

5307

Roney  
C.P.

**DECISION**



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

FILE: B-190107

DATE: February 8, 1978

MATTER OF: John F. Curley - Per Diem at Location  
Subsequently Made Permanent Duty Station

- DIGEST:
1. Employee performed intermittent temporary duty in Boston during month of June 1977. By travel order dated June 16, 1977, employee was transferred to Boston, effective July 3, 1977. Certifying officer questions employee's entitlement to per diem in Boston after date of orders transferring employee to Boston. While general rule is that employee transferred to place where he is performing temporary duty may not be paid per diem after notice of such transfer, rule is not applicable where temporary duty is intermittent and it is expected that employee will return to headquarters for official duty prior to effective date of transfer.
  2. Employee agreed to pay broker's fee to two acquaintances, neither of whom possessed real estate license, if they found a buyer for his residence at former duty station. Reimbursement for broker's fee may be allowed only where employee is legally liable for such fee. Reimbursement would not be proper in this case since New York law not only prohibits person from acting as real estate broker without first procuring license but also states that no person shall bring or maintain an action in court for broker's fee without first alleging and proving he was a duly licensed broker.

This action is in response to the letters of September 9, 1977, and October 4, 1977, from Mr. Michael Fontana, authorized certifying officer, Interstate Commerce Commission, pertaining to the claim of Mr. John F. Curley. Mr. Curley is claiming per diem for a period of temporary duty in Boston after having been notified of his transfer to that city from his former duty station in New York, New York. He also requests information as to his entitlement to reimbursement for a broker's fee.

By travel order dated June 16, 1977, Mr. Curley was transferred from New York, New York, to Boston, Massachusetts, effective July 3, 1977. He performed temporary duty in Boston on June 12 through 16, 1977; June 22 through 25, 1977; and June 29 and 30, 1977. It appears that he returned to his

B-190107

permanent duty station in New York following the last two temporary duty assignments. However, on the basis that Mr. Curley was in Boston subsequent to June 16, 1977, the date of the order transferring him to Boston, his claim for per diem was denied by the agency.

The general rule is that when a civilian employee is transferred to a place at which he is already on duty, the transfer is effective on the date he receives notice thereof. However, if an employee is transferred to a place where he is not on temporary duty, the transfer is effective on the date he actually arrives at the new station. 23 Comp. Gen. 342 (1943). The latter rule has not been applied when an employee performs a period or periods of temporary duty at his designated new official station between the time he receives the transfer orders and the stated effective date of those orders if such period or periods of temporary duty are terminated by a return to the old station on official business prior to the stated effective date of the transfer orders. 51 Comp. Gen. 10 (1971); B-139223, June 15, 1959; and B-135690, May 8, 1958. In 51 Comp. Gen. 10, supra, we held that the effective date of the transfer for travel and per diem purposes would be the date the employee returned to his new duty station to stay.

Since it appears to have been contemplated that Mr. Curley would return to New York for the performance of official business following each temporary duty assignment to Boston, the effective date of his transfer would be the date that he returned to Boston to actually report for duty. That date is not indicated in the files, but it appears that it is subsequent to the days for which he is claiming per diem. Accordingly, his claim for per diem may be allowed, if otherwise proper.

The second question pertains to Mr. Curley's entitlement to reimbursement for a broker's fee he agreed to pay in connection with the sale of his residence in New York. We have previously held that an employee must be legally liable under the applicable state law for the broker's fee or real estate commission in order to be entitled to reimbursement under Federal Travel Regulations (FPMR 101-7) para. 2-6.2a (May 1973). See Matter of Jerry Goudelöcke, B-139375, October 12, 1977, and B-165747, January 7, 1969. In Mr. Curley's case, he states that at the time of sale or otherwise to the best of his knowledge the persons who found a purchaser for his residence did not hold real estate licenses.

B-190107

The following sections of New York law control the enforceability of debts for real estate broker's commissions:

"No person, co-partnership or corporation shall engage in or follow the business or occupation of, or hold himself or itself out or act temporarily or otherwise as a real estate broker or real estate salesman in this state without first procuring a license therefor as provided in this article.\* \* \*" New York Real Property Laws 440-a.

"Actions for commissions; license prerequisite

"No person, co-partnership or corporation shall bring or maintain an action in any court of this state for the recovery of compensation for services rendered, in any place in which this article is applicable, in the buying, selling, exchanging, leasing, renting or negotiating a loan upon any real estate without alleging and proving that such person was a duly licensed real estate broker or real estate salesman on the date when the alleged cause of action arose." New York Real Property Laws 442-d.

Thus, it does not appear that Mr. Curley has met the established criteria that would entitle him to reimbursement for a broker's fee paid under the stated circumstances.

  
Deputy Comptroller General  
of the United States