

FOLKERT COLEMAN AND CAREY D. FERGUSON

APRIL 26, 1926.—Committed to the Committee of the Whole House and ordered to be printed

Mr. UNDERHILL, from the Committee on Claims, submitted the following

REPORT

[To accompany H. R. 8331]

The Committee on Claims, to whom was referred the bill (H. R. 8331) for the relief of Folkert Coleman, of Port Huron, Mich., and Carey D. Ferguson, collector of customs and special disbursing agent for the Treasury Department at Detroit, Mich., having considered the same, report thereon with a recommendation that it do pass.

The full facts in the case are stated in the following letter of the Secretary of the Treasury which is made a part of this report.

TREASURY DEPARTMENT,
Washington, February 26, 1926.

HON. CHARLES L. UNDERHILL,
Chairman Committee on Claims,
House of Representatives, United States.

MY DEAR MR. CHAIRMAN: I am in receipt of your letter of the 19th instant, asking for a report as to the merits of bill H. R. 8331, for the relief of Folkert Coleman, who was employed by the custodian of the post-office building at Port Huron, Mich., as a temporary laborer in the custodian service of this department, from February 1 to February 26, 1925, and Carey D. Ferguson, collector of customs and special disbursing agent for the Treasury Department at Detroit, Mich., for the amount he paid to Mr. Coleman upon a pay roll submitted by the custodian of the building named for the services of Mr. Coleman from February 1 to 15.

Mr. Coleman was assigned to duty as a temporary laborer by the custodian of the Port Huron building on February 1, 1925, and submitted his nomination for regular temporary appointment. Upon receipt of the nomination it was found that the nominee was over the age of 70 years, the age of retirement of laborers as set forth in the act of May 22, 1920, and as the Comptroller General of the United States had decided that the employment of such persons was illegal (decisions of September 6, 1923; December 12, 1923; and February 20, 1924), the custodian was directed by telegraph on February 25, 1925, to dis-

continue the employee's services, and by letter of the same date that the department could not authorize the payment of compensation for services rendered.

Mr. Coleman had already been certified by the custodian on his pay roll for the period February 1 to 15, 1925, to the special disbursing agent (Carey D. Ferguson, collector of customs, Detroit, Mich.), and that official had issued check in the sum of \$37.50 in payment thereof. The department upon receipt of the special disbursing agent's account for February suspended approval of the payment and endeavored to make collection thereof. The Comptroller General, on June 1, 1925, disallowed the amount paid.

Mr. Coleman has not been paid for services rendered during the period February 16 to 26, 1925, in the sum of \$27.50, nor has he refunded the amount erroneously paid him by the special disbursing agent.

There is inclosed for the information of your committee copies of the correspondence in connection with this case.

It may be stated that the cases of Mr. Coleman and Mr. Ferguson are similar to those of other employees and special disbursing agents, whose relief was authorized by Public Resolution No. 322 of the Sixty-eighth Congress and which was approved January 14, 1925. I recommended favorable action on that legislation because the department had received the benefit of the services of the employees and because the payments made by the disbursing agents had been made in good faith, and, therefore, it is recommended that the bill in question (H. R. 8331) be given favorable consideration.

Very truly yours,

A. W. MELLON,
Secretary of the Treasury.

WASHINGTON, D. C., February 25, 1925.

CUSTODIAN,

Post office, Port Huron, Mich.:

Folkert Coleman, laborer, 71 years old, discontinue immediately as he can not be paid for services. See circular letter December 18, 1923. Letter follows.

H. G. SHERWOOD,
Acting Executive Officer.

FEBRUARY 25, 1925.

CUSTODIAN,

Post office, Port Huron, Mich.

SIR: Referring to forms received this date completing your nomination for the temporary appointment of Folkert Coleman to the position of laborer at \$900 per annum at the building in your custody, effective on the 1st instant, this confirms office telegram of this date instructing you to discontinue his services immediately, as the papers show he was born on March 3, 1854, and is, consequently, 71 years of age.

The Comptroller General rendered a decision that persons temporarily employed, who have reached retirement age, may not legally be paid for services, and that decision was brought to the attention of all custodians in a circular letter issued on December 18, 1923.

In view of the foregoing, Folkert Coleman can not legally be paid for any services rendered in the position of laborer and the nomination is returned without action for cancellation on your files. If he has been paid for services from the 1st to 15th instant, you will be advised fully in a separate communication relative to making collection of the amount and adjusting the overpayment.

