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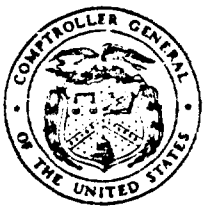
DECISION



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

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FILE: B-210613 **DATE:** June 10, 1983

MATTER OF: Daniel L. Reid - POV Travel to FAA Academy

DIGEST:

Employee, not covered by collective bargaining agreement, who traveled to FAA Academy, is entitled to use of his privately owned vehicle (POV) as advantageous to the Government, since he is identically situated to employees who are specifically covered by a provision of collective bargaining agreement permitting use of a POV as advantageous to the Government in certain circumstances. Agreement requires "frequent assignment to recurring training" at the FAA Academy, and employee here is subject to frequent assignment to recurring training at the FAA Academy where his training program as a Data Systems Specialist calls for him to attend future training classes at the FAA Academy in order to reach full performance level. The FAA may not discriminate between identically situated employees.

This action is a reconsideration of Settlement Certificate Z-2830702, September 23, 1982, issued by our Claims Group, disallowing the claim of Mr. Daniel L. Reid, an Air Traffic Data Systems Specialist, Federal Aviation Administration (FAA), for reimbursement of mileage costs for the use of his privately owned vehicle (POV) to travel to and from the FAA Academy in Oklahoma City, Oklahoma. It is Mr. Reid's contention that his use of his POV should have been found to be advantageous to the Government. For the reasons stated below we reverse the decision of our Claims Group, and we hold that Mr. Reid is entitled to full reimbursement of his mileage costs for travel by POV to and from the FAA Academy as advantageous to the Government.

The record shows that Mr. Reid was issued Travel Order S-2103-138, dated September 18, 1980, to attend training at

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the FAA Academy in Oklahoma City, Oklahoma, from October 2, 1980, through November 18, 1980. Mr. Reid, a Data Systems Specialist at the Seattle, Washington, Air Route Traffic Control Center, drove his POV to and from the FAA Academy and claimed total travel and subsistence expenses of $2,350.40, with mileage calculated on the basis of POV use being advantageous to the Government. The FAA did not consider Mr. Reid's use of POV as advantageous to the Government and compensated him based on the constructive cost of air travel to and from the FAA Academy, in the total amount for travel and subsistence of $1,939, or $411.40 less than Mr. Reid claimed. The FAA denied the internal grievance filed by Mr. Reid, so he then filed a claim with GAO.

Mr. Reid claims that he should be reimbursed his POV costs because he is in the same situation as Airway Facility employees that are covered by the Federal Aviation Science and Technological Association, National Association of Government Employees (FASTA/NAGE)-FAA collective bargaining agreement. Airway Facility employees are reimbursed for POV mileage costs for "recurring training" under Article 19, Section 1 of the FASTA/NAGE-FAA agreement. As support for his position, Mr. Reid relies on our decisions in Ard T. Johnson, B-194372, January 8, 1980, and Air Traffic Control Trainees, B-201542, September 18, 1981.

Both of those decisions involved Article 19, Section 1 of the FASTA/NAGE-FAA agreement, which provides:

"ARTICLE 19 - FAA ACADEMY TRAINING TRAVEL

"Section 1. The Parties recognize that the frequent assignment of airway facilities technicians to recurring training at the FAA Academy, leading to qualification and/or maintenance of qualification on certifiable systems and supporting sub-systems, creates an unusual situation not experienced by other travelers. It is further recognized that adequate Government owned quarters and adequate off-hours local transportation are not provided. The Employer therefore agrees that, when such personnel (if employed in the

> contiguous 48 states) are issued a travel order to attend the FAA Academy for more than three consecutive weeks, such personnel shall be authorized the use of a privately owned vehicle. Such travel shall be deemed to be advantageous to the Government and per diem and mileage shall be paid at the rate applicable to such travel."

In Ard T. Johnson, we held that if an employee covered by the FASTA/NAGE-FAA agreement, who travels in a POV to the FAA Academy, is considered to be using his POV for the advantage of the Government, then an identically situated employee who is not covered by the agreement should also be considered to be using his POV for the advantage of the Government. We reasoned in support of our holding:

> "* * * The reason for [our holding] is that, although the FAA has the discretion to determine when POV use is advantageous to the Government, the FAA cannot exercise its discretion in an arbitrary or capricious manner. Employees who have identical travel situations should not be treated differently under FTR para. 1-2.2c merely because some are covered by a labor-management agreement and others are not. The only criteria for finding POV use advantageous to the Government are set out at para. 1-2.2c. Coverage under a collective-bargaining agreement is not one of the criteria. Once a determination is made under para. 1-2.2c to find advantage to the Government in a given situation, an agency may not discriminate between classes of employees. Once the FAA decided certain factors created an advantage to the Government under the FTR, then the FAA is required to apply such a determination to other employees who meet those factors. The only exception to this would be if FAA could show that other circumstances militate against the finding of advantage in a particular case."

Following our decision in Ard T. Johnson, the Associate Administrator for Administration of the FAA issued a letter dated February 25, 1980, to Regional and Center Directors concerning travel to the FAA Academy by POV, and providing criteria to be used in complying with our decision. That letter provided, in part, that:

> "When employees outside the FASTA bargaining unit attend a class at the FAA Academy which:
>
> 1. Meets the criteria of Article 19, Section 1; and
>
> 2. Is attended by employees specifically covered by Article 19, Section 1;
>
> Such employees will be authorized use of their POV's on an advantageous to the Government basis consistent with the provisions of Article 19."

