



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: U-Save Auto Rental

File: B-270916

Date: September 13, 1996

DIGEST

A car rental company filed a claim against an agency for the value of a car and loss of use of the car at the daily rental rate, for a car rented by a government employee on official travel, which was stolen through no fault of the employee. The company was not a party to the U.S. Government Car Rental Agreement which places risk of loss by theft on the company. Therefore, the employee's liability, for which the agency may pay, is determined under the law of bailments, as modified by the rental contract which in this case places liability on the customer for all "missing equipment" and "loss" to the vehicle "regardless of whether customer is at fault," but makes no provision for continuing to charge the daily rental fee after the customer no longer has possession of the car. Accordingly, the agency may pay the claim for the value of the vehicle, but it may not pay the claim for the continuing daily rental fee for loss of use of the vehicle.

DECISION

This action is in response to a request for an advance decision whether the U.S. Navy may pay a claim by U-Save Auto Rental, Tucson, Arizona, for an automobile stolen while rented to a Navy employee on temporary duty.¹ As explained below, the Navy may make payment on the claim for the value of the automobile but not for amounts claimed for loss of use of the vehicle.

Background

By travel orders issued September 6, 1995, Mr. Jeffrey E. Eslinger, a Navy civilian employee, was authorized to travel on temporary duty from his official duty station, the Naval Ordnance Center, Mechanicsburg, Pennsylvania, to attend a meeting in Tucson, Arizona, and return. The orders authorized him to use a rental car while in Tucson.

¹The request for decision was submitted by the Chief Petty Officer in Charge, Personnel Support Activity Detachment, Mechanicsburg, Pa.

Apparently, prior to Mr. Eslinger's departure, a reservation for a rental car was made for him with the Thrifty Car Rental Company in Tucson. He states, however, that when he arrived in Tucson on September 11, 1995, the Thrifty representative told him that because of a golf tournament and a convention then taking place, they had no cars available, but they had contacted another rental agency, U-Save Auto Rental, which did have one for him. Accordingly, Mr. Eslinger rented a car from U-Save. In doing so, he necessarily signed U-Save's rental contract, declining collision damage waiver coverage, and indicating that he would return the car on September 14, the day he was scheduled to return to Mechanicsburg.

Mr. Eslinger reports that he drove the car to the hotel where he was lodging and at which a conference he was to attend was being held. He states that he parked the car in the hotel's parking lot, locked it, and retained the keys. When he returned to the parking lot the next evening to use the car, he discovered that it was missing. He then asked a hotel security officer to assist him in looking around the parking lot for the car. Mr. Eslinger states that they were unable to locate the car, but they did find broken glass in the space where he had parked the car, which he believes indicates that a thief had broken into it. He promptly notified the police, and a copy of the police report is in the file. Mr. Eslinger states that he notified U-Save the following morning since their office had already closed the prior evening when he discovered the car missing. He also telephoned his supervisor in Mechanicsburg and advised him of the situation and that it would be necessary to rent another car until completion of his temporary duty.

Mr. Eslinger returned to Mechanicsburg on September 14, and he filed a written report of the matter along with his travel voucher on September 18. No negligence on Mr. Eslinger's part has been alleged regarding the theft of the car, and the record indicates none. Apparently, the car has not been recovered.

Subsequently, U-Save filed a claim with the agency for the value of the stolen car, which U-Save stated to be \$13,430.00, plus loss of use of the vehicle at \$22.00 per day (the daily rate charged for rental of the car under the contract) until settlement of the claim. The agency forwarded the matter to Headquarters, Military Traffic Management Command (MTMC) for consideration since that command is responsible for negotiation of the U.S. Government Car Rental Agreement by which participating car rental companies agree to apply special terms and procedures in the rental of cars to government travelers on official business. One of the terms of the agreement is that the rental company assumes and bears the entire risk of loss of or damage to the rented vehicle from and including every cause whatsoever, including theft.

MTMC advised the agency that U-Save in Tucson was not a participant in this program, and thus the terms of the agreement are not applicable to the theft of the automobile rented by Mr. Eslinger. MTMC opined that under the Joint Travel

Regulations (JTR), paragraph C2102, and the terms of U-Save's rental contract that Mr. Eslinger signed, the government may be liable for the loss of the vehicle.² Because of uncertainty regarding its liability for the loss of the car, the agency requested our decision on the matter.