Copies of this letter will be sent to the special disbursing agent and the district secretary.

Respectfully,

H. G. SHERWOOD,
Acting Executive Officer.

PORT HURON, MICH., February, 27, 1926.

H. G. SHERWOOD,

*Acting Executive Officer, Office of Supervising Architect,
Washington, D. C.*

MY DEAR SIR: Reference is made to your telegram of February 25 instructing me to discontinue the services of laborer Folkert Coleman, and you refer me to circular letter of December 18, 1923.

I will be glad if you will send me a copy of the letter referred to, as I have no recollection of ever receiving such a letter, neither can I find a copy of it in my files.

On receipt of your telegram your instructions were carried out and I submitted to the Secretary of the Civil Service Commission to-day the name of another man to temporarily fill the position pending the establishment of a register.

Sincerely,

T. S. SCUPHOLM, *Custodian.*

MARCH 25, 1925.

CUSTODIAN,

Post Office, Port Huron, Mich.

SIR: Reference is made to the following entry which appears on your pay roll of custodian employees for February 1 to 15, 1925: Laborer (temporary), \$900 P. A. Folkert Coleman, February 1 to 15: Gross amount earned, \$37.50; net amount paid, \$37.50.

In view of office telegram and letter of the 25th ultimo, advising you that Mr. Coleman could not be paid for services due to the fact that he has already reached the age for retirement, the entry represents an overpayment of \$37.50, which you will please collect and deposit with the special disbursing agent.

The official mentioned will be furnished with a copy of this letter for his information.

Respectfully,

H. G. SHERWOOD,
Acting Executive Officer.

TREASURY DEPARTMENT,
OFFICE OF THE SUPERVISING ARCHITECT,
April 1, 1925.

Respectfully referred to the Comptroller General of the United States for his information and whatever action may be deemed necessary.

H. G. SHERWOOD,
Acting Executive Officer.

APRIL 11, 1925.

CIVIL DIVISION,

General Accounting Office, Washington, D. C.

SIR: Reference is made to the account of C. D. Ferguson, collector of customs and special disbursing agent, Detroit, Mich., for the month of February, 1925, and to the pay roll of the custodian force, post-office building, Port Huron, Mich., for the period February 1 to 15, and the suspension of the entry thereon in favor of Folkert Coleman, temporary laborer, who was beyond the age of retirement at the time of his assignment to duty.

In connection with the foregoing, attention is invited to a communication dated March 27, 1925, received from the custodian of the building named in reply to a letter of suspension by this office (copies of which were attached to the roll in question) which was transmitted to you with office reference of April 1.

There is inclosed herewith photostatic copy of a communication from Hon. Louis C. Cramton, Member of Congress, relative to this matter, and it will be appreciated if you will advise the office of the final action in the premises in order that the Congressman may be advised thereof.

Respectfully,

H. G. SHERWOOD,
Acting Executive Officer.

GENERAL ACCOUNTING OFFICE,
Washington, D. C., April 13, 1925.

SUPERVISING ARCHITECT,

Treasury Department, Washington, D. C.

SIR: There has been received your first indorsement of April 1, 1925, referring to this office letter dated March 27, 1925, from T. S. Scupholm, custodian, Port Huron, Mich., relative to an amount of \$37.50 paid to Folkert Coleman, representing salary as janitor from February 1 to 15, 1925.

In view of act of Congress approved January 14, 1925 (Public No. 322, 68th Cong.), amending the act of May 22, 1920 (41 Stat. 614), this office will take no further action in this matter as it is considered that he is entitled to the money received.

Respectfully,

J. R. McCARL,
Comptroller General.
By B. RICHARDS.

APRIL 16, 1925.

CLAIMS DIVISION,

General Accounting Office, Washington, D. C.

SIR: Reference is made to your letter of the 13th instant, file "Col-086667-GEC," with regard to the payment of \$37.50 to Folkert Coleman for service rendered as temporary laborer at the post-office building, Port Huron, Mich., for the period February 1 to 15.

In view of the second paragraph of the communication referred to, please advise this office whether it may instruct the custodian of the post-office building to submit to the department for payment a voucher covering the period February 16 to 26, during which period Mr. Coleman also served at \$900 per annum.

Respectfully,

H. G. SHERWOOD,
Acting Executive Officer.

APRIL 22, 1925.

CIVIL DIVISION,

General Accounting Office, Washington, D. C.