By this letter, the FAA declined to consider employees outside the FASTA/NAGE bargaining unit as identically situated to employees covered by the FASTA/NAGE-FAA agreement unless they met the criteria set forth above, including attendance at the class by one or more employees specifically covered by Article 19. The FAA then recommended in its Administrative Report of September 9, 1981, that Mr. Reid's claim be denied since no employees specifically covered by Article 19 attended his class at the FAA Academy.

However, we held soon thereafter in Air Traffic Control Trainees, B-201542, September 18, 1981, that paragraph 6.b of FAA Southern Region Notice SO N 1500.78, May 29, 1980, which incorporated the standards contained in the February 25, 1980, FAA letter, was unduly restrictive, and must be modified to exclude the requirement that a class be attended by one or more trainees who are Airway Facilities Technicians for an employee not covered by the FASTA/NAGE-FAA agreement to qualify for a finding of use of a POV as advantageous to the Government. We did, however, state that paragraph 6.b of the FAA Notice may continue to include a requirement that, in order to qualify

for a finding of use of a POV as advantageous to the Government, an employee must be subject to "frequent assignment to recurring training."

We held further in Air Traffic Control Trainees, that air traffic control trainees are not identically situated to members of the FASTA/NAGE bargaining unit since the former are almost exclusively new hires who do not perform training at the FAA Academy on a recurring basis, whereas the technicians do perform such training on a recurring basis during their careers. Because of our decision in Air Traffic Control Trainees, the issue in this case comes down to whether Mr. Reid is subject to "frequent assignment to recurring training" within the meaning of Article 19 and our decision. The FAA has not generally defined this term.

Mr. Reid claimed in a letter to GAO dated November 29, 1981, that his situation was distinguishable from that of Air Traffic Control Trainees, and that he is indeed subject to "frequent assignment to recurring training." Specifically, he contended that Data Systems Specialists like him: are not exclusively new hires (Mr. Reid has been an FAA employee for 10 years); must attend three to four courses of 3 to 4 weeks duration over a period of approximately 4 years; and may well require additional training due to the advent of a new air traffic control computer system.

The FAA responded to our decision in Air Traffic Control Trainees, and to Mr. Reid's letter of November 29, 1981, by recommending denial of Mr. Reid's claim again on March 25, 1982, because Mr. Reid was not, in the FAA's opinion, subject to "frequent assignment to recurring training." The FAA stated, in pertinent part:

> "In your particular case, the training records indicate that only two of the three enroute automation program courses you completed in the last two years were conducted at the FAA Academy; the third course was taken at your facility. Although the enroute automation training is a ten-phase program, it consists of correspondence and facility training, as well as resident courses. Further, we understand that attendance at any of the remaining courses cannot be predicted because attendance is discretionary and is dependent upon the recommendation of the Data Systems Officer, and the availability of

> funding and class quotas. Therefore, based on your record of attendance and the uncertainty of future attendance, we must conclude that your situation does not meet the conditions of Article 19."

Mr. Reid took issue with the FAA's assessment of the recurring nature of his training program as a Data Systems Specialist in a letter dated March 31, 1982, to the FAA. He argued:

> "You stated that I completed only two courses at the Academy. This is true. It is also true that, in the absence of the controller strike, and assuming that my training program would be identical with all other recent DSS appointees, I would have been scheduled for two more classes at the Academy. Even while I was at the Academy the training program was being changed to a ten-phase sequence, five of which are conducted at the Academy. This means that three to five trips to Oklahoma City would be necessary to complete the program, and one does not attain the full performance level (FPL) status until <u>all</u> phases are completed. Attendance, therefore, is not discretionary as you claim. These trips are in addition to the one or two trips necessary for ATC developmentals. If these are included in the total training program, seven trips to Oklahoma City might be necessary for the FPL DSS. To date, I have been there three times. When I return to automation duties, I will be expected to make at least two more. The conditions set forth in Article 19 are certainly fulfilled."

Mr. Reid further contended that other Data Systems Specialists had been permitted use of their POV's as advantageous to the Government while attending courses at the FAA Academy.

We disagree with the FAA's contention that Mr. Reid's training at the FAA Academy as a Data Systems Specialist is

not "recurring training" within the meaning of Article 19, Section 1 of the FASTA/NAGE-FAA agreement, since future attendance at remaining courses in the ten-phase program:

> "* * * cannot be predicted because attendance is discretionary and is dependent upon the recommendation of the Data Systems Officer and the availability of funding and class quotas. * * *"

We note that future attendance at many forms of training, including presumably that of employees specifically covered by Article 19 of the FASTA/NAGE-FAA agreement, is inherently speculative due to the reasons cited by the FAA. To agree with the FAA would permit the FAA to find that any employee not in the FASTA/NAGE bargaining unit is not subject to frequent assignment to recurring training at the FAA Academy because his attendance at future training can never be a certainty. We hold that the FAA in this case has adopted an overly restrictive interpretation of the term "recurring training" as used in Article 19. Where it is necessary for an employee to complete a ten-phase training program, with one-half of the courses at the FAA Academy, in order to reach the full performance level, that employee is subject to frequent assignment to recurring training and is entitled to use his POV as advantageous to the Government, if the other conditions of Article 19 and our decisions are met.

In sum, since we hold that Mr. Reid is subject to frequent assignment to recurring training at the FAA Academy, and there is no dispute that Mr. Reid otherwise meets the criteria of Article 19 and our decisions, we conclude that Mr. Reid is identically situated to employees specifically covered by Article 19 of the FASTA/NAGE-FAA agreement. Therefore, since the FAA may not discriminate between Mr. Reid and employees specifically covered by Article 19 where they are identically situated, we hold that Mr. Reid's claim in the amount of $411.40, may be paid. Settlement will issue in due course.

for Milton J. Socolar
Comptroller General
of the United States