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DECISION



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

10,109

FILE: B-191104

DATE: May 9, 1979

ABCC00150

MATTER OF: Customs Service Inspectors' Mileage and Per Diem

*[Entitlement to
for travel outside Official Duty Stations]*

DIGEST: 1. Customs Service inspectors claim mileage and per diem under agency regulations for travel to Customs station 11 to 40 miles from their assigned port of entry (POE). Our decisions give agencies discretionary authority to restrict mileage and per diem where employees perform travel in vicinity of their official duty station. Therefore, since inspectors perform travel to Customs station 11 to 40 miles from their POE on regular basis and Customs regulations state that travel on predetermined rotational schedule to local places is deemed travel within an employee's headquarters and is nonreimbursable, inspectors' claims are denied.

2. Customs inspectors assigned on an irregular basis to towns, defined as Customs stations by 19 C. F. R. §§ 1.3(a) and (d) (1977), near their regular headquarters claim mileage and per diem. Customs denied claim because the same towns are also defined in Customs regulation 19 C. F. R. § 1.2 as being part of the inspector's port of entry (POE) and travel expenses within POE are not reimbursable under Customs regulations although travel beyond POE is reimbursable. Since 19 C. F. R. §§ 1.3(a) and (d) state that Customs stations are places other than POE, the regulations are apparently inconsistent. We shall read the regulations in favor of the inspectors so as to entitle them to mileage and per diem.

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The National Treasury Employees Union (NTEU) has requested a decision on behalf of six Customs Service inspectors as to whether they are entitled to mileage and per diem for travel outside their official duty stations. We requested a report on the matter from the Customs Service and our decision is based upon the information received in the Customs Service report as well as that sent us in NTEU's submission.

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The record shows that the six inspectors are assigned to the Portland District within Region I of the Customs Service. Inspectors Elsey, Jenkins, Michaud, and Broderick are permanently assigned to the port of entry (POE) at Houlton, Maine. Inspectors Tilley and Martin have been assigned to the POE at Van Buren, Maine.

According to the NTEU submission the inspectors are called upon from time to time to perform relief assignments at various Customs stations along the Canadian border. Customs stations are usually found at small border crossings where one or two inspectors are permanently assigned. The larger POE provides supervision and relief for these stations when the regular inspector is not on duty.

The Customs Service report shows that inspectors Elsey, Jenkins, Michaud, and Broderick have been assigned to the Customs stations at Forest City, Monticello, and Orient from time to time as part of their duties at the port of Houlton. In addition, according to Mr. Emery W. Ingalls, District Director, Region I, U.S. Customs Service, inspectors Tilley and Martin have been assigned to Hamlin, Maine, a Customs station, on a normal rotational schedule.

The NTEU states that:

"Until July 28, 1977, the expenses claimed for travel to relief assignments were paid by the agency. When Circular FIS-8-A:FM came out, the District Director ordered that such payments be stopped, since he believed all relief assignments were within the claimants' regular duty station. Under Section 4.A of FIS-8, the 'regular duty station' is defined as 'the port of entry as defined in the Customs regulations, to which an employee is assigned and regularly reports to work.' * * * Conversely, any other place which is not an employee's regular duty station is considered a temporary duty station (TDS). Travel expenses are reimbursable only if the travel was to a TDS."

Customs Service Circular FIS-8-A:FM, July 28, 1977, entitled "Local Travel Expenses" sets out the rules under which the

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inspectors are to be reimbursed travel expenses and states in pertinent part as follows:

"* * * Reimbursement for local travel expenses incurred by Region I employees will be based upon the provisions of the policy statement."
(Underscoring supplied.)

With regard to mileage reimbursement, paragraph 4. B. 1 states:

"B. Circumstances Under Which an Employee is Eligible to Receive Transportation Expenses, Including Mileage

"1. Transportation Expenses Incurred by Employees Going Directly From Home to a Temporary Duty Station and Return

"Reimbursement is limited to the amount of transportation cost incurred by the employee which exceeds his normal round-trip costs for travel between home and his normal work location in his regular duty station."

As to per diem payments, paragraph 4. C provides:

"C. Criteria for Determining an Employee's Eligibility to Receive Partial Per Diem Allowances

"1. Employees performing travel to a temporary duty station for a period of 24 hours or less, without incurring lodging costs are entitled to a partial per diem allowance when either of the following conditions are satisfied:

"a. The travel period involved is more than 10 hours.

"b. The travel period involved is at least 6 hours and began before 6:00 a.m. or terminated after 8:00 p.m."

Under the above rules, therefore, employees who travel to temporary duty stations are entitled to mileage, and per diem

(assuming a 10-hour minimum day is involved), whereas payment of travel expenses is not allowed for travel which takes place within an inspector's regular duty station. The question, then, is whether the Customs stations at Forest City, Hamlin, Monticello, and Orient to which the inspectors travel are within their regular duty stations within the meaning of Customs regulations and policies or whether such Customs stations are the inspectors' temporary duty stations. In the former case there would be no entitlement to travel expenses, in the latter, the employees would be so entitled.

Circular FIS-8-A:FM, July 28, 1977, defines "Regular Duty Station" as:

"* * *the port of entry as defined by Customs regulations, to which an employee is assigned and regularly reports for work.

* * * * *

"It also includes locations which are outside the port of entry, but within the local travel area, when an employee is assigned to such locations under a pre-determined rotation schedule (every two weeks, monthly, etc.)."

The NTEU contends that the assignments to the various Customs stations require the inspectors to travel distances from 11 to 40 miles. It is argued that reimbursement for travel expenses is required here because the travel was for official Government business and was performed outside of the inspectors' "official duty station," as defined in paragraph 1-1.3(c)(1) of the Federal Travel Regulations (FTR) (FPMR 101-7, May 1973).

