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B-217636 March 4, 1985

Number: B-217636

Date: 1985-03-04

B-217636 March 4, 1985

The United States Claims Court has jurisdiction under 28 U.S.C. Sec. 1491, a part of the Tucker Act, to render judgments upon claims for informers awards authorized by 19 U.S.C. Sec. 1619 (1982). 28 U.S.C. Sec. 1491 grants Claims Court jurisdiction over claims for recovery under a Federal statute if it is a "money-mandating. statute, i.e., confers a substantive right to recover money damages from the United States. The Claims Court has jurisdiction over claims for awards under 19 U.S.C. Sec. 1619 since that statute is "money-mandating." See Court cases cited.

Mr. George M. Beasley, III Commercial Litigation Branch Civil Division United States Department of Justice Washington, D.C. 20530

Attention: Classification Unit 2nd Floor, Todd Building

Dear Mr. Beasley:

Subject: Robert Rickard v. United States Claims Court No. 13-85

This responds to the request of Mr. Richard K. Willard, Acting Assistant Attorney General, Civil Division, dated January 23, 1985, for a litigation report on the above captioned action. Mr. Willard also requested our opinion on whether 19 U.S.C. Sec. 1619 (1982) is a "money-mandating" statute for purposes of the United States Claims Court's jurisdiction.

With respect to the litigation report, our records reveal no outstanding claim by or against the plaintiff. We have no factual knowledge regarding the case beyond that contained in the petition, and we know of nothing that would form the basis of a counterclaim or setoff in this case.

With regard to the jurisdictional issue, our view is that 19 U.S.C. Sec. 1619 is "mandatory" and that the plaintiff may bring an action for payment under it in the Claims Court.

BACKGROUND

Generally, 19 U.S.C. Sec. 1619 [1] authorizes compensation awards to private informers of customs laws violations. It provides:

"Any person not an officer of the United States who detects and seizes any vessel, vehicle, merchandise, or baggage subject to seizure-and forfeiture under the customs laws or the navigation laws, and who reports the same to an officer

of the customs, or who furnishes to a United States Attorney, to the Secretary of the Treasury, or to any customs officer original information concerning any fraud upon the customs revenue, or a violation of the customs laws or the navigation laws, perpetrated or contemplated, which detection and seizure or information leads to a recovery of any duties withheld, or of any fine, penalty, or forfeiture incurred, may be awarded and paid by the Secretary of the Treasury a compensation of 25 per centum of the net amount recovered, but not to exceed $50,000 in any case, which shall be paid out of any appropriations available for the collection of the revenue from customs. For the purposes of this section an amount recovered under a bail bond shall be deemed a recovery of a fine incurred. If any vessel, vehicle, merchandise, or baggage is forfeited to the United States, and is thereafter, in lieu of sale, destroyed under the customs or navigation laws or delivered to any governmental agency for official use, compensation of 25 per centum of the appraised value thereof may be awarded and paid by the Secretary of the Treasury under the provisions of this section, but not to exceed $50,000 in any case."

The plaintiff filed an action in the Claims Court seeking compensation under 19 U.S.C. Sec. 1619 for providing original information to the United States Customs Service and the Drug Enforcement Administration which led to substantial recoveries by those two agencies. The complaint invokes the Claims Court's jurisdiction pursuant to 28 U.S.C. Sec. 1491(a), part of the Tucker Act. [2]

The Tucker Act is a jurisdictional statute. It does not by itself create any substantive right enforceable against the United States. Rather, it grants jurisdiction to the Claims Court in cases in which one of the sources the statute lists (the Constitution, Federal statutes or regulations or contract) gives the claimant a substantive right enforceable against the United States for money damages. United States v. Testan, 424 U.S. 392, 398 (1976). Put another way, the Claims Court has no jurisdiction if the authority the plaintiff relies on beyond 28 U.S.C. Sec. 1491(a) does not give him a right which is enforceable against the United States.