SIR: I have your letter of the 18th instant (C-FWN-7), in which you state that in accordance with decision of the Comptroller General (3 Comp. Gen. 119) it will be necessary to disallow compensation to Folkert Coleman, temporary laborer, post-office building, Port Huron, Mich., as paid by C. D. Ferguson, collector of customs, Detroit, Mich., for the period February 1 to 15, 1925.

Under date of April 13, 1925, the division of claims, addressed a letter to this office (Col-986667-GEC) in connection with this matter and there is quoted below the second paragraph thereof:

"In view of act of Congress approved January 13, 1925 (Public No. 322, Fifty-eighth Congress), amending the act of May 22, 1920 (41 Stat. 614), this office will take no further action in this matter as it is considered that he is entitled to the money received."

A copy of the above referred to communication was forwarded to Congressman Louis C. Cramton on April 16, and at the same time a letter was addressed to the claims division asking, whether, in view of the quotation above, the office had authority to secure from the custodian of the Port Huron building a pay roll in favor of Mr. Coleman covering the period February 16 to 26, during which period the employee rendered service, but has not been paid.

It will be very much appreciated if this matter is given careful consideration and the office advised definitely of the status of the case.

Respectfully,

H. G. SHERWOOD,
Acting Executive Officer.

APRIL 23, 1925.

ACTING EXECUTIVE OFFICER,

Office of the Supervising Architect, Washington, D. C.

SIR: There has been received your letter of April 16, 1925, file SA-M, in reply to letter of this office dated April 13, 1925, pertaining to the payment of \$37.50 to Folkert Coleman, for service rendered as temporary laborer at the post-office building, Port Huron, Mich., for the period February 1 to 15, 1925, and your request is noted that your office be informed whether it may instruct the custodian of the Port Huron building to submit to the department for payment a voucher covering the period February 16 to 26, 1925, during which period Mr. Coleman also served at \$900 per annum.

In reply you are advised that a voucher may be prepared covering the period February 16 to 26, 1925, and after it has received administrative approval it should be submitted to the claims division, General Accounting Office, as a claim for direct settlement with the claimant by this office.

Respectfully,

J. R. McCARL, *Comptroller General.*

MAY 14, 1925.

CIVIL DIVISION,

General Accounting Office, Washington, D. C.

SIR: May I have a reply to office letter of April 22, 1925, having reference to your letter of April 18 (C-FWN-7), and one from the claims division dated April 13 (Col-086667-GEC), in connection with a certain payment of compensation to Folkert Coleman, temporary laborer, post-office building, Port Huron, Mich., which was made by C. D. Ferguson, collector of customs, Detroit, Mich., and to salary which the employee named earned by serving from February 16 to 26, 1925?

Your prompt attention to this matter will be greatly appreciated.

Respectfully,

H. G. SHERWOOD,
Acting Executive Officer.

GENERAL ACCOUNTING OFFICE,
Washington, June 1, 1925.

Mr. H. G. SHERWOOD,
Acting Executive Officer,

Office of Supervising Architect, Treasury Department.

SIR: Receipt is acknowledged of your letter of April 22, 1925, SA-M, relative to suspension, voucher 16, February, 1925, accounts of C. D. Ferguson, collector of customs, Detroit, Mich., on account of erroneous payment of compensation to Folkert Coleman, temporary laborer, post-office building, Port Huron, Mich., for the period February 1 to 15, 1925.

The relief act of January 14, 1925 (Public, No. 322, Sixty-eighth Congress), authorized and directed the Comptroller General to credit the accounts of all disbursing officers or agents of the Department of the Treasury with the amounts heretofore paid in good faith for temporary services to such persons who had reached the age for retirement or who had been retired.

It is therefore held that payment for such services rendered subsequent to the date of that act are not properly payable by a disbursing officer of the Treasury, and are therefore proper for disallowance.

The letter from the claims division, date April 13, 1925, that "this office will take no further action in this matter" had reference to the demand made upon Mr. Coleman by the custodian for refund, and your reference of April 1, 1925. The statement that "it is considered he is entitled to the money received" was clearly an inadvertence.

Respectfully,

J. R. McCARL,
Comptroller General.
By GEO. MCINTURFF.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, June 1, 1925.

There is for consideration the question whether a disbursing officer is entitled to credit for a payment to a civilian employee beyond the retirement age for services rendered by said employee for the period February 1 to 15, 1925.

