

DECISION

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PHM 25201

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

FILE: B-208183**DATE:** May 20, 1983**MATTER OF:** Timothy W. Joseph - Travel Expenses -
Privately Owned Vehicle - Constructive Cost**DIGEST:**

1. Because of medical condition affecting employee's eardrums, he was unable to travel by air to a temporary duty station. Instead of traveling by train, he chose to travel by privately owned vehicle, with reimbursement limited to constructive cost of travel by common carrier. Since travel by air was not available to employee, the "appropriate" common carrier transportation under FTR para. 1-4.3 was rail transportation, and the constructive cost of rail rather than air transportation is thus applicable.
2. Where employee, who traveled by privately owned vehicle as a matter of preference and took additional time away from his official duties, is to be reimbursed at the constructive cost of rail transportation, the employee's annual leave may be charged for the work hours involved in the trip exceeding those hours which would have been required had he used rail transportation.

The issue presented is whether air travel or rail travel is to be used as the proper constructive cost of common carrier transportation when an employee traveled by private automobile in lieu of common carrier.

This decision is in response to a request for an advance decision from Raymond E. Wolatz, an authorized certifying officer of the Department of Energy (DOE), Chicago Operations Office. His request involves a claim by a DOE employee, Dr. Timothy W. Joseph, for reimbursement of

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expenses he incurred in using his privately owned vehicle (POV) in lieu of common carrier while on temporary duty travel. For the reasons stated below, we hold that under the circumstances of this case, reimbursement is to be set at not more than the constructive costs Dr. Joseph would have incurred had he traveled by train.

Dr. Joseph was scheduled to attend a Hazardous Waste inspection at Brookhaven National Laboratory, in Upton, New York, on October 8, 1981. Because of a serious medical condition involving his eardrums, he had been advised by his doctor not to travel by air until the condition had cleared up. Since he could not fly, the agency determined that travel by rail would be the acceptable alternative. Dr. Joseph, however, chose to drive rather than take the 27-hour train trip, and he assumed that his reimbursement would be compared to rail travel. His travel orders permitted travel by "privately owned vehicle at the rate of 22.5 cents per mile provided total cost does not exceed cost of travel in common carrier."

He left his residence in Plainfield, Illinois, on October 3, 1981, and arrived at his hotel on Long Island on October 7. The traveltime was extended because of a few stops along the way for personal reasons. The official business was taken care of on October 8. Dr. Joseph arrived back at his residence on the evening of October 9, 1981.

According to the information supplied by the certifying officer, had Dr. Joseph traveled by air, his reimbursable expenses would have totaled \$322.67, and had he taken rail transportation, they would have totaled \$551. In fact Dr. Joseph's actual expenses for travel by privately owned vehicle totaled \$572.02. He contends that, since his physician prohibited his travel by airplane, reimbursement for his travel expenses should not be limited to the constructive cost of air transportation, including the constructive per diem by that method of transportation, but rather should be limited to the constructive cost of rail transportation, including constructive per diem.

The certifying officer maintains, however, that the comparison should be made against air transportation based upon the Department of Energy travel manual and paragraph 1-4.3 of the Federal Travel Regulations, FPMR 101-7 (May 1973) (FTR). Additionally, the certifying officer contends

that all normal work hours involved in the trip in excess of the work hours that would have been required had the trip been made by use of air transportation should be charged to the employee's annual leave account. The certifying officer requests our determination of the appropriate constructive cost method and the appropriate charge to the employee's annual leave.

The first issue for determination is whether Dr. Joseph is entitled to be reimbursed on the basis of the constructive cost of air travel or rail travel. Paragraphs 1-2.2c(3) and 1-2.2d of the FTR subject reimbursement for the use of a privately owned vehicle for official travel to the constructive cost restrictions enumerated in paragraph 1-4, unless a determination has been made that common carrier transportation or Government-furnished vehicle transportation is not available or would not be advantageous to the Government. Paragraph 1-2.2d, FPMR Temp. Reg. A-11 Supp. 4 (1977), states:

"When an employee uses a privately owned conveyance as a matter of personal preference and such use is compatible with the performance of official business, although not determined to be advantageous to the Government under 1-2.2c(3), such use may be authorized or approved provided that reimbursement is limited in accordance with the provisions of 1-4."

