

**DECISION**



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

*60467*

FILE: B-183978

DATE: FEB 3 1976

MATTER OF: Robert H. Johnston - Actual Subsistence Expenses

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DIGEST: Where employee of Federal Mediation and Conciliation Service incurred dual lodging expenses on the same nights, and travel order authorized reimbursement of actual subsistence expenses not to exceed \$40 per day and his subsistence expenses exceeded \$40 each day, reimbursement of actual subsistence expenses up to \$40 each day may be made, provided appropriate agency official determines employee had no alternative but to retain lodgings at regular temporary duty post while occupying lodgings at other temporary posts.

This action is in response to a request by an authorized certifying officer of the Federal Mediation and Conciliation Service for our decision as to whether Mr. Robert H. Johnston, a mediator with the agency, is entitled to reimbursement for lodging expenses incurred on the same night at two different temporary duty points and if so, what limitations, if any, are placed upon such reimbursement.

The certifying officer has submitted the claimant's expense voucher and states, in pertinent part, as follows:

"While in Tucson, Mr. Johnston rents an apartment on a monthly basis. His job sometimes requires overnight trips away from Tucson, in which case he incurs the additional expense of paying for two lodging accommodations for the same night. In April of this year, Mr. Johnston traveled on official business to Window Rock and Second Mesa, Arizona, and stayed overnight in each place, which resulted in paying for lodging accommodations in both Tucson and the above-mentioned places.

"Please advise if Mr. Johnston is entitled to both lodgings for this period of time, and if so, can he claim the entire amount even though it is over \$40.00? Can he claim a flat \$40.00 for each of

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these days? Federal Mediation and Conciliation Service Travel Regulations state that its employees who are 'authorized (or approved) to claim actual subsistence, may be reimbursed such expenses in an amount not to exceed the actual cost of hotel sleeping room, plus tax, and the actual cost (not to exceed \$12.00) of meals, tips, and other items of personal expense, total not to exceed \$40.00 per day.' Mr. Johnston's Travel Authorization allows him actual expenses, which are as follows:

<u>"Dates</u>	<u>Lodging</u>	<u>Lodging</u>	<u>Meals</u>	<u>Total per day</u>
4/20-21/75	\$18.88	\$16.00	\$12.00	\$46.88
4/22-24/75	\$18.88	\$14.42	\$12.00	\$45.30"

Travel Authorization No. 075-163 dated March 5, 1975, states that the purpose of the travel by Mr. Johnston was in connection with mediation of the Navajo-Hopi Land Dispute. Travel was to begin approximately on March 7, 1975, and terminate approximately on March 31, 1975. The subsistence allowance specified was "Hotel plus tax plus up to \$12.00 for miscellaneous expense not to exceed \$40.00 per day." An amendment dated April 1, 1975, to the original travel authorization extended the travel period from April 1 to June 30, 1975.

In a statement dated April 25, 1975, the claimant reported that lodging on various dates was claimed for apartment 24, Catalina Foothills Lodge, Tucson, Arizona, where the mediation office for the land dispute was set up. He states that it was necessary for him to obtain an apartment in order to be available on a full-time basis in the Tucson area for mediation meetings. He explains that lodging expenses were also claimed at Window Rock and Second Mesa, Arizona, where travel away from Tucson was necessary to conduct official business in connection with the land dispute. Mr. Johnston limited his claim to \$40 per day.

The primary question is whether Mr. Johnston is entitled to reimbursement for lodging expenses incurred on the same night at two different duty points and is he entitled to the total amount of subsistence expenses expended on each of the 2 days in question. Federal Travel Regulations (FTR) (FPMR 101-7, May 1973) effective during the period the travel in question occurred provides in paragraph 1-8.1b, as follows:

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"Duty of heads of agencies. Heads of agencies, as defined in 5 U. S. C. 5701, shall in accordance with the provisions of this part prescribe conditions under which reimbursement may be authorized or approved for the actual and necessary subsistence expenses of a traveler. Such conditions shall restrict travel on an actual subsistence expense basis to those travel assignments where necessary subsistence costs are unusually high. They shall not permit the use of the actual subsistence expense basis where necessary subsistence expenses may exceed the statutory maximum per diem allowance by a small amount. Because hotel accommodations constitute the major part of necessary subsistence expenses, travel on an actual subsistence expense basis might appropriately be authorized or approved for travel assignments which otherwise meet conditions prescribed by the head of the agency where the traveler has no alternative but to incur hotel costs which would absorb all or practically all of the statutory maximum per diem allowance." (Emphasis supplied.)

In construing the aforesaid regulation, the decisions of this Office have held that if it is determined by an appropriate official (see para. 1-8. 1c) of an agency that an employee had no alternative but to retain his lodgings at his regular temporary duty post while occupying lodgings at other temporary posts where lodgings were also required, to insure the availability of lodgings upon return to his original temporary duty post, we would interpose no objection to the allowance of expense items for the dual lodgings, subject to the actual expense limitation stated in the travel order. B-164228, October 9, 1975; B-182600, August 13, 1975; B-164228, June 17, 1968; B-158882, April 27, 1966; and B-155141, October 20, 1964.

Since, by statute (5 U. S. C. § 5702(c) (1970)), actual and necessary subsistence expenses incurred inside the continental United States could not exceed \$40 each day during the period in question, an actual expense limitation in the same amount was contained in the claimant's travel order, and as Mr. Johnston's subsistence expenses exceeded \$40 per day for each of the days in question, he would be entitled to reimbursement of his subsistence expenses at the rate of \$40 for each day, provided the aforementioned administrative determination of necessity is made by an appropriate official of the Federal Mediation and Conciliation Service.

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The certifying officer also states that this decision will affect the payment of the voucher under consideration and any future vouchers submitted by Mr. Johnston for similar claims. In this connection, it is to be noted that paragraph 1-8.1 of FTR (May 1973) has been revised by Attachment A of FPMR Temporary Regulation A-11, effective May 19, 1975. However, paragraph 1-8.1c(1)(b), as did its predecessor paragraph, allows the authorization or approval of actual subsistence expense reimbursement where "the traveler has no alternative but to incur hotel costs which absorb all or nearly all of the maximum per diem allowance (see 1-7.2), since hotel accommodations constitute the major portion of necessary subsistence expenses." Hence, the aforesaid rule governing reimbursement where dual lodgings are required would still be applicable.

Subject to the requirements previously set forth, the instant voucher may be certified for payment, if otherwise proper.

**R.F.KELLER**  
"Deputy"  
Comptroller General  
of the United States