEASED OPERATION ON SATURDAY. HE STATES THAT NOT UNTIL WEDNESDAY, FEBRUARY 2, WAS HE ABLE TO HIKE OUT OF HIS AREA TO GET TRANSPORTATION TO THE PENTAGON AND EVEN THEN DID NOT REACH THE BUILDING UNTIL LATE IN THE MORNING ALTHOUGH HE LEFT HOME EARLY. FOR THESE REASONS, HE STATES HE WAS NOT ABLE TO PROCEED TO NEW YORK IN TIME TO ATTEND THE COURSE.

THE ASSOCIATION WAS ADVISED THAT MR. SPENCER WAS UNABLE TO ATTEND THE COURSE BECAUSE OF THE UNEXPECTED HEAVY SNOWSTORM. HOWEVER, THE ASSOCIATION CONDUCTED THE COURSE AS ADVERTISED AND REPLIED THAT UNDER THE TERMS OF MR. SPENCER'S REGISTRATION HE OR A SUBSTITUTE WAS TO ATTEND. THEREFORE, THE ASSOCIATION BELIEVES THAT IT SHOULD BE PAID FOR THE COURSE AND HAS ISSUED A CREDIT FOR ATTENDANCE AT A SUBSEQUENT MICROELECTRONICS COURSE ON THE BASIS THAT IT IS ENTITLED TO PAYMENT UNDER THE TERMS OF MR. SPENCER'S REGISTRATION AGREEMENT.

A QUESTION HAS BEEN RAISED AS TO WHETHER THE ASSOCIATION IS ENTITLED TO PAYMENT UNDER ITS CONTRACT SINCE IT IS SUGGESTED THAT PERFORMANCE WAS IMPOSSIBLE, MR. SPENCER HAVING BEEN PREVENTED FROM ATTENDING THE COURSE BY AN ACT OF GOD. HOWEVER, WE DO NOT BELIEVE THAT THIS IS A VALID DEFENSE TO THE CLAIM SINCE THE TERMS OF THE CONTRACT WITH THE ASSOCIATION ARE CLEAR THAT IF MR. SPENCER COULD NOT ATTEND SOMEONE ELSE COULD HAVE BEEN SENT IN HIS PLACE.

MOREOVER, IT IS THE GENERAL VIEW THAT WHERE A CONTRACT FOR SCHOOLING IS FOR A SPECIFIED PERIOD FOR WHICH A DEFINITE PAYMENT OF TUITION IS TO BE MADE, AND THERE IS NO GENERAL STIPULATION FOR A DEDUCTION OR REFUND IN THE EVENT OF INABILITY TO ATTEND, THE ENTIRE CONTRACT PRICE IS PAYABLE REGARDLESS OF THE NONATTENDANCE BY THE STUDENT FOR PART OF ALL OF THE TIME, AT LEAST WHERE THE FAILURE TO ATTEND IS NOT EXCUSED BY SOME FAULT UPON THE PART OF THE SCHOOL OR SOMEONE CONNECTED WITH IT. 15 AM. JUR. 2D, COLLEGES AND UNIVERSITIES 21; 55 AM. JUR., UNIVERSITIES AND COLLEGES 8; AND 47 AM. JUR., SCHOOLS 223. ALSO, IN B-159059, JUNE 28, 1966, OUR OFFICE CONSIDERED A SITUATION WHERE AN EMPLOYEE, BECAUSE OF THE PRESS OF WORK, DID NOT ATTEND A COURSE FOR WHICH HE HAD BEEN REGISTERED AT THE ASSOCIATION UNDER THE SAME TERMS AS IN THE IMMEDIATE SITUATION. IN THAT CASE, IT WAS HELD THAT THE CONFIRMATION OF THE REGISTRATION RESULTED IN A VALID OBLIGATION FOR PAYMENT OF THE FEE AND THAT, IN THE ABSENCE OF A SHOWING THAT THE ASSOCIATION WAS IN ANY WAY RESPONSIBLE FOR THE FAILURE OF THE AGENCY TO GIVE TIMELY NOTICE OF CANCELLATION, THE ASSOCIATION WAS ENTITLED TO PAYMENT.

IN VIEW OF THE FOREGOING, THE ASSOCIATION IS ENTITLED TO THE SEMINAR AND REGISTRATION FEES AND THEY SHOULD BE PAID.

SINCE THE ASSOCIATION HAS PROVIDED A CREDIT WHICH CAN BE USED FOR A FUTURE MICROELECTRONICS COURSE AND MR. SPENCER'S ABSENCE FROM THE COURSE APPEARS TO HAVE BEEN JUSTIFIED DUE TO THE UNEXPECTED SEVERE STORM AND THE LACK OF TRANSPORTATION FROM THE AREA WHERE HIS TRIP WAS TO ORIGINATE, NO CHARGE SHOULD BE MADE AGAINST MR. SPENCER FOR THE FEES.