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B-37205 October 19, 1943

Number: B-37205

Date: 1943-10-19

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Mr. E. V. Lackey, Regional Fiscal Agent, Forest Service, United States Department of Agriculture, 760 Market Street, San Francisco, California.

Dear Mr. Lackey:

Reference is made to your letter of May 13, 1943, requesting decision whether you are authorized to certify for payment voucher in the amount of $50, stated in favor of Salstron and Anderson, Orleans, California, as the alleged value of a mule reported to have been injured on October 7, 1942, and later destroyed while under hire to the Department of Agriculture, Forest Service, under contract No. A5fe-7428, dated August 27, 1942.

It appears that the mule was hired and was at the time being used in connection with a war mapping project being prosecuted by the Forest Service for the War Department and financed from funds advanced by that Department under the appropriation "Engineer Service Army, 1942-1943", 55 Stat. 811, 812; 56 Stat. 129, 228, 621, which contains a provision "for the procurement, preparation, and reproduction of maps and similar data for military purposes; for expenses incident to the Engineer Service in military and training operations, including military surveys."

The contract contained a provision that "Risk of loss, damage, or destruction of hired equipment assumed by USFS (Terms of Act of Jan 31, 1931)." Said act of January 31, 1931, provides in part:

"* * * 'The Secretary of the Agriculture is authorized, under such regulations as he may prescribe:

* * *

"'(c) To reimburse owners for loss, damage, or destruction of horses, vehicles and other equipment obtained by the Forest Service for the use of that service from employees or other private owners: Provided, That payments or reimbursements herein authorized may be made from the applicable appropriations for the Forest Service: And provided further, That except for fire-fighting emergencies no reimbursement herein authorized shall be made in an amount in excess of $50 in any case unless supported by a written contract of hire or lease.'"

The circumstances under which the mule was injured resulting in its destruction are stated in your letter as follows:

"On October 7, 1942, the mule was being used for packing Government supplies from the Big Flat Guard Station to Red Mountain. The trip requires crossing a cable swing foot bridge. While crossing this bridge, the male became frightened, roared and fell. When the mule landed, he lodged his foot in a hole between the bridge and a rock wall, breaking his leg. This mule was useless so it was necessary to destroy him. This was done on October 17. The mule was being used on official work at the time of the accident and there is no evidence of negligence on the part of the Government employees is charge of the pack train. Statements attached to the voucher described the accident, condition of the mule, and established its value at $50.00."

Since the mule was hired for use and was being used at the time in connection with the project being operated by the Forest Service for the War Department and financed by funds advanced by that department, you appear to be in doubt whether the claim falls within the scope of the act of January 31, 1931, 46 Stat. 1052, referring in that connection to decision of this office, 18 Comp. Gen. 109.

The decision in 18 Comp. Gen. 109, referred to by you, involved a claim for the value of a horse hired by the Forest Service for use in connection with certain work to be done by the Civilian Conversation Corps on Emergency Conservation Projects under Emergency Conversation funds. The contract provided that the Forest Service would assume responsibility for the death or permanent disability of the horse while under hire. It was held however--citing 16 Comp. Gen. 123, and decision of May 26, 1936, A-62062--that equipment hired for use on Emergency Conservation Work Projects is not "obtained by the Forest Service for the use of that services" within the purview of the act of January 31, 1931, and that said act does not authorize reimbursement from Emergency Conservation funds or under the regular appropriation of the Forest Service for damages to private property for use on such Emergency Conservation Work projects. See also, decision of August 25, 1937, to the Secretary of Agriculture, A-67007. It was further said that the general rule is that, in the absence of an authorized contractual provision therefor, the United States is not liable for injuries sustained, without fault or negligence on the part of any officer or employee of the Government by horses when being used for the purposes for which hired and that the contractual provision in that case--that risk of loss by death or permanent disability of the horse would be assumed by the Forest Service--not being authorized under any appropriation or other provision of law, was without any affect to impose upon the Government liability for such injury or death beyond the liability under the general rule there stated.

The promises upon which that decision was based appear to be present also in the present case. In that case, the horse was hired by the Forest Service for work on Emergency Conservation work performed under Emergency Conservation funds. In the present case, the male was hired by the Forest Service for work done for the War Department under War Department funds. The act of January 31, 1931, did not authorize reimbursement for damages to private property hired for use on Emergency Conservation projects chargeable to Emergency Conservation funds, nor does it authorize reimbursement for damages to private property hired for use on a project such as here involved chargeable to War Department funds. Neither does the appropriation "Engineer Service Army, 1942-1943"--which appears to be source of the working fund proposed to be charged--contain any provision authorizing its use for the reimbursement of the owners of rented equipment for the loss of such equipment on the basis of the provisions of said act of January 31, 1931. Accordingly, the claim does not fall within the provisions of the 1931 act. Therefore, the contractual provision that the risk of loss, damage, or

destruction of the hired animal wold be assumed by the Forest Service under that act is unauthorized. Such being the case, the claim must be considered only on the basis of the general rule, above referred to, that, in the absence of an authorized contractual provision therefor, the United States is not liable for injuries sustained by animals when being used for the purposes for which hired when such injuries occur without fault or negligence on the part of any officer or employee of the Government. Your letter states, as indicated above, that there is no evidence of negligence on the part of Government employees in the matter and the papers submitted with the voucher appear to support that view. Therefore, on the present record, there appears no legal liability on the part of the Government for the loss of the male.

Accordingly, you are not authorized to certify the voucher for payment and it, together with the related papers will, therefore, be retained in the files of this office.

Respectfully,

Comptroller General of the United States