THE ISSUE

In cases where a plaintiff bases his claim on a Federal statute as here, the test of whether the statute establishes a substantive right enforceable against the United States is whether that statute is permissive or mandatory. Eastport Steamship Corp. v. United States, 372 F.2d 1002, 1009 (Ct. C1. 1967); Adair v. United States, 648 F.2d 1318 (Ct. Cl. 1981); Doe v. United States, 224 Ct. C1. 632 (1980). If a statute creates a legal entitlement in any individual who meets its requirements, it is mandatory or "money-mandating" and the Claims Court has jurisdiction to decide cases arising under it. Typically, the issue in cases in which the Claims Court has jurisdiction is whether the claimant has in fact met the statute's requirements. Conversely, a permissive statute is one which authorizes payment to persons only after the exercise of discretion by an executive official on the question of whether the Government will make a payment, and the Claims Court has no jurisdiction to hear cases brought under it. Thus, the question here is whether 19 U.S.C. Sec. 1619 confers upon an-informer who has satisfied its requirements an enforceable right to be paid, or whether payment is discretionary.

DISCUSSION

We base our view that 19 U.S.C. Sec. 1619 is a money-mandating statute upon

judicial caselaw and upon an examination of our treatment of the statute and its predecessors in earlier legal opinions of this Office.

Wilson v. United States, 135 F.2d 1005 (3rd Cir. 1943) appears to be on point. In Wilson, the plaintiffs had brought district court actions for payment under 19 U.S.C. Sec. 1619 for providing original information of fraud on the customs revenue. As a defense, the Government argued "that the Secretary of the Treasury under section 619 of the Tariff Act of 1930 may in his absolute discretion grant or withhold compensation to informers and since the Secretary has not seen fit to make awards to the plaintiffs, the court below was without jurisdiction to entertain suits under the Tucker Act. " Id. at 1008.

The Appellate Court considered the Government's contention rather extensively and then refuted it. [3] The Court said that the policy of Congress in passing section 1619 and its predecessor acts was to protect the customs revenues of the United States. It noted that "an informer would have little incentive to give original information upon occasions at considerable personal risk to officers of the United States if his compensation rested in the absolute discretion, almost, one might say, in the whim, of an executive officer." Id. at 1 009.

Addressing the fact that the statute uses the word "may" instead of "shall," the Court applied the principle stated in DuPont v. Mills, 196 A. 168 (Del. Sup. Ct. 1937), and followed in numerous other cases cited in the opinion. Quoting from DuPont, the Court said:

"* * * the word 'may', ordinarily permissive in quality, is frequently given a mandatory meaning * * * where a public body or officer is clothed by statute with power to do an act which concerns the public interest, or the rights of third persons. In such cases, what they are empowered to do for the sake of justice, or the public welfare, the law requires shall be done. The language although permissive in form, is, in fact peremptory. * * *" Id. at 1009.

The Court also found section 1619 to be mandatory based on its use of the words "award" and "compensation." It noted that "An award of compensation ordinarily does not rest within the whim of the tribunal authorized to make it," and, "[C]ompensation is rarely, if ever, based on the absolute discretion of an administrative or an executive officer. " Id. at 1009. Thus, the court rejected the Government's contention that the district court was without jurisdiction to try the case stating:

"We think that in enacting Section 619 Congress intended the Secretary of the Treasury to make an award and pay compensation to an informer who gave valuable original information to the United States. There is therefore an implied contract within the meaning of the Tucker Act between the United States and the informer who brings himself within the purview of Section 619.* * *" Id. at 1009.

The Court of Claims in Tyson v. United States, 32 F. Supp. 135 (Ct. C1. 1940), viewed the statute similarly. The plaintiff in Tyson brought an action to recover an informer's fee under section 619 for furnishing original information concerning an importer's failure to pay customs duties. The Secretary of the Treasury had previously denied the plaintiff's claim administratively. The Government demurred to the plaintiff's petition arguing that section 619 "makes the decision of the Secretary of the Treasury on an application for an informer's fee final and conclusive." The Court ultimately sustained the

demurrer because the plaintiff's petition was defective. However, before doing so, the Court discussed the extent to which it disagreed with the Government's contention that the Secretary had absolute discretion over section 619 payments.

