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Abel Lopez

Div. Pers.



DECISION

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

FILE: R-105652

DATE: DEC 28 1976

MATTER OF:

Laxman S. Sundae - Per diem - Delays -
Personal convenience

DIGEST:

Employee on temporary duty attended two training sessions. He interrupted travel for personal reasons. Additional per diem incident to interruption is disallowed. Additional per diem is also disallowed for early departure when later flights from his duty station to TDY point were available that would arrive at his destination at a reasonable hour. Employee on official business should exercise the same care in incurring expenses that a prudent person would exercise in traveling on personal business.

Charging of annual leave is primarily a matter of administrative discretion. There would be no objection to a charge to annual leave when an employee interrupts travel for his own personal convenience.

This action responds to a request for an advance decision from John P. Watson, an authorized certifying officer, Mining Enforcement and Safety Administration, Department of the Interior, on two claims submitted by Mr. Laxman S. Sundae, an employee of the Administration. The questions raised relate to whether additional per diem may be paid in connection with interrupted travel Mr. Sundae performed and whether an adjustment should be made to his annual leave record for the extra travel time involved in returning to his duty station.

The letter of request, dated December 30, 1975, indicates that Mr. Sundae, whose permanent duty station is Duluth, Minnesota, was authorized to attend two sessions of an Industrial Hygiene course for mine inspectors in Denver, Colorado. The first session covered the period of August 11 to August 22, 1975. The second session covered the period from September 8 to September 19, 1975. The travel authorizations for the two sessions were amended to include the use of a privately owned vehicle not to exceed the cost by common carrier.

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To attend the first session, Mr. Sundae drove his personal automobile to Minneapolis, Minnesota, and departed from Minneapolis via air to Denver. Upon completion of his duty he departed Denver on North Central Flight #726 at 7 p.m. on August 21 and arrived at Minneapolis at 9:35 p.m. Mr. Sundae indicated on his travel voucher that he departed Minneapolis via personal automobile at 8:30 a.m. on August 22 and arrived in Duluth at 12 noon. However, in an attached memorandum Mr. Sundae states that he did not depart Minneapolis until 4:30 a.m. on August 25. Per diem for August 22 was suspended on the basis that, since Mr. Sundae had taken North Central Flight #726 on August 21, he could have arrived at Duluth at 10:50 p.m. by staying on the same flight.

To attend the second training session, Mr. Sundae states on his voucher, dated September 26, 1975, that he departed at 12 noon on September 8 from Duluth. He was allowed one-half day per diem for that day. But, in a letter submitted with his reclaim voucher dated November 11, 1975, Mr. Sundae states he was away from Duluth from September 4 to September 7, and did not actually depart from Duluth on September 8 as he had stated in his original voucher. He is claiming an additional quarter day per diem for September 8 because, if he had been in Duluth, he would have had to depart Duluth at 8 a.m. in order to arrive in Denver on time. The agency points out that several flights leave Duluth after 12 p.m. which arrive in Denver at a reasonable hour. Mr. Sundae evidently bases his contention on driving time, i.e., leave Duluth by automobile and fly from Minneapolis as a junction point on the trip to Denver.

On the voucher dated September 26 for the second session, Mr. Sundae states, as he did on the voucher for the first session, that he returned to Minneapolis at 9:35 p.m. on North Central Flight #726 on September 18 and after staying the weekend in Minneapolis departed from there at 5 a.m. on September 22 and arrived in Duluth at 8 a.m. the same day.

On the factual situation described above, we have been requested to rule on the following questions:

1. Under the rules governing comparative costs, can Mr. Sundae be paid additional per diem on the basis that it would be unreasonable to be required to

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take a flight that arrives at his duty station at 10:50 p.m. when he actually did take that flight from Denver and elected to deplane at 9:35 p.m. in Minneapolis for his own convenience?

2. If the answer to the first question is in the negative, then, should Mr. Sundae be required to take annual leave for the extra time involved in returning to his duty station on September 19 based on constructive travel time that he initiated by electing to take North Central Flight #726 leaving Denver at 7 p.m. on September 18?
3. In view of the adequacy of flight schedules after 12 p.m. from Duluth that would permit him to meet the scheduled meeting date in Denver, may Mr. Sundae's claim for an additional quarter day per diem for September 19 be properly paid?

