

18827 Mosher PL



DECISION

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

FILE: B-201508 **DATE:** July 15, 1981
MATTER OF: Rodney D. Johnson - Reduced per diem

DIGEST: An employee claims additional per diem on the basis that the reduced per diem rate established by his agency for employees on temporary duty was not sufficient to cover all of his subsistence expenses. His claim may not be allowed because the decision as to whether or not to authorize per diem and as to the amount of per diem is within the discretionary authority of the employing agency.

The issue presented here upon an appeal from a settlement of our Claims Division is to what extent an agency may authorize a reduced per diem rate where an employee claims additional per diem based on some evidence that the amount authorized was not adequate to cover the employee's expenses of lodging and subsistence. The determination as to whether per diem will be authorized and in what amount is within the discretionary authority of the administrative officials concerned; therefore, the employee's claim may not be allowed.

Rodney D. Johnson, an employee of the Forest Service, Department of Agriculture, whose official station was New Orleans, Louisiana, was assigned to temporary duty by orders dated September 12, 1977. The temporary duty involved travel between his official station and the Southern Forest Experiment Station territory and adjoining states. The travel orders provided for a per diem allowance of:

- "(a) average daily lodging cost, rounded up to the next dollar, plus \$9.00, but not to exceed \$35 per day for the entire voucher period
- "(b) a rate of \$9.00 for travel of less than 24 hours when a night's lodging is not required."

The orders were amended on January 9, 1978, effective the same date, to change the per diem allowance to:

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- "(a) Average daily lodging cost, rounded up to next dollar, plus \$9, but not to exceed \$28 per day for the entire voucher period."

A dispute arose over the adequacy of the subsistence allowance which apparently was based on a study done in October 1976. Another study was conducted and by a letter dated April 27, 1978, the Supervisory Forester indicated that the results of the study, which was based on a survey of Forest Service travelers, indicated an average rate of \$6.89 per day for subsistence. However, because several employees did not eat some lunches or breakfasts during the study period, which the Supervisory Forester indicated would cause the lower average, he recommended that the fixed rate should be kept at \$9 per day. The rate of \$9 per day was cancelled on July 2, 1978, and the rate increased to \$16. The basis for that increase is not clear from the record; however, we presume it was based on new information which indicated higher costs.

Mr. Johnson claims that for the period from September 11, 1977, the date of his original orders, to July 2, 1978, his per diem rate should have been \$16 per day. The agency has denied his claim citing the general rule that a travel order cannot be retroactively amended to increase or decrease the per diem rate unless there is an apparent error in the authorization.

Mr. Johnson cites several areas where he alleges error was made in setting the original per diem rate which he contends makes that rate illegal. Mr. Johnson alleges that some other field personnel were receiving lodging plus \$16 per day and that the finance officer had been misinformed or had facts misrepresented to him when setting the rate at \$9.

The general statutory authority for a per diem allowance is 5 U.S.C. 5702 (1976) which provides in pertinent part that "An employee, while traveling on official business away from his designated post of duty, is entitled to a per diem allowance prescribed by the agency concerned." Federal Travel Regulations (FPMR 101-7) para. 1-7.3a (May 1973), which, pursuant

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to 5 U.S.C. 5707 (1976), implements the statute, states in pertinent part, that "It is the responsibility of each department and agency to authorize only such per diem allowances as are justified by the circumstances of the travel." Thus, there is no requirement that per diem in lieu of subsistence must be administratively authorized upon assignment to a temporary duty station. Moreover, per diem is intended to reimburse a traveler only where additional expense is incurred. See Bornhoft v. United States, 137 Ct. Cl. 134 (1956). The determination as to whether per diem will be authorized and in what amount is, therefore, within the discretionary authority of the administrative officials concerned. B-156699, May 24, 1965; B-168637, July 15, 1970; B-171969.31, November 14, 1973; and B-182728, February 18, 1975.

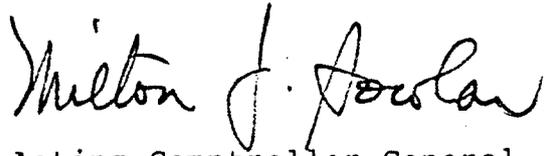
With regard to the establishment of different per diem rates for other employees, we note that agencies, in fixing per diem rates, shall consider factors which will reduce the expenses of an employee such as familiarity with a locality as developed through repeated travel. See FTR para. 1-7.3a. Considering such factors, we believe it was within the discretion of the agency to limit the per diem. We know of no legal requirement that an agency pay the same per diem rate for similar travel by different employees, but, in the interest of fairness, it would appear desirable. B-198008, September 17, 1980.

The fact that the amount of per diem authorized may have been insufficient to meet Mr. Johnson's full cost of lodging and subsistence is not sufficient to establish that the travel order was in error in setting a low per diem rate. While Mr. Johnson indicates that the determination of the rate of per diem was based on misinformation or insufficient information concerning cost of meals and lodging, there is no indication that at the time the travel was performed there was any error apparent on the face of the order or that facts or circumstances clearly demonstrated that some provision previously determined and definitely intended had been omitted through error or inadvertence in preparing the travel orders. Instead, it appears that the \$9 rate was set based on a study of costs incurred by employees traveling in the area. In such circumstances we see nothing illegal in the setting of the reduced rate and

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we find no basis for modification of Mr. Johnson's travel orders retroactively to reflect the higher per diem rate prior to July 2, 1978. 57 Comp. Gen. 367, 369 (1978).

Accordingly, the settlement of our Claims Division determining that the agency correctly applied Federal Travel Regulations in disallowing Mr. Johnson's claim is sustained.

A handwritten signature in cursive script that reads "Milton J. Fowler". The signature is written in dark ink and is positioned above the typed name and title.

Acting Comptroller General
of the United States