

Mr. Ruprecht

17254

DECISION



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

FILE: B-198512

DATE: March 5, 1981

MATTER OF: Charles W. Miller - [Reimbursement for expenses necessary to obtain reduced air fare]

DIGEST: Employee who traveled on a non-workday in order to take advantage of a reduced air fare may be considered in a travel status and authorized and paid an extra day's actual subsistence where the cost of subsistence is more than offset by the savings to the Government through use of the reduced fare. Agency's bulletin, to the extent that it is inconsistent with the Federal Travel Regulations, need not be followed.

Mr. Richard J. Laulor, an authorized certifying officer with the Federal Mediation and Conciliation Service (FMCS) requests an advance decision on the propriety of paying the reclaim of Mr. Charles W. Miller for an extra day's subsistence expenses incurred in order to obtain reduced air travel fare. Mr. Laulor requests guidance in light of an FMCS bulletin which purportedly limits the period for which such expenses may be reimbursed. We hereby authorize payment for Mr. Miller's claim, based on the following.

FACTS

Charles W. Miller, a Commissioner with FMCS stationed in Toledo, Ohio, was authorized to attend a FMCS seminar in Orlando, Florida, from November 4 through November 9, 1979. By returning on Saturday, November 10th, Mr. Miller was able to obtain a special air fare which reportedly reduced his travel expenses by \$130. In order to obtain the special fare, he incurred subsistence expenses for lodging and meals amounting to \$48.68, resulting in a net savings to the Government of \$81.32.

Mr. Miller's claim for said expenses was, however, suspended by FMCS on December 5, 1979. He subsequently submitted a reclaim voucher for the suspended amount which resulted in the instant request from FMCS.

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In its Administrative Suspension Statement of December 5, 1979, FMCS cites a bulletin issued by its Director of Administration on October 15, 1979. The bulletin states in pertinent part:

"All FMCS employees who will be attending mini-seminars are requested to utilize reduced/special airline fares whenever possible.

* * * * *

"Reimbursement for subsistence will be limited to the period of the mini-seminar including travel time to and from the site, unless special work on the mini-seminar requires a longer period of travel. Anyone leaving his/her official duty station earlier than required or returning later than required should base claims for subsistence on reconstructed travel for the period stated above." 79-BUL-161, October 15, 1979.

The regional certifying officer apparently concluded that since the subsistence expenses were incurred after the close of the conference on November 9th, but prior to Mr. Miller's return on November 10th, they were outside of the bulletin's stated period of allowable reimbursement.

In a letter attached to his reclaim voucher, Mr. Miller refers to a recent Comptroller General decision in which we allowed an employee's claim for an additional day's per diem incurred in order to qualify for reduced air fare, since there was an overall savings to the Government, and the employee acted in a prudent manner. See Lawrence B. Perkins, B-192364, February 15, 1979, and cases cited therein.

DISCUSSION

The Perkins decision, supra, is also consistent with several recent cases involving members of the uniformed services in which we allowed payment of an employee's "extra" per diem where, as is true in the present case, the increased travel time did not interfere with the performance of official duties, (e.g., travel occurred on a non-workday), was not solely for personal convenience, and the cost of the extra expenses was more than offset by the savings to the Government. Dr. Kenneth J. Bart, 58 Comp. Gen. 710 (1979); Dr. Alexander W. Teass, B-194381, August 2, 1979. Although the above cases involve per diem, we believe that the same principle would apply to actual subsistence. Mr. Miller traveled on a non-workday (Saturday), and the cost of the actual subsistence was more than offset by the savings to the Government through use of the reduced fare. Thus, he may be considered to be in a travel status for the extra time required to take advantage of the reduced fare. Perkins, supra.

While the above-cited cases support our allowing Mr. Miller's claim, it is also necessary to consider the effect of the FMCS bulletin. As will be seen, to the extent that the bulletin is contrary to existing regulations, it must be disregarded.

The controlling statutory provisions regarding reimbursement for travel and subsistence expenses of civilian employees are contained in sections 5701-5709 of title 5, United States Code (1976). Regulations implementing these provisions are issued by the General Services Administration and are found at Chapter 1, Travel Allowances, of the Federal Travel Regulations (FTR) (FPMR 101-7, May 1973). As a statutorily authorized regulation, the FTR has the force and effect of law and may not be waived or modified by an employing agency regardless of the existence of any extenuating circumstances. 49 Comp. Gen. 145, 147 (1969); Johnnie M. Black, B-189775, September 22, 1977.

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An examination of the relevant regulations shows that FTR para. 1-1.3a, and 1-3.4b(1), apply to the present case. They provide:

"1-1.3. General rules.

a. Employee's obligation. An employee traveling on official business is expected to exercise the same care in incurring expenses that a prudent person would exercise if traveling on personal business."

"1-3.4b. Reduced rates.

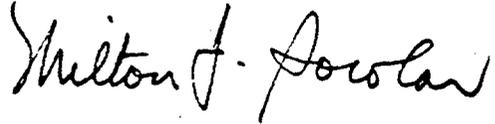
(1) Use of special lower fares. Through fares, special fares, commutation fares, excursion, and reduced-rate roundtrip fares shall be used for official travel when it can be determined prior to the start of a trip that any such type of service is practical and economical to the Government. * * *"
(Emphasis added.)

We have held that FTR para. 1-3.4b(1) not only permits the use of special reduced rates but actually requires a traveler to use them for official travel when it can be determined in advance that it would be advantageous to the Government. 54 Comp. Gen. 268, 269 (1974).

In the present case, Mr. Miller effected a net savings to the Government, and acted in the manner required of him by the FTR and decisions of this Office. Indeed, even the FMCS bulletin clearly instructed him to use reduced airline/fares whenever possible. Any reading of the FMCS bulletin which would prohibit reimbursement for expenses incurred by Mr. Miller when so acting must be disregarded as inconsistent with provisions of the FTR, and cannot be relied on to suspend his claim. The agency may wish to amend its bulletin to clear up any inconsistency.

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Accordingly, the reclaim voucher submitted may be certified for payment.

A handwritten signature in cursive script that reads "Milton J. Fowler".

Acting Comptroller General
of the United States