Analysis and Conclusions

As stated above, Mr. Eslinger rented the automobile incident to performing his official travel, as authorized by his travel orders. We note that the applicable regulations provide that in selecting a commercially rented vehicle, installation transportation officers, contract travel agencies and travelers are to select the lowest cost rental service that meets mission requirements, and generally this will be vehicles available under the MTMC agreements. JTR, para. C2102B. While this guidance was followed initially in Mr. Eslinger's case by reserving an automobile with Thrifty, Thrifty did not have the automobile available for Mr. Eslinger, and instead arranged to have U-Save provide a car for him. Under the facts as reported in the record, we impute no fault to Mr. Eslinger in the matter.³ Thus, in renting the vehicle from U-Save and driving it to the hotel and parking it, he was acting within the scope of his employment, as authorized by his travel orders. See JTR para. C2102-F; and Captain Kenneth R. Peterson, 65 Comp. Gen. 253 (1986).

In declining the collision damage waiver under the U-Save contract, Mr. Eslinger was complying with the general policy established under the JTR, which prohibits reimbursement for the cost of purchasing extra collision insurance when official

²We have been advised that Thrifty Car Rental in Tucson is a participant in the agreement. Therefore, if Thrifty had provided the automobile reserved by Mr. Eslinger, under the agreement Thrifty would be required to bear the loss incurred by theft of the automobile. We note that the agreement also provides that where no vehicles are available at the time of pick-up, and the renter has a reservation, the company's rental location is to make arrangements to provide a vehicle "through another location participating in the rental Agreement." Since it appears Thrifty did not carry out its responsibility in this regard, MTMC should take this into consideration in monitoring quality control under the agreement.

³We note that JTR para. C2102-B.2 provides that travelers having access to an installation transportation officer should work through that officer to obtain rental vehicles, and when a rental vehicle has been arranged by such an officer and the traveler procures a vehicle from another source, reimbursement will be limited to the cost of the vehicle arranged by the transportation officer, provided the vehicle arranged for was available. In this case, we do not know whether a transportation officer arranged the rental with Thrifty, but in any event, Thrifty did not have the vehicle available for Mr. Eslinger.

travel in a rental vehicle is performed wholly within the United States. JTR para. C2102-D.1. The JTR also provides that an employee may be reimbursed the full amount of the loss sustained as contained in the rental contract for personal funds paid to a rental car agency for damage sustained by an automobile properly rented and damaged in the performance of official business, or direct payment in the full amount of the loss may be made by the government to the rental car agency instead of to the employee. JTR para. C2102-D.2. The JTR does not address a claim for loss of a rental vehicle due to theft.

As between U-Save and Mr. Eslinger, the rental of the automobile constitutes a bailment for hire, which is a bailment for the mutual benefit of the parties, and it is well settled that under such a bailment, the bailee is required to exercise only ordinary diligence in the care of the property bailed. Allen Business Machines, 55 Comp. Gen. 356 (1975); 23 Comp. Gen. 907 (1944); and 8 Am. Jur. 2d, Bailments, § 221 (1980). Absent a contractual provision increasing the bailee's liability, where the bailee has met the standard of ordinary diligence, the bailee is not liable for loss of or damage to the property, including loss due to theft. 8 Am. Jur. 2d, Bailments § 216 (1980).

In the present case, as noted above, there is no indication of negligence on the part of Mr. Eslinger in the care of the automobile, and his actions in parking it in the hotel parking lot, locking it and retaining the keys with him indicate at least ordinary diligence. Therefore, unless the U-Save rental contract places a greater degree of liability on the bailee, there is no basis to hold Mr. Eslinger liable for the loss incurred by the actions of the unknown thief, and thus no basis for the government to pay the claim.

