

Claims Report

United States Army Claims Service

Personnel Claims Notes

Theft of Services Not Cognizable Under Article 139

Several field claims offices have contacted the U.S. Army Claims Service concerning the proper disposition of claims under Article 139, Uniform Code of Military Justice,¹ for theft of services. The queries typically arise after an Article 139 claim is presented to the claims office and alleges either of two common fact patterns. The first occurs when a claimant has performed labor for a soldier and the soldier fraudulently refuses to pay the amount of compensation which had been agreed upon by the parties.² The second occurs when a claimant discovers that a soldier has obtained and used the personal identification number (PIN) of the claimant's phone card to obtain unauthorized phone service.

Neither of these scenarios is cognizable under Article 139 which is an "extraordinary administrative claims settlement authority" and must not be expanded "beyond its strict limits."³ The remedy it provides must be strictly construed. There is no authority in the statute, the implementing regulation, or the Army's past practice which permits the application of Article 139 to anything other than the willful damage or wrongful taking of tangible property. This aspect of the Army's policy is in accord with the policies of our sister services and ensures that commanders do not exercise authority which is reserved to civil judicial authority.⁴ Unless Congress and the President increase the scope of Article 139, field offices must ensure that claims for theft of services are properly denied. The Special Court

Martial Convening Authority (SPCMCA) can deny such claims prior to the appointment of an investigating officer.⁵

When reviewing claims involving *both* theft of services and theft of property, field offices must take special care to ensure that damages are only assessed for loss of property. For example, Sergeant Jones is preparing to depart the command on permanent change of station orders, and he desires to have Mr. Turner, a former employee of a body shop, paint his vehicle for free. To carry out his scheme, Sergeant Jones offers to pay Mr. Turner \$1,500 for the entire job, including \$500 for paint and other materials and \$1,000 for labor. Mr. Turner completes the work and requests payment, but Sergeant Jones states that he is unable to make payment now but promises to send a check for the full amount the day after he receives his next paycheck. Sergeant Jones departs the command and subsequently fails to pay. Mr. Turner files an Article 139 claim for \$1,500. The claim is cognizable in the amount of \$500, which represents the value of the property wrongfully taken.⁶ Mr. Turner cannot, however, recover the \$1,000 promised for the value of his services under Article 139.

In analyzing such cases, it is critical to determine the relative portions of the claim pertaining to property loss and to loss of services. This distinction should also be explained to investigating officers prior to submitting their findings and recommendations to the SPCMCA. Captain Metrey.

Importance of the Purchase Amount on DD Form 1844

1. UCMJ art. 139 (1988).

2. If otherwise appropriate, an Article 139 claim is cognizable if a contractual dispute is "merely a cloak for an intent to steal." DEP'T OF ARMY, PAMPHLET 27-162, LEGAL SERVICES: CLAIMS, para. 10-3(b) (15 Dec. 1989) [hereinafter DA PAM 27-162].

3. *Id.* para. 10-1.

4. The Air Force defines property as:

an item that is owned or possessed by an individual or business. Property includes a tangible item such as clothing, household furnishings, motor vehicles, real property, and currency. The term does not include intangible property or items having no independent monetary worth. Items that should not be considered property for the purposes of this chapter include stocks, bonds, checks, check book, credit cards, telephone service, and cable television services.

AIR FORCE GEN. CLAIMS DIV., GEN. CLAIMS HANDBOOK, Ch. 6 (Apr. 1997).

The Navy regulation implementing Article 139 does not contain a definition of property but does limit the Article 139 remedy to acts that are punishable under Article 109, UCMJ. It further requires that the damage, loss or destruction of property be caused by "riotous conduct, willful conduct, or acts showing such reckless or wanton disregard of the property rights of others that willful damage or destruction is implied." This requirement necessarily limits the remedy to acts involving tangible property. DEP'T OF NAVY, MANUAL OF THE JUDGE ADVOCATE GENERAL, CHAPTER IV, ARTICLE 139 CLAIMS—REDRESS OF DAMAGE TO PROPERTY (1990).

5. DEP'T OF ARMY, REG. 27-20, LEGAL SERVICES: CLAIMS, para. 9-7(c)(2) (1 Aug. 1995). A legal review is required of any Article 139 claim submitted to an approval authority for final action.

6. DA PAM 27-162, *supra* note 2, para. 10-5(e)(3).

When a claimant files a claim for loss of, or damage to, household goods, it is important to ensure that the DD Form 1844, List of Property and Claims Analysis Chart, includes not only the date each item was purchased, but also the original cost. The original cost is not always a controlling factor for adjudication purposes.⁷ For purposes of carrier recovery, however, it can be an important issue because carriers may contend that the amount of repair exceeds the value of the item.⁸ Some carriers deny all liability; other carriers offer much less than the unknown original cost. The issue of original cost, if not resolved early, can become a major problem if the claimant can no longer be located.

A recent case involved a nine piece sectional sofa with a reupholstery cost of \$3,187.50. The sectional sofa was purchased in 1978, picked up for nontemporary storage in 1989,

and delivered to the claimant in 1992. The amount of the original purchase price was missing, and the carrier contended that it was overcharged, because the reupholstery bill was so expensive. The claimant could not be located, and the U.S. Army Claims Service was forced to compromise for an amount much less than the claimant was paid.

As this case demonstrates, it is imperative that field claims offices check the column marked "Original Cost" to see that the original cost was entered, along with the original date of purchase. If these entries are missing, it may be impossible to reconstruct them later, and it may be very difficult to pursue recovery against the carrier responsible for the damage. Ms. Schultz.

7. For adjudication purposes, an item's value is usually determined by using the value of similar used items or the depreciated replacement cost. Only if no better method of valuing a claimant's loss is available may the original purchase price be used to determine value through the adjusted dollar value method. *See id.* para. 2-39.

8. Carriers may argue that the original purchase price should be used to determine an item's value.