"* * *There is little question that use of personally owned vehicle was advantageous to the government in this instance, as required under FTR 1-2.2.C(3). In this part of Maine, there is virtually no public transportation and no government vehicles are available for these relief assignments."

The NTEU argues that Forest City, Hamlin, Monticello, and Orient are not within the respective POEs of the inspectors because

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they are listed at section 1.3(d) of Part 1 of title 19 of the Code of Federal Regulations (1977) as Customs stations. Section 1.3(a) of Part 1 of title 19 of the Code of Federal Regulations defines Customs stations as follows:

"Places, other than ports of entry, at which Customs officers or employees are stationed under the authority contained in article IX of the President's message referred to in § 1.2 to enter and clear vessels, accept entries of merchandise, collect duties, and enforce the various provisions of the Customs and navigation laws shall be known as Customs stations." (Underscoring supplied.)

Based on the language of this section, the NTEU argues that travel to the above-listed Customs stations is not travel within the inspectors' POE and thus that the Customs stations are not a part of their regular duty stations.

The NTEU also argues that the inspectors are not assigned to a predetermined rotation schedule as described in FIS-8-A:FM, July 28, 1977, quoted above, inasmuch as it finds little pattern to the relief assignments of inspectors stationed at the port of Houlton. Moreover, NTEU states that the broadened definition of the term "regular duty station" to include locations outside the POE in the local travel area to which an employee is assigned on a predetermined rotation schedule, is beyond the scope of the agency's discretion as employee interests were not considered in making such a definition. In this regard NTEU cites 36 Comp. Gen. 795 (1957) which held that, in exercising their discretionary power to allow mileage, the administrative officials are to give due consideration to the interests of both the Government and the employee.

We have held that an agency may reasonably restrict the payment of per diem within a certain mileage radius from the employee's place of duty or permanent duty station. 52 Comp. Gen. 446 (1973). It is within the discretion of the agency involved to pay per diem only where it is necessary to cover the increased expenses incurred arising from the performance of official duty. 31 Comp. Gen. 264 (1952). We have recognized that agencies generally have the authority and the responsibility to restrict payment of per diem upon a reasonable basis, such as the distance to the temporary duty station. 55 Comp. Gen. 1323 (1976).

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Likewise, an agency has discretion to limit allowable mileage between an employee's residence and places of temporary duty in the vicinity of headquarters. 36 Comp. Gen. 795 (1957); B-131810, January 3, 1978.

Although we have stated that administrative officials are to give due consideration to the interests of both the Government and the employee, we cannot say here, in view of the relatively short distances involved, that the Customs Service's refusal to allow mileage or per diem to inspectors who travel to the various locations within the local travel area as described in FIS-8-A:FM, July 28, 1977, is an abuse of its discretion. See B-185374, July 29, 1976. In this regard the Customs Service informs us that inspectors Tilley and Martin, whose claims for mileage and per diem for the additional 11 miles each way traveled to Hamlin were denied by the Customs Service, have in fact been assigned to work in Hamlin on a normal rotational schedule. Under FIS-8-A:FM, July 28, 1977, travel to points outside an employee's POE within the local area, which is performed as part of a pre-determined rotational schedule, is deemed to be travel to his regular duty station and as such, mileage and per diem payments for that travel is not allowable. Accordingly, the claims of inspectors Tilley and Martin are denied.

As to inspectors Elsey, Jenkins, Michaud, and Broderick, the Customs Service argues that their occasional travel to the Customs stations at Forest City, Monticello, and Orient is really travel to their POE at Houlton and thus is travel to their regular duty stations. The Customs Service refers to 19 C.F.R. § 1.2(b) (1977) which defines a POE as follows:

"The term 'port' and 'port of entry,' as used in these regulations, refer to any place designated by Executive order of the President * * * at which a Customs officer is assigned with authority to accept entries of merchandise, to collect duties, and to enforce the various provisions of the customs and navigation laws."

The table to 19 C.F.R. § 1.2 which sets out the various POEs includes Houlton, Maine, and refers to Executive Order 4156, February 14, 1925, which establishes:

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"* * * a new port of entry * * * which shall be known as the port of Houlton, in customs collection district No. 1 (Maine and New Hampshire), and which shall comprise the townships of Houlton, Monticello, Littleton, Hodgdon, Cary, Amity, Orient, Weston, Danforth and Forest City, effective March 1, 1925." (Underscoring supplied.)

The regulations relied upon by NTEU, 19 C.F.R. §§ 1.3(a) and (d), and that relied upon by the Customs Service, 19 C.F.R. § 1.2(b), appear to be inconsistent. While the latter regulation defines Monticello, Orient, and Forest City as being part of the POE of Houlton, the former regulations list those towns as Customs stations which are defined as " * * * places, other than ports of entry."

No explanation has been offered by the Customs Service concerning the discrepancy in the regulations. It is our view that the ambiguity should be resolved in favor of the inspectors since clearly under FIS-8-A:FM, July 28, 1977, travel to a Customs station listed at 19 C.F.R. § 1.3(d) was not travel within their POE and thus was travel to a temporary duty station, for which mileage and per diem is payable. Accordingly, we hold that those inspectors who traveled on other than predetermined rotation schedules to Customs stations which are not POEs as defined in 19 C.F.R. §§ 1.3(a) and (b) are entitled to travel expenses as set out in FIS-8-A:FM, July 28, 1977. Payment to inspectors Elsey, Jenkins, Michaud, and Broderick should be made consistent with this decision.


Deputy Comptroller General
of the United States