The act of May 22, 1920 (41 Stat. 614), was an act for the retirement of employees in the classified civil service of the United States. Section 6 of said act provided:

"SEC. 6. That all employees to whom this act applies shall, upon the expiration of ninety days next succeeding its passage, if of retirement age, or thereafter on arriving at retirement age as defined in section 1 hereof, be automatically separated from the service, and all salary, pay, or compensation shall cease from that date, and it shall be the duty of the head of each department, branch, or independent office of the Government to notify such employees under his direction of the date of such separation from the service at least sixty days in advance thereof * * *"

In decision of June 30, 1920 (26 Comp. Dec. 1079), the Comptroller of the Treasury held that as the employee is automatically separated from the service, and pay is expressly directed to cease, the failure to give the notice specified by the act could not continue the employee in the service or in a pay status.

It was held in decision of the Comptroller of the Treasury dated December 8, 1920 (27 Comp. Dec. 524), that reemployment in the Government service of employees retired under provisions of the act of May 22, 1920, is prohibited.

In decision of this office dated December 6, 1923 (3 Comp. Gen. 119), it was held that persons who have passed the age for retirement fixed by the act of May 22, 1920, may not lawfully be employed in temporary positions required to be filled in accordance with the civil service laws and regulations.

There was a failure to discontinue the services of certain employees of the Treasury Department when they had reached retirement age and in some cases they were not paid for the services rendered after reaching retirement age and in other cases the employees were paid and credit was not allowed for such payments. In order to relieve the situation thus arising, Congress passed an act approved January 14, 1925 (43 Stat. 748), providing as follows:

"* * * That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, the agreed compensation in each case to all persons temporarily employed by the Department of the Treasury prior to the enactment of this act who had, before such employment, reached the age for retirement, or who had been retired from the Government service under the provisions of the act entitled 'An act for the retirement of employees in the classified civil service, and for other purposes,' approved May 22, 1920. In case of the death (either before or after the enactment of this act) of any person entitled to compensation under the provisions of this act, the amount of such compensation shall be paid the widow, or if no widow, then to the children, or if no children, then to the estate of such person."

"SEC. 2. The Comptroller General is authorized and directed, notwithstanding the provisions of such act of May 22, 1920, to credit the accounts of all disbursing officers or agents of the Department of the Treasury with the amounts heretofore paid in good faith for temporary services to such persons who had reached the age for retirement or who had been retired."

When the bill, which afterwards became the act of January 14, 1925, was under consideration in the Senate, the explanation was made that it was to provide pay for services rendered after age of retirement applying to only 42 cases throughout the country and involving further payment of only \$1,020. (See Congressional Record, vol. 66, p. 1181.)

The question here under consideration arose in connection with a payment made by the collector of customs at Detroit, Mich., to an employee of the custodian service at Port Huron, Mich., for services rendered from February 1 to 15, 1925. A consideration of the language of the act of January 14, 1925, and of the explanation made when the bill was under consideration in the Senate of the United States, compels the conclusion that said act was intended merely to validate payments made prior to its enactment and to authorize payment for services rendered prior to the date of the act. There appears nothing in the act to indicate an intent to authorize payment for services subsequently rendered.

The rule which allows a de facto officer or employee to retain amounts paid for services rendered if not in excess of the reasonable value of such services can not operate to relieve a disbursing officer of responsibility for a payment made by him in direct contravention of statutes and of decisions of this office.

J. R. McCARL,
Comptroller General of the United States.

CUSTODIAN,
Post Office, Port Huron, Mich.

JUNE 5, 1925.

SIR: Reference is made to correspondence relative to the payment of compensation to Folkert Coleman, who served as temporary laborer outside of appointment at the building in your custody, from February 1 to 26, 1925.

There is inclosed herewith for your information a copy of a communication addressed to the department by the Comptroller General, together with a copy of his decision wherein disallowance of the amount paid Mr. Coleman for the period February 1 to 15, by C. D. Ferguson, collector of customs at Detroit, is made and in view of which this department can not pay Mr. Coleman for service rendered during the period February 16 to 26.

The only relief to be had in this case would seem to be through an act of Congress similar to one approved by the President on January 14, 1925, in behalf of certain employees who served under similar conditions in the custodian service some time ago.

A communication has been addressed to Congressman Cramton in connection with this matter.

Respectfully,

McKENZIE MOSS,
Assistant Secretary.