Since there is no dispute that common carrier transportation was available by both air and rail and Dr. Joseph's travel authorization clearly shows that the agency determined that use of a private vehicle was not advantageous to it, paragraph 1-4.3 controls here. Paragraph 1-4.3 of the FTR provides, in pertinent part:

"Whenever a privately owned conveyance is used for official purposes as a matter of personal preference in lieu of common carrier transportation under 1-2.2d, payment for such travel shall be made on the basis of the actual travel performed, * * * plus the per diem allowable for the actual travel. The total allowable shall be limited to the total constructive cost of appropriate common

carrier transportation including constructive per diem by that method of transportation." (Emphasis supplied.)

In the instant case, while there is no dispute that airplane service was "provided" between Dr. Joseph's place of origin and destination, it is equally clear that airplane travel could not be used by Dr. Joseph due to his medical condition. In this situation the reference in paragraph 1-4.3 of the FTR to "appropriate" common carrier transportation must be construed to mean rail transportation. Although paragraph 1-4.3a indicates that the comparison should be made to the constructive cost by airplane, this regulation did not contemplate the situation found here where, for medical reasons, airplane service cannot be used, and thus in effect is not "provided." Accordingly, we hold that Dr. Joseph's medical condition takes this case outside the specific rules in paragraph 1-4.3a for determining constructive cost. Rather, the general rule of paragraph 1-4.3 that the claimant may recover the "total constructive cost of [the] appropriate common carrier transportation" controls. Since rail travel was the "appropriate" common carrier transportation under the circumstances, we conclude that Dr. Joseph should be reimbursed up to the constructive cost of first-class rail transportation. See FTR paragraph 1-4.3a(2).

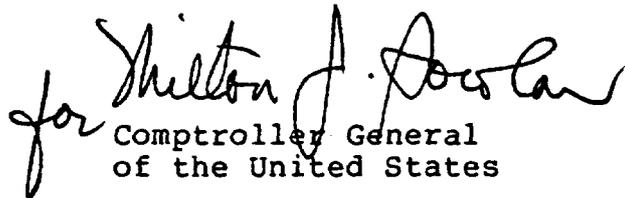
The certifying officer next submits for decision the issue of whether Dr. Joseph's annual leave should be charged for the normal working hours he missed exceeding the hours that would have been required had the trip been completed by plane. By letter to the Veterans Administration, dated January 11, 1965, B-155693, we stated that although the determination to charge an employee leave because he travels by privately owned vehicle when he could have accomplished the official business involved in a shorter time had he traveled by appropriate common carrier is a matter primarily within the sound discretion of the head of the agency concerned, we believe that, in the interest of economy, employees who use privately owned vehicles for official travel, when such mode of travel is not to the advantage of the Government, should be charged leave for excess traveltime.

Additionally, we have held that where excess time away from official duties was occasioned by the employee's

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election to travel by privately owned vehicle as a matter of personal preference, the excess absence from work should be charged to annual leave. 56 Comp. Gen. 865 (1977).

Since we hold that Dr. Joseph should be reimbursed at the constructive cost of rail transportation, the agency must determine the constructive traveltime Dr. Joseph would have taken for the same trip by rail. Because Dr. Joseph traveled by car and made three stops along the way for personal reasons, his absence totaled 7 days. Accordingly, the normal work hours involved in the trip, in excess of those required for the same trip by rail transportation, may be charged to Dr. Joseph's annual leave.

for  Milton J. Douglas
Comptroller General
of the United States