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DECISION



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

FILE: B-197561

DATE: December 14, 1981

MATTER OF: Thomas A. Bowman and Daniel J. McCormick -
Per diem while on temporary duty

DIGEST: Former Forest Service employees claim additional per diem for periods when meals and miscellaneous portion of per diem was limited by agency to \$9. Agency relies on duty imposed by the Federal Travel Regulations paragraph 1-7.3a, to authorize only such per diem as is justified by circumstances of travel. However, Forest Service Manual implementing FTR para. 1-7.3a allows exceptions to standard per diem rate only under limited circumstances, none of which is applicable in this case. Thus, under Forest Service Manual employees are entitled to standard per diem rate, applicable at time of travel, of average daily lodging costs plus \$16 for meals and miscellaneous expenses, not to exceed \$35 per day.

Thomas A. Bowman and Daniel J. McCormick, former employees of the Forest Service, appeal the Claims Group denial of their claim for additional per diem. The claimants argue that the Forest Service was without authority to reduce their per diem incident to their temporary duty assignments. For the reasons that follow, we agree with the claimants.

Mr. Bowman and Mr. McCormick were employed as Foresters by the Southern Forest Experiment station in New Orleans, Louisiana. They were required to travel throughout the region on a continuing basis. Their travel orders authorized a limited per diem allowance, consisting of average daily lodging costs plus \$9, not to exceed \$23 per day. They traveled intermittently under these orders from the latter part of 1977 through June 30, 1978.

Their per diem allowance was increased to the standard rate effective July 1, 1978, after their supervisor was informed that Forest Service regulations were being misapplied.

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At that time the travel orders were amended on a prospective basis to provide for lodgings plus \$16, not to exceed \$35 a day.

The claimants note that, during the period covered by their claim, the Federal Travel Regulations, para. 1-7.3c(1) (FPMR Temp. Reg. A-11, Supplement 4, April 29, 1977), authorized a per diem (not to exceed \$35 a day) consisting of:

"* * * the average amount the traveler pays for lodging, plus an allowance of \$16 for meals and miscellaneous subsistence expenses.
* * *"

They argue that the Forest Service regulations pertaining to travel permit reductions in per diem only under certain narrowly defined circumstances, none of which is applicable to them. Thus, they conclude that the Forest Service violated its own regulations by denying the full \$16 for meals and miscellaneous expenses.

The Forest Service relies on the provisions of FTR para. 1-7.3a (FPMR 101-7, May 1973) as authority for the reduction of the meals and miscellaneous expenses portion of per diem from \$16 to \$9. That paragraph charges each agency with the responsibility "* * * to authorize only such per diem allowances as are justified by the circumstances affecting the travel." Examples are provided of factors that may warrant a reduced per diem, including known arrangements when lodgings and meals may be obtained without cost or at low cost, and when the traveler is familiar with establishments providing lodging and meals at a lower cost in certain localities. Finally, the Forest Service states that the claimants were authorized the same per diem rates as other similarly situated employees.

Paragraph 1-7.3 of the Federal Travel Regulations establishes an agency's responsibility for prescribing individual per diem rates. While subparagraphs b through e provide rules to cover specific situations described in those subparagraphs, the agency may exercise its own discretion in other situations. This responsibility is recognized in Forest Service Manual paragraph 6543.01, which provides:

"* * * The Secretary of Agriculture is authorized to issue regulations for the Department which

will further restrict travel regulations promulgated by the GSA. Such regulations provide the basis for proper delegation and redelegation of authority by which the Forest Service administers travel necessary for the transaction of official business of the agency. * * *

Under this authority, the Forest Service Manual provides rules governing the application of per diem to Forest Service employees at paragraph 6543.07a, which provides for a standard per diem rate. At the times in question, the standard per diem rate established by the Department of Agriculture was the average daily lodging cost plus \$16, rounded to the next whole dollar, not to exceed \$35 a day. In accordance with the duty imposed by FTR paragraph 1-7.3a to authorize only such per diem as is justified, the Forest Service Manual provides for exceptions to the standard per diem rate in paragraph 6543.07a. It states:

"* * * The only exceptions to the standard per diem rate are actual subsistence when authorized and for those exceptions listed in item 5. * * *

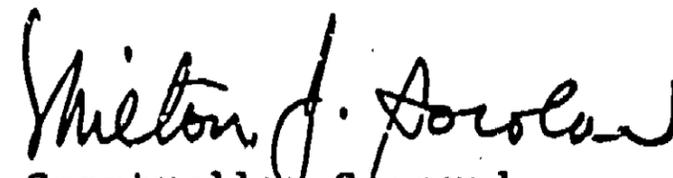
None of the exceptions contained in item 5 appear to apply to this situation. The Forest Service, however, relies on paragraph 5(g), which provides:

"Special Rates. Special rates for less than the standard per diem rate may be authorized where subsistence is obtained through noncommercial sources, such as Forest Service work camps or where meals are prepared by the traveler in Government or noncommercial facilities. This will be done by establishing an amount lower than the standard subsistence component of the per diem rate. * * *

The record shows that the employees obtained their rooms and meals commercially. Therefore, it appears that the circumstances of the employees' travel do not fall within the situations described in item 5(g).

Since the Forest Service regulations provide that the standard per diem rate will be authorized unless the traveler's situation is covered by one of the exceptions provided in paragraph 6543.07a5, the Forest Service erred in reducing the employees' per diem. That conclusion is supported by the statement of Richard T. Quick, the employees' supervisor during the period of the claim. He states in an affidavit that, when it was discovered that the agency regulations were being misapplied, the per diem rates were corrected prospectively, effective July 1, 1978, to the standard per diem rate. Accordingly, we find that the Forest Service acted improperly under its own regulations in reducing the per diem rates of the two employees.

The final contention of the Forest Service is that an employee's travel orders may not be retroactively amended to increase or decrease entitlements, citing 22 Comp. Gen. 934 (1943) and 28 Comp. Gen. 732 (1949). While that statement is generally true, there are certain exceptions that have been recognized by this Office which provide precedent for retroactively amending the travel orders in this case. Specifically, in B-183886, July 30, 1975, we allowed the retroactive correction of an employee's travel order where the agency misapplied or misconstrued its own written policy guidelines in fixing a lower mileage rate than was required by its regulations. Thus, since the Forest Service misapplied its regulations in authorizing a reduced per diem rate, we hold that the two employees are entitled to the standard per diem rate of lodgings plus \$16, not to exceed \$35.

for 
Comptroller General
of the United States