

DECISION

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

FILE: B-184075
MATTER OF:

DATE: AUG 16 1976

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98682

Peter Bockman - Locality per diem

DIGEST:

Civilian employee, assigned temporary duty aboard Government survey ship, was administratively paid shipboard per diem until vessel had been in port for 3 days and thereafter paid locality per diem. On receipt of employee's claim for locality per diem for entire period after reporting to ship, GAO Claims Division assessed overpayment on basis that locality rate does not attach until employee is aboard for 3 days. On appeal, administrative payment affirmed since per diem must be paid with reference to ship's arrival in port.

This action is before us upon the appeal by Mr. Peter Bockman, the claimant herein, of a disallowance by our Transportation and Claims Division (now Claims Division) of his claim for additional locality per diem for travel performed as an employee of the U.S. Naval Oceanographic Office.

The record indicates that pursuant to duly issued travel orders, the claimant performed temporary duty assignments aboard a U.S. Navy survey ship from January 12, 1971, through March 16, 1971, and from May 25, 1971, through June 13, 1971. Each tour of duty commenced with departure from San Diego, California, and included intermediate calls at and final return to ports located within the continental United States. The assignments included an initial 6 1/2 days and 8 days, respectively of operational preparation duty at San Diego prior to actual sea duty. Whether per diem reimbursement for portions of the preparation periods should be at the shipboard rate or at the locality rate is the question addressed by this decision.

Mr. Bockman had administratively been reimbursed at the shipboard rate until the ship to which he was assigned had been in port for 3 days; thereafter he was paid at the locality rate of \$25 per day. Since the ship had been in port for 2 1/2 days prior

B-184075

to the claimant's reporting thereto on January 12, 1971, for his first tour of duty, he was administratively reimbursed at the shipboard rate for the first 1/2 day in port and at the locality rate for the balance of the preparational period. At the time he reported for his second tour of duty on May 26, 1971, the vessel had been in port for 1/2 day; he was therefore administratively reimbursed at the shipboard rate for the first 2 1/2 days and at the locality rate for the remainder. Believing our decision at 50 Comp. Gen. 388 (1970) to be inapplicable to a presailing period, Mr. Bockman submitted to our Claims Division his claim for reimbursement at the locality rate for the entire presailing preparational period in port.

By a settlement certificate dated May 7, 1973, the Claims Division disallowed the claim, stating that under 2 Joint Travel Regulations, para. CS101-2d (ch. 60, October 1, 1970), an individual is to be paid the shipboard rate for the first 3 days he has spent aboard ship. On that basis the Division further disallowed reimbursements at the locality rate which were administratively made for the period after the ship had been in port for 3 days but before the claimant had been on duty aboard the vessel for 3 days. Having thus determined that Mr. Bockman was indebted to the United States in the amount of \$42.25, the debt was reported to the Navy Regional Finance Center for collection.

By a letter dated March 20, 1975, Mr. Bockman appealed the settlement of the Claims Division. Apparently abandoning his contention that locality per diem should have been paid for the entire presailing period, the claimant states that it is the practice of his employing agency to begin reimbursement at locality per diem rates 3 days after the ship arrives in port rather than 3 days after the traveler boards the vessel. Based upon that practice, the claimant contends that the settlement was in error.

In 50 Comp. Gen. 388, *supra*, we held that civilian employees assigned to temporary duty aboard a survey vessel may not be required to occupy quarters aboard the vessel during periods exceeding 3 days in port. The basis for permitting per diem at the shipboard rate for the first 3 days was that the vessel, as distinguished from the port at which a stop may be made, is the employee's temporary duty station and that a 3-day stopover was not an unreasonable period for refueling and replenishing the ship's supplies. Since the focus of our decision was on the

B-184075

vessel itself, rather than on the port, all persons assigned to the ship must be paid per diem with reference to the ship's arrival in port. This rule includes persons reporting to a vessel for duty while the ship is in port.

We note that the Joint Travel Regulations have been amended to reach this result at paragraph C8101-3b(6) (ch. 27, October 1, 1971), which provides in relevant part:

"When an employee reports to a Government ship for temporary duty while the ship is in port, he is paid the same per diem rate as all other employees assigned to duty aboard the ship."

This and other modifications were in direct response to our decision at 50 Comp. Gen. 388, supra. See Julius R. Boese, et al. v. United States, 206 Ct. Cl. 560 (1975). The effective date of the change, October 1, 1971, is subsequent to the date of the events in question here. Since, however, Mr. Bockman's entitlement depends on our decision at 50 Comp. Gen. 388, supra, rather than on the regulation, that date does not preclude reimbursement here.

We hold, therefore, that as of the date of our decision in 50 id. 388, supra, civilian employees assigned to temporary duty aboard a survey vessel must be paid per diem with reference to the ship's arrival in port. Accordingly, Mr. Bockman's claim for locality per diem after he reported aboard but before the ship had been in port for 3 days is denied. On the same basis the denial by the Claims Division of locality rate per diem after the ship had been in port for 3 days but before the claimant had himself been aboard for 3 days is reversed.

Accordingly, our Claims Division is being advised to issue a settlement in Mr. Bockman's favor in the amount found due.

R.F.KELLER

Deputy

Comptroller General
of the United States