

U.S. Must Pay Aide's Legal Fees

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A federal judge ordered the U.S. Civil Service Commission yesterday to pay legal fees that could run as high as \$400,000 to A. Ernest Fitzgerald, the Pentagon employee who was fired after he told Congress about a \$2 billion cost overrun on the C-5A airplane.

In an apparently unprecedented opinion, U.S. District Judge William B. Bryant ordered the commission to pay the legal bills Fitzgerald incurred during his ultimately successful six-year battle to get this job back.

"To hold that Fitzgerald, or any other person in his situation, must bear such an expense as the price of vindicating such basic, fundamental rights (as those of making a living) would make a mockery and a sham of the mandate of Congress, and in cases like the present one would make those rights meaningless," Bryant wrote.

The firing of Fitzgerald, the judge wrote, was "blatantly improper action against him at the highest levels of the government."

Contacted by telephone at his mother's home in Alabama, Fitzgerald said he was "really delighted" to hear about Bryant's decision.

He said a computer print-out of part of his legal fees made last April showed that he owed one firm about \$225,000. He estimated that his total fees would be \$400,000.

In his order, Judge Bryant gave the Civil Service Commission 30 days "to determine the amount and costs of at-



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torneys' fees incurred by (Fitzgerald) in the conduct of the proceedings before it, which shall be awarded . . . in accordance with this opinion."

Bryant said that it was in cases such as Fitzgerald's "that the need for attorneys' fees is greatest, lest government officials such as the ones involved here be free to harass or victimize disfavored

employees, secure in the knowledge that the employee will either be wholly unable to stand up for his or her rights because of the staggering cost of the prospective fees involved, or, even if the employee is especially courageous and tenacious, will be left with a legal bill, which to virtually all federal employees would be financially catastrophic."

Fitzgerald testified about the cost overruns on the C-5A, the world's largest aircraft, to a congressional committee in 1969. In January, 1970, he was told his job had been abolished, and he was out of work.

He then began his battle for reinstatement. It took numerous hearings before the Civil Service Commission and the U.S. District Court before he was taken back and the government was ordered to pay him back salary. At first, he was monitoring the work of Air Force maintenance depots, a job that carried less responsibility than the one that had been abolished. He now

oversees Pentagon productivity reports.

In the proceeding involving attorneys' fees, the Civil Service Commission argued that the law did not permit it to do more for Fitzgerald than give him a job and back pay. Judge Bryant found otherwise.

Fitzgerald said yesterday he hoped Bryant's decision would lend encouragement to other government employees who may have been unjustly fired, and that it also might encourage more lawyers to take their cases.

"We noted a reluctance on the part of other attorneys around town to take this case on a 'pro bono' (no fee) or contingency fee basis because of the example set by the Civil Service Commission in dragging my case out," Fitzgerald said. "It is a horrible expense.

"You know," he said, "the government has the taxpayers' money. You go into these hearings and they oppose you with your own money."