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**DECISION**



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

**FILE:** B-200305

**DATE:** April 23, 1931

**MATTER OF:** Donald Bray - Travel Claim for  
Temporary Duty

- DIGEST:**
1. Employee who finishes temporary duty at 6:15 p.m. ordinarily should not be required to perform return travel that same night. Thus, employee who interrupts return travel for personal reasons and travels by an indirect route, departing late that night should not have constructive costs comparison made on basis of night coach rate for flight departing that same evening. Constructive cost comparison should be based on schedule that permits employee to travel during regular duty hours the following morning.
  2. Employee traveling on an actual expense basis finished temporary duty at 6:15 p.m. on Thursday but did not depart the temporary duty station until 12:55 a.m. Friday when he traveled to another city on personal business. Since employee incurred no expense for lodging on Thursday, he may not be reimbursed hypothetical cost of lodgings for that night. However, because employee's constructive cost reimbursement should be based on direct return travel scheduled the following morning, lodging costs for that night may be included in determining his constructive expense limitation.

This action is in response to a request for a decision submitted by the authorized certifying officer of the Chicago Operations and Regional Office of the Department of Energy, Argonne, Illinois, regarding a claim for travel and transportation expenses of an employee while on temporary duty. The issues presented in this case arise from the fact that the employee indirectly routed and interrupted his return travel. Those issues are: (1) whether the cost of a night's lodging may be included in the constructive cost computation even though the employee did not incur any lodging costs on the particular night, and (2) whether the

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employee may be limited on a constructive cost basis to the night coach air fare for return to his official station where he in fact performed indirect travel at hours qualifying for the night rate.

Mr. Donald Bray, an employee of the Department of Energy, was assigned temporary duty in Golden, Colorado. He was authorized actual expenses not to exceed \$48 per day. He traveled from his residence in St. Charles, Illinois, to Golden, Colorado, on Wednesday, March 19, 1980, utilizing one-way night coach from Chicago's O'Hare Airport to Denver. He left his residence at approximately 8 p.m. central standard time and arrived in Denver at approximately 11 p.m. mountain standard time or approximately 4 hours' traveltime. He incurred 1 night's lodging expense on the night of his arrival. He attended a conference the following day and concluded his official business at 6:15 p.m.

There were two flights available from Denver to Chicago which would have permitted Mr. Bray to return the same day, one at 6:50 p.m. and one at 9:10 p.m. However, Mr. Bray did not return to his official station on Thursday, March 20. Having completed his official business, he instead traveled to Huntsville, Alabama, on personal business. His flight to Huntsville left Denver at 12:55 a.m. Friday morning. On Sunday, he departed Huntsville by private automobile, arriving at his residence the following day.

Receipts have been provided for only 1 night's lodging.

Mr. Bray claims that his reimbursement for the actual costs he incurred for travel by way of Huntsville should not be limited to the travel and transportation expenses he would have incurred for direct return travel to Chicago by a flight departing Thursday evening. He claims that an additional night's lodging for Thursday, March 20, should be included as part of the constructive cost in a comparative computation between actual and constructive costs. The agency asserts that Mr. Bray should be limited on a constructive cost basis to the night coach air fare without lodging for the 20th since such costs would have been

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applicable had he returned to his official station at the conclusion of his official business.

Official hours of work for Government employees are set forth in 5 U.S.C. 6101 (1976). Subsection (b)(2) of that section provides:

"To the maximum extent practicable, the head of an agency shall schedule the time to be spent by an employee in a travel status away from his official station within the regularly scheduled workweek of the employee."

The Office of Personnel Management regulation issued pursuant to 5 U.S.C. 6101(c) (1976) appears at 5 C.F.R. 610.123 and provides:

"Insofar as practicable travel during nonduty hours shall not be required of an employee. When it is essential that this be required and the employee may not be paid overtime under § 550.112(e) of this chapter the official concerned shall record his reasons for ordering travel at those hours and shall, upon request, furnish a copy of his statement to the employee concerned."

The above-quoted regulation places a responsibility on the official ordering travel during non-duty hours to record his reasons justifying the requirement for such order, when--as in the present case--overtime travel is not involved.

Insofar as compatible with work requirements, we have recognized that these authorities permit an employee to delay his departure from a temporary duty assignment and incur additional per diem costs in order to perform travel during his regular duty hours. 53 Comp. Gen. 882 (1974). Thus, in B-168855, March 24, 1970, we rejected the agency's contention that an employee who completed his temporary duty assignment at 4:45, remained overnight and returned the following day, was limited to the travel costs that would have

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been payable had he returned the prior evening. Consistent with these decisions, we have held that for the purpose of determining constructive costs when an employee travels by an unauthorized mode or routing, the schedule used should be one that would permit the employee to travel during regular duty hours to the extent practicable. B-175627, July 5, 1972. In limited circumstances, such as those involved in Laxman S. Sundae, B-185652, December 28, 1976, we have viewed the employee's indirect travel at a late hour on the night of departure as evidence that it was not unreasonable to schedule his official travel at that hour and have limited constructive costs on that basis. However, we do not believe that decision is controlling in Mr. Bray's case since it would be unreasonable to assume that he would have scheduled his return travel at 12:55 a.m. on Friday, March 21, if he had not taken leave but returned to work that day.

In Mr. Bray's case, the record contains no suggestion that there was any official necessity for his return to his official duty station in order to perform work on the following morning. In these circumstances his reimbursement for the expenses he incurred incident to his indirect return travel by way of Huntsville should not be limited on the basis of a constructive schedule requiring him to perform return travel Thursday evening. Accordingly, the constructive cost for his return air fare should not be limited to a night coach flight. See Federal Travel Regulations (FTR) (FPMR 101-7) para. 1-4.3d (May 1973).

Because Mr. Bray did not incur lodging costs for Thursday night, he may not be reimbursed hypothetical costs for commercial lodgings for that night. Gary L. Hutchison, B-191559, November 8, 1978. However, the cost of lodgings for that night--costs he would have incurred had he returned to his official station on Friday morning--may be included in determining the maximum amount he may be reimbursed based on constructive costs. James S. Brunton, B-168857, March 24, 1977, and October 12, 1977.

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Accordingly, the voucher submitted may be paid  
if modified as set forth herein, if otherwise correct.

*Milton J. Fowler*

Acting Comptroller General  
of the United States