

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

50957

FILE: B-182324

DATE: JUL 31 1975

97326

MATTER OF: Carl W. Kaufman - Claim for additional per diem allowance.

DIGEST: Employee claims additional per diem allowance on basis he acquired a vested right to per diem rate (\$25) authorized by Joint Travel Regulations (JTR) at time his travel orders were issued. JTR was subsequently changed to reduce the rate applicable to employee to \$14. When travel orders indicate per diem is in accordance with JTR, a change in JTR that modifies per diem rate applicable to employee must be applied on a prospective basis from the effective date of the change. Claim may not be allowed.

This action is a request for a reconsideration of a settlement of July 15, 1974, issued by the Transportation and Claims Division of our Office, which denied the claim of Mr. Carl W. Kaufman, an employee of Headquarters, Defense Supply Agency (HQ, DSA), Alexandria, Virginia, for additional per diem allowance incident to his temporary duty assignment (TDY) to attend a course of instruction at the Air War College, Maxwell Air Force Base, Montgomery, Alabama.

The facts in this case, according to the record, are summarized as follows. HQ, DSA issued Travel Order number 19-74, on May 22, 1973, that authorized Mr. Kaufman approximately 298 days TDY at the Air War College. It was indicated in block 13 of these orders that per diem was authorized in accordance with Volume 2 of the Department of Defense Joint Travel Regulations (JTR) which at that time prescribed a rate of \$25. Thereafter, the Per Diem, Travel and Transportation Allowance Committee, the authority responsible for promulgating the JTR, issued Joint Determination, number 16-73, dated August 9, 1973, which was duly promulgated and subsequently incorporated in the JTR (C8101j) by change number 97, dated November 1, 1973. The Joint Determination reduced the per diem rate to \$14 for employees attending training courses at schools, colleges and universities (including military schools) for periods of 45 days or more, effective September 1, 1973.

Mr. Kaufman was paid at the \$25 per diem rate until October 31, 1973, when it was discovered that under the amended regulation he should only

have received the reduced \$14 per diem rate from September 1, 1973. His orders were amended on November 13, 1973, to reflect the requirements of the JTR change of the reduced per diem rate from September 1, 1973, and recoupment of the overpayment was made by his agency.

Mr. Kaufman filed a claim for additional per diem at the rate of \$11 per day from September 1, 1973, until the completion of his TDY assignment at the Air War College, which was disallowed by our Transportation and Claims Division on the basis that he had received the per diem allowances to which he was entitled under the JTR.

In appealing this adverse determination, the employee contends that on the date his orders were issued and at the time he began performance of the TDY, he was entitled to a \$25 per diem rate. In reliance on this entitlement, he made certain legally binding commitments, such as the long term lease of a house which amounted to an expenditure of approximately \$419 per month. He further states that the subsequent reduction of his per diem rate caused him to suffer a severe financial hardship. He also contends that the November 1, 1973 issuance of change 97 to the JTR with an effective date of September 1, 1973, was an improper retroactive reduction in his per diem entitlement. Finally, he asserts that at the time his orders were issued in May 1973, he was offered the option of either a TDY assignment with per diem or a permanent change of station (PCS) with relocation allowances. He states that he elected the TDY assignment relying on the then applicable per diem rate of \$25.

The applicability of per diem rates during the period here involved was set forth in 2 JTR para. C8050-1 (change 89, March 1, 1973) and reads as follows:

"C8050 GENERAL

"1. APPLICABLE PER DIEM RATES. Unless otherwise specifically provided for in this volume, the per diem allowances prescribed in Part C are applicable for all periods of temporary duty and permanent duty travel." (Emphasis supplied.)

We construe this provision as making per diem rates allowed by the JTR applicable to all persons covered by that regulation for the period of temporary duty that such rates are in effect. When the JTR is changed to authorize a different rate, the new rate becomes effective on the date set forth in the JTR change. An employee has no vested right to continue

to be paid at the rate in effect at the date his orders were issued. Hence, the per diem rate entitlement is governed at any given time throughout the life of such orders by the provisions of the JTR and is subject to change as the JTR is changed.

With regard to the employee's contention that the November 1, 1973, change 97 to Volume 2 of the JTR improperly established a retroactive rate, we point out that the September 1, 1973 rate reduction set forth in that change was promulgated by the Per Diem, Travel and Transportation Allowance Committee, Joint Determination, number 16-73, dated August 9, 1973. In our decision 33 Comp. Gen. 505 (1954) we held that the promulgation of a Joint Determination in advance of the effective date of per diem rate modifications is, in effect, a change in the JTR, despite the fact that it is issued in advance of the formal JTR change, inasmuch as the Joint Determination gives actual or constructive notice to persons whose rights might be affected either favorably or adversely. Thus, we find no merit in the contention that the November 1, 1973 change 97 to Volume 2 of the JTR established an improper retroactive per diem rate reduction.

While it is unfortunate that Mr. Kaufman suffered a financial hardship as a result of long term binding commitments he made in reliance on the per diem rate that was in effect at the time his orders were issued, all employees are charged with the knowledge that laws and regulations are subject to change from time to time. Since Mr. Kaufman's orders effectively pegged his per diem rate to that prescribed by the JTR, he was on notice that any change in the JTR that modified the rate applicable to his situation, would apply to him on a prospective basis from the effective date of the change. See for example 47 Comp. Gen. 127 (1967) and 40 *id.* 242 (1960). Since the JTR change in question did not provide an exception for orders issued prior to its effective date, we are unable to make such an exception in Mr. Kaufman's case.

On the basis of the foregoing, the settlement certificate dated July 15, 1974, issued by our Transportation and Claims Division that disallowed Mr. Kaufman's claim for additional per diem is hereby affirmed.

R.F. KELLER

Deputy Comptroller General
of the United States