

DECISION

D. Aggarwal
PLM II
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

7986

FILE: E-191425

DATE: October 11, 1978

MATTER OF: Roger W. Rodgers - Reimbursement for travel
by a privately owned automobile

- DIGEST:
1. Employee of Customs Service performed local travel in July 1975, incident to overtime duty assignments. He should be reimbursed mileage in accordance with agency travel policies in effect at time travel was performed, since rights become vested upon performance of travel. Subsequent regulation may not retroactively apply to increase or decrease rights. See Comp. Gen. decs. cited.
 2. Customs Service regulations required employees to place themselves at overtime duty assignments at own expense except when performing services required by regulation to be reimbursed by a party-in-interest. Regulation was within agency's administrative discretion with regard to payment of travel expenses and mileage. See Comp. Gen. decs. cited.

This action is in response to a request by Mr. Jack F. Lenzel, an authorized certifying officer of the U.S. Customs Service, concerning whether Mr. Roger W. Rodgers, an employee of the Customs Service in the Houston, Texas, region, may be reimbursed mileage for local travel in his privately owned vehicle in connection with overtime duty assignments in July of 1975.

The record shows that during the period July 16, 1975, through July 30, 1975, Mr. Rodgers traveled by privately owned automobile on 6 days in connection with the performance of overtime duty assignments. Mr. Rodgers submitted a voucher in which he claimed reimbursement for mileage in the amount of \$33.75. The travel involved was from his residence to his point of overtime duty and return with occasional intermediate stops at his official duty station.

We have been informally advised by the Houston regional office that customs overtime duty assignments usually arise

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without any advance notice and that accordingly it is not possible to prepare written travel orders in advance of such assignments. Reimbursement for such local travel is approved where proper. Accordingly, Mr. Rodgers' local travel, in connection with his overtime duty, was performed without written travel orders.

Mr. Rodgers was advised on October 24, 1975, by the Houston District Director that settlement of his claim would be temporarily delayed pending the issuance by Customs Service headquarters in Washington, D.C., of a revised policy statement regarding reimbursement for local travel. This new travel policy was implemented on March 5, 1976, by Customs Circular, FIS-8-A:A:0 which was issued by the Assistant Commissioner (Administration) of the Customs Service.

The record shows that prior to the issuance of the March 5, 1976 Circular, there was a lack of uniformity in the various Customs Service regions as to the reimbursement of expenses of local travel. The Houston regional office advised us that it had not issued any regulations with regard to local travel incident to overtime duty assignments and that it had followed the travel policies implemented by the Customs Service headquarters office in Washington, D.C., by Circulars FIS-8-FP, dated April 8, 1964, and June 23, 1966.

Subsection 3B of the April 8, 1964 Circular provided in pertinent part as follows:

"A customs employee shall place himself at a customs overtime assignment and return therefrom at his own expense, except when he is assigned to perform on a customs overtime assignment any of the services enumerated in section 24.17 of the Customs Regulations for which expenses are required to be reimbursed by a party-in-interest* * *. In such a case the employee shall be paid actual transportation expenses within the port limits and authorized travel expenses, including per diem when the services are performed outside the port limits, except

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that no such payment shall be made if the customs overtime assignment immediately precedes or follows the employee's regular tour of duty and no additional expenses are incurred as a result of the overtime assignment."

The matter of authorizing mileage to an employee for the use of his automobile in connection with official travel is discretionary with the agency in which he is employed. 52 Comp. Gen. 446, 451 (1973). We find the regulation quoted above is a proper exercise of an agency's discretion to authorize reimbursement for expenses for travel from residence to a nearby temporary duty post. See Matter of Brian E. Charneck, B-184175, August 5, 1975, and cases cited therein.

The Customs Service revised travel policy implemented by Circular FIS-8-A:0 issued March 5, 1976, provides for the reimbursement of travel in connection with overtime assignments regardless of whether the expenses thereof are reimbursable by a party-in-interest. The revised policy, however, would not be applicable to Mr. Rodgers' claim as his travel occurred prior to its issuance. It is a well-settled principle that the rights of a traveler become vested upon performance of the travel and a valid regulation may not be amended retroactively to increase or decrease the rights given thereby. 27 Comp. Gen. 339 (1947); 32 id. 315 (1953); 40 id. 242 (1960); and B-149897, October 26, 1962. Administrative delays involved in making and publishing an amendment to a regulation do not legally justify a retroactive application of the amendment. 33 Comp. Gen. 505 (1954).

Paragraph 1-4.1 of the Federal Travel Regulations (FPMR 101-7, May 1973) (FTR) provides as follows:

"a. Mileage payments. When employees and others rendering service to the Government use privately owned motor vehicles or airplanes in the conduct of official business within or outside their designated posts of duty or places of service and such use is authorized or approved as advantageous to the Government or as an authorized or approved exercise of the employee's preference, payment shall be made

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on a mileage basis unless payment on an actual expense basis is specifically authorized by law."

Subsection 3 of Circular FIS-8-FP, dated June 23, 1966, provides as follows:

"(a) Overtime, Sunday, or holiday assignments under the customs overtime laws (19 U.S.C. 267, 1451) or under the Federal Employees Pay Act of 1945, as amended. When traveling to and from an assignment to perform any of the services enumerated in section 24.17 of the Customs Regulations for which compensation and expenses are required to be reimbursed by the party-in-interest, under either the customs overtime laws or the Federal Employees Pay Act of 1945, as amended, the employee shall be paid mileage for the amount of the round-trip distance from his official duty station to his temporary duty assignment and return. If the distance from his residence to the temporary duty assignment is less than the distance from his official station to the temporary duty assignment, he shall be paid for the actual mileage driven. If the assignment immediately precedes or follows the employee's regularly scheduled tour of duty, mileage shall be paid only for the distance the employee is required to travel in excess of the round-trip distance between his residence and regular duty station."

The above-cited travel policy was in effect during the time Mr. Rodgers performed the travel for which he has claimed reimbursement. The record before our Office does not establish whether any of the overtime assignments incident to which Mr. Rodgers claims mileage were reimbursable by a party-in-interest. Where the Customs Service finds that the expenses of Mr. Rodgers' overtime duty were reimbursable by a party-in-interest, reimbursement should be allowed in accordance with the provisions of the June 23, 1966 Circular. In the absence of such a finding, Mr. Rodgers would not be entitled

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to reimbursement for mileage as subsection 3B of the April 8, 1964 Circular, supra, provides that a Customs Service employee shall place himself and return from his overtime duty assignment at his own expense, except where the expenses of the assignment are reimbursable by a party-in-interest.

Action on Mr. Rodgers' travel voucher should be taken in accordance with the above.

Deputy


Comptroller General
of the United States