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DECISION



C. Brown

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

FILE: B-191012

DATE: May 17, 1978

MATTER OF: Fred Gutierrez - Transportation Agreement

DIGEST: Employee of Government contractor on Guam, who was subsequently hired by Navy, is entitled to a transportation agreement. Navy granted him nonforeign post differential on basis of examples of eligible classes in Federal Personnel Manual which include virtually same classes eligible for issuance of a transportation agreement in Volume 2 of Joint Travel Regulations.

By a letter dated December 8, 1977, Mr. Louis T. Shook of the U.S. Naval Station, Guam, M.I., requested a decision on the entitlement of Mr. Fred Gutierrez to a transportation agreement in connection with his employment by the Naval Shore Electronics Engineering Activity (NAVSEEACTION) on Guam.

The record shows that in 1973 Mr. Gutierrez was sent to Guam as an employee of the Bunker-Ramo Corporation, a Government contractor. He was subsequently hired by NAVSEEACTION as a local hire on February 4, 1974, as an Electronics Engineer. Later Mr. Gutierrez requested a transportation agreement and nonforeign post differential. His request was denied. However, on appeal the Civilian Personnel Office (CPO), Department of the Navy, Washington, D.C., determined that Mr. Gutierrez was entitled to a nonforeign post differential. At the same time CPO directed that NAVSEEACTION request a decision from the General Accounting Office with regard to Mr. Gutierrez' right to a transportation agreement.

Mr. Gutierrez' entitlement to a transportation agreement is governed by paragraph C4002-3 of Volume 2, Joint Travel Regulations (JTR) which states in part as follows:

"3. OVERSEAS LOCAL HIRES

"a. General. Overseas local commanders in foreign areas will negotiate an initial agreement with a locally hired employee if the conditions in subpar. b are met. Local commanders in nonforeign areas will negotiate

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an initial agreement with a locally hired employee if the conditions in subpar. b are met and provided the position is one for which qualified local applicants are not readily available. To avoid misunderstanding at a later date, eligibility for return transportation will be determined at the time of appointment and recorded through the execution of an agreement.

"b. Conditions.

"(1) Bona Fide Residence in the United States. To be eligible to negotiate an agreement, the employee must be able, at the time of appointment or assignment, to establish to the satisfaction of the appointing official, bona fide place of actual residence (see par. C4004) in the United States but outside the geographical locality of the post of duty.

"(2) Qualifying Presence in the Area. For the purpose of establishing qualifying presence in the area, an employee shall be considered to have residence in the United States if his status in the area prior to employment was that of:

1. an employee of ... [x] Government contractor ... providing the individual was recruited in the United States under conditions of employment which provided for return transportation."

In originally denying Mr. Gutierrez' request for a transportation agreement NAVSEECT determined that he did not meet two of the above requirements. Specifically NAVSEECT determined that Mr. Gutierrez did not have return transportation rights with Bunker-Ramo Corporation and that he did not have a residence in the United States, i.e., he was a resident of Guam.

The CPO in awarding Mr. Gutierrez' claim for nonforeign post differential found that the determination with regard to Mr. Gutierrez' return travel entitlement to be incorrect.

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It also found that his residence on Guam was attributable to his employment by a Government contractor, as he was recruited for the position on Guam by Bunker-Ramo Corporation in 1973.

In light of the finding of the CPO we believe that the employee was likewise entitled to a transportation agreement at the time of his appointment. Although the position was advertised locally on Guam, such advertisement does not preclude the employee's entitlement to a transportation agreement provided he met the qualifications of 2 JTR C4002-3. Also, the fact that he had return transportation rights with Bunker-Ramo indicates the employee was a resident of the United States within the meaning of paragraph C4002-3. Moreover, the examples of eligible classes of employees entitled to a nonforeign post differential in the Federal Personnel Manual, chapter 591, subchapter 3-3b(2), include virtually the same classes of employees who are entitled to a transportation agreement.

In view of the above and since Mr. Gutierrez was granted a nonforeign post differential, he is entitled to a transportation agreement.


Deputy Comptroller General
of the United States