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DECISION



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

FILE: B-198062

DATE: June 23, 1981

MATTER OF: Woodrow O. Davis - Per Diem Rate While
on Travel - Company Aircraft

DIGEST: Civilian employee of the Air Force traveled by company owned aircraft round trip between Fort Worth, Texas, and Brussels, Belgium, and paid for his meals on the aircraft. Employee was authorized reimbursement for all necessary travel expenses and he was reimbursed at a per diem rate of \$6 pursuant to regulations although he paid a substantially higher amount for meals. 2 Joint Travel Regulations para. C4552-3b(9) permits an appropriate official to authorize or approve an increased per diem rate for en route travel outside the continental United States. Since no administrative action had been taken to increase the per diem rate pursuant to this regulation prior to the employee's travel, an appropriate official of the Air Force may approve a higher per diem rate.

Mr. Woodrow O. Davis appeals our Claims Division Settlement of January 7, 1980, (Z-2816568), which denied his claim for reimbursement for subsistence expenses incurred for meals he purchased on an aircraft owned by a private company during official travel between Fort Worth, Texas, and Brussels, Belgium.

Mr. Davis, a civilian employee of the Department of the Air Force, traveled round trip on temporary duty on a company owned aircraft between Fort Worth and Brussels under travel orders dated August 15, 1978. The travel order states that payment will be made in accordance with "Vol. 2 (Civilian) for all necessary travel expenses." By agreement between the Government and the company, the company provided seats, if available, to Government employees at no charge but employees were required to reimburse the company for meals. Mr. Davis spent \$7.50 for a meal on the trip to Brussels, and on the return trip he

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spent \$22.25 for a meal. Mr. Davis was reimbursed for both trips at a per diem rate of \$6 pursuant to 2 Joint Travel Regulations (JTR) para. C4552-3b(4).

Mr. Davis' claim for further reimbursement was denied by our Claims Division because he failed to qualify under the provisions of 2 JTR para. C4552-3e for an increase in per diem reimbursement when an employee is required to pay for meals for which deductions are made. It is not clear whether the meals Mr. Davis consumed while on the flight are "deductible meals" as defined by Appendix D of Volume 2 of the JTR. However, that issue is not pertinent to Mr. Davis' claim since the JTR provision concerning deductible meals does not increase an employee's per diem entitlement. See 2 JTR para. C4552-3e.

However, there is a regulation which allows for an increased per diem rate for periods of actual travel outside the continental United States. 2 JTR para. C4552-3b(9) states:

"(9) Increased Per Diem Rates. When per diem rates prescribed by subpars. (4) and (5) are not commensurate with the traveler's subsistence expenses, a different rate may be authorized or approved in an amount not in excess of the maximum rate applicable to the destination duty point, * * *. A statement of the circumstances warranting the increase will be included with the authorization or approval." (Emphasis added.)

The primary issue in this case is whether this regulation may be applied to increase Mr. Davis' per diem rate after his travel was completed. The general rule regarding retroactive modification or amendment of travel orders is that under orders entitling an officer or employee to travel allowances,

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a legal right to such allowances vests in the traveler when the travel is performed. It may not be divested or modified retroactively so as to increase or decrease the right which has accrued. 55 Comp. Gen. 1241 (1976). However, in one line of prior decisions of our Office we have permitted "approval" by administrative action after the fact. Thomas W. Rochford, B-197960, August 6, 1980, and B-172108, April 21, 1971. In those cases we permitted approval of temporary quarters subsistence expenses under Federal Travel Regulations (FTR) para. 2-5.2a and approval of the mode of transportation used for local travel incident to a house hunting trip under FTR para. 2-4.2. The significant factor in those cases was that the item approved was not included in the authorization issued prior to the travel. Thus, the cases did not involve a retroactive modification of the travel orders. Rather, the approval was the original determination concerning the item in question.

In contrast, another line of prior decisions of our Office have upheld the general rule stated above concerning retroactive modification of travel orders even though the language "authorized or approved" was used in the regulation. Those cases cover situations in which the item in question was included in the authorization issued prior to travel and for which a retroactive modification was requested subsequent to the performance of the travel. See Sandra C. Britt et al., B-164228, October 9, 1975; Charles Feigenbaum, B-191185, August 22, 1978.

In Howard W. Ticknor, B-187921, November 18, 1977, we held, among other things, that an increased per diem rate could be authorized under FTR para. 1-7.4b(3)(b), from which 2 JTR para. C4552-3b(9) was derived. We concluded, however, that the increased rate could not be applied retroactively. FTR para. 1-7.4b(3)(b) contains the language "authorized or approved" as does 2 JTR para. C4552-3b(9). Absent any administrative determination, the regulations require a \$6 per diem rate for en route travel

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of 6 hours or more by air. If an authorization is issued for a rate in excess of \$6 it cannot be retroactively modified. However, if no such administrative determination is made prior to the travel, a rate in excess of \$6 may be approved after the travel is performed. Howard W. Ticknor is modified to that extent.

Accordingly, Mr. Davis' claim for a higher per diem rate for periods of actual travel between Fort Worth and Brussels, is remanded to the Air Force for its determination under 2 JTR C4552-3b(9). We have no objection to payment based on a higher per diem rate if an appropriate official approves such action.



Acting Comptroller General
of the United States