Official Government travel interrupted for the personal convenience of the traveler is governed by the standards set in para. 1-7.5d, Federal Travel Regulations (FTR), FPMR 101-7, May 1973, which provides as follows:

"d. Indirect-route or interrupted travel.
Where for a traveler's personal convenience or through the taking of leave there is interruption of travel or deviation from the direct route, the per diem allowed may not exceed that which would have been incurred on uninterrupted travel by a usually traveled route.
(See 1-2.5 and 1-11.5a(d).)"

Since Mr. Sundae interrupted his travel at Minneapolis for personal reasons he may be paid per diem only for such time as he would have spent traveling had he not done so.

In performing official travel a Government employee is required to exercise the same care in incurring expenses that a prudent

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person would exercise if traveling on personal business. See paragraph 1-1.3 of FTR, FPMR 101-7, May 1973; B-177138, January 18, 1973. In addition, we have held that in performing official travel a Government employee is required to proceed as expeditiously as if he would be traveling on his personal business even though he may be required to travel on nonworkdays. See 2 Comp. Gen. 708; 31 id. 278 (1952); 46 id. 25 (1966).

With reference to constructive costs for comparison purposes para. 1-4.3d, of FTR, FPMR 101-7, May 1973 provides:

"d. Use of actual and reasonable scheduling.
In making the foregoing cost comparisons of transportation, scheduled departures and arrivals of planes, trains, and buses at unreasonable hours shall be disregarded. (For this, 'unreasonable hours' means those which would unduly inconvenience the traveler or adversely affect his safety, or which would result in unduly increasing the constructive per diem.)"

The agency in the instant case had scheduled a departure from Denver at 9 a.m. on August 22. However, as a matter of personal preference Mr. Sundae left Denver on flight #726 at 7 p.m. on August 21. Had he remained on that flight, he would have arrived in Duluth at 10:30 p.m. The arrival time in Duluth is not unreasonable nor would it have unduly inconvenienced Mr. Sundae since he chose the departure time from Denver. See B-140608, September 17, 1959. Therefore, had Mr. Sundae traveled as a prudent person for his own personal business he would have continued on that flight to Duluth. The same reasoning applies to the claimant's return trip from Denver on September 18.

With respect to the third question raised by the certifying officer, paragraph 1-4.3, FTR, FPMR 101-7, May 1973, provides:

"1-4.3. When use of privately owned conveyances is in lieu of common carrier transportation.

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Whenever a privately owned conveyance is used for official purposes as a matter of personal preference in lieu of common carrier transportation under 1-2.2d, payment for such travel shall be made on the basis of the actual travel performed, computed under 1-4.1 at the mileage rate prescribed in 1-4.2a plus the per diem allowable for the actual travel. The total allowable shall be limited to the total constructive cost of appropriate common carrier transportation including constructive per diem by that method of transportation. Constructive cost of transportation and per diem by common carrier shall be determined under the following rules:

"c. Per diem allowance. The constructive per diem shall be the amount which would have been allowable if the traveler had used the carrier upon which the constructive transportation costs were determined."

The constructive flight scheduled by the agency departed Duluth on September 8 at 3:45 p.m. and arrived in Denver at 6:15 p.m. Such a flight would not have "duly inconvenienced" Mr. Sundae, since it would arrive at a reasonable hour and permit him sufficient time to rest before the training session began. The per diem allowed Mr. Sundae would thus be limited by the amount allowable if Mr. Sundae had used this mode of transportation and taken this flight. The additional amount claimed by Mr. Sundae for per diem for September 8 is disallowed.

Finally, turning to the second question of whether Mr. Sundae should be charged annual leave for travel time involving personal convenience travel in excess of that required for the official travel alone, we have held that the charging of annual leave is primarily a matter of administrative discretion. See 45 Comp. Gen. 425 (1976); 54 id. 234 (1974). It would be reasonable for an agency to charge leave for excess travel time not justified as officially necessary. In the circumstances of this case there would be no objection to charging annual leave for the excess time.

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Accordingly, Mr. Sunda's claims for additional per diem are disallowed. The vouchers are returned and may not be certified for payment.

R.F. KELLER

Acting Comptroller General
of the United States