Essentially, the Court held that section 619 authorizes the Secretary to make the factual determinations which are prerequisite to an award, but that the statute does not give the Secretary the discretion to withhold payments if he finds that a claimant has met those prerequisites. The Court stated:

"* * * The defendant says that the Secretary's action in refusing to pay the award is final and conclusive, and that this court has no jurisdiction to review it. We do not altogether agree. Under certain circumstances and to a certain extent we think his action may be reviewed by the courts. Congress did not intend to leave to the caprice or whim of the Secretary an informer's right to the award. It intended to confer upon the informer an absolute right to demand the payment of the award when he had met the conditions precedent thereto laid down by Congress; that is to say, when he had furnished information of a fraud on the revenue, or a violation of the customs law, and when that information was 'original' information thereof, and when that information led to the recovery of duties, or of a fine, penalty, or forfeiture. If the information furnished was not the first information which the Secretary of the Treasury had concerning the fraud or violation, the informer was not entitled to the fee. If the information furnished did not lead to a recovery of duties, or of any fine, penalty, or forfeiture, the informer was not entitled to a fee. But when the information was the first information which the Secretary had had, and when that information led to the recovery of duties, or of a fine, penalty, or forfeiture, then the informer was entitled as of right to the payment of the award, and if the Secretary of the Treasury arbitrarily or capriciously refused to pay it, the informer had the right to file suit in court to compel that payment.* * * " Id. at 136

Thus, unless one were now to challenge the correctness of the Wilson and Tvson decisions, 19 U.S.C. Sec. 1619 clearly appears to be a "money- mandating" statute for purposes of the Claims Court's jurisdiction under the Tucker Act. [4]

Furthermore, we note that this Office has historically treated 19 U.S.C. Sec. 1619 (and its predecessors) as a statute which requires the Secretary to pay an informer's award to any claimant meeting its requirements. For example, in 5 Comp.Gen. 665 (1926), we considered whether the Secretary of the Treasury could pay an informer's award after his death to his widow who was the administratrix of his estate. The statute which authorized informer's awards at the time was section 619 of the Tariff Act of 1922, 42 Stat. 988. Its language was virtually identical to that of the current law. In holding that the Secretary could pay the informer's award to his estate we said:

"Payments for information so furnished as to violations of the customs laws are not personal gratuities but are rather in the nature of compensation for services rendered and have a direct relation to the benefit derived from such information by the United States in that they may not exceed 25 percent of the net amount recovered. The compensation having been earned by furnishing information resulting in recovery, the right to file a claim therefor becomes vested in the informer, is not defeated by his death, and the amount awarded by the Secretary of the Treasury may be paid to his legal representative even though no claim was filed nor award made until after the death of the informer."

Id. at 665-66.

While the decision is not directly on point, the quoted language reflects our view that informers receive payments under section 619 not at the Secretary's discretion, but as compensation and therefor as a matter of right.

CONCLUSION

While we express no opinion on the merits of Mr. Rickard's particular claim, it is our view that, based on existing precedent, a jurisdictional challenge grounded on the "money-mandating" concept would be unlikely to succeed. If we can provide any further assistance in this matter, please feel free to contact Mr. Jonathan Barker of my staff at 275-5544.

Sincerely yours,

Robert H. Hunter Assistant General Counsel

1. 19 U.S.C. Sec. 1619 is the codification of section 619 of the Tariff Act of 1930, 46 Stat. 758 (June 17, 1930).

2. 28 U.S.C. Sec. 1491 (a) (1) reads:

"The United States Claims Court shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort.* * *

3. The Court found no help in deciding this issue in the provision's legislative history nor in the legislative histories of its predecessor statutes. It therefore determined the legislative intent from an examination of 19 U.S.C. Sec. 1619 itself. Id. at 1009. We likewise investigated the provision's legislative history and, like the Court, found no guidance.

4. Subsequent to Wilson and Tyson, the Court of Claims has decided a number of other cases under 19 U.S.C. Sec. 1619. E.g., Lacy v. United States, 607 F.2d 951 (Ct. Cl. 1979); Cornman v. United States, 409 F.2d 230 (Ct. Cl. 1969); Fraters Valve & Fitting Co. v. United States, 347 F.2d 990 (Ct. C1. 1965). These later cases address the merits of individual claims and contain no mention of the jurisdictional issue.