In asserting its claim against the agency, U-Save enclosed a copy of its contract Mr. Eslinger signed, but U-Save did not refer to any particular provision concerning liability for a stolen vehicle. However, U-Save has advised us that it considers the provisions of the declination of collision damage waiver Mr. Eslinger initialed as clearly placing liability for loss of the vehicle on the customer. This provision is found on the face of the contract in a section entitled "Collision Damage Waiver," which contains two provisions from which the customer is to select one. The first provision states that "By initialing, Customer for the additional daily rate shown accepts Lessor's Collision Damage Waiver and Customer acknowledges he is to be responsible only (subject to the conditions listed on the reverse side of this agreement) for the first \$250/ _____ of collision damage to the Vehicle." The second provision, which Mr. Eslinger initialed and to which U-Save refers as including liability for loss due to theft, states that "By initialing, Customer declines Lessor's Collision Damage Waiver and agrees to pay Lessor for all damage and/or loss to vehicle."

While the second provision quoted above does refer to "all damage and/or loss to vehicle," when it is read in conjunction with its title and the first provision, both of which relate only to "collision damage," the second provision could be understood to refer only to all damage and/or loss due to collision. However, additional support for U-Save's position is found in item 5 of the terms and conditions appearing on the reverse of the contract. Item 5, entitled "Responsibility for Damage," relates to the collision damage waiver provisions on the face of the agreement and provides in pertinent part that "Customer is responsible for and will pay Lessor on demand for all missing equipment, loss, or damage to the Vehicle regardless of whether Customer is at fault. If Customer does not violate any term of this Agreement and if Customer, by signing the appropriate space on the front of the Agreement has accepted and paid for Lessor's Collision Damage Waiver, Customer's liability for collision damage will be limited to the first Two Hundred Fifty Dollars (\$250.00) or such other amount on the face hereof." These two sentences clarify the liability of the customer in relation to the provisions on the face of the agreement in that the first sentence places liability on the customer for all missing equipment, loss or damage to the vehicle regardless of whether the customer is at fault, and the second sentence limits his liability only for collision damage, if he has selected and paid for the collision damage waiver. The liability thus placed on the customer for "all missing equipment, [and] loss . . . to the Vehicle regardless of whether Customer is at fault" appears broad enough to place liability on the customer for the loss of the entire vehicle by theft, as in this case.

As noted above, the JTR authorizes reimbursing an employee for or paying directly to a rental car company a claim for damage to a rented vehicle incurred during the performance of official business, but the JTR does not mention paying a claim for theft of a rented vehicle in the same circumstances. However, we do not believe this omission precludes the agency from paying a valid claim asserted by a rental company for loss of a vehicle due to theft when the vehicle was properly rented by an employee for use on official business, as in this case.⁴ Although the rental contract was between U-Save and Mr. Eslinger, the agency authorized Mr. Eslinger to rent an automobile for use on official travel, and therefore he is entitled to reimbursement for the cost of doing so. We believe that such reimbursement (or payment directly to the rental company) may include the amount of a valid claim for loss due to theft of the vehicle on the same basis that such a claim for loss due to damage to the vehicle may be paid. Accordingly, the agency may pay U-Save's

⁴The provisions of JTR para. C2102-D prescribe rules concerning employees obtaining "extra collision and personal accident" insurance when renting vehicles for official business, and the agencies' obligation to pay claims arising in circumstances where they are proscribed from reimbursing employees for obtaining such insurance. Apparently because such insurance does not relate to theft, claims for theft are not addressed therein.

claim for the value of the vehicle (\$13,430) to the extent that it does not exceed the reasonable value of the vehicle as verified by the agency.

As to U-Save's claim for loss of use of the vehicle (\$22 per day until settlement of the claim), we note that item 7 on the reverse of the U-Save contract provides that the customer shall pay additional time and mileage charges for any period beyond the agreed period of rental during which "the customer retains possession of the vehicle." However, this provision does not provide a basis for paying the loss of use claim since upon theft of the vehicle, through no fault of his, Mr. Eslinger no longer had possession of the vehicle. We see no other contractual provision which would support allowance of this claim which is, in effect, the vehicle's daily rental cost for a continuing period during which the vehicle was no longer available for use by Mr. Eslinger on official travel. Accordingly, this claim may not be paid. See Allen Business Machines, supra.

/s/Seymour Efros
for Robert P. Murphy
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