

**DECISION**



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

**FILE:** B-212401

**DATE:** April 3, 1984

**MATTER OF:** Albert Armendariz

**DIGEST:**

An employee of the Immigration and Naturalization Service on temporary duty may not be reimbursed based on the per diem rate and automobile rental expenses provided in his travel order because the Service in effect established a special lower per diem rate predicated upon a requirement that the employee use Government quarters at the temporary duty location and which would not require use of a rental automobile. Although 5 U.S.C. § 5911(e) precludes an employee from being subjected to that requirement unless the agency determines it to be necessary for the accomplishment of the employee's mission, the Service made such a determination in this case based on the needs of the Service in processing 800 Haitians at Fort Allen, Puerto Rico.

Should an employee of the Immigration and Naturalization Service on temporary duty be reimbursed using the per diem rate of \$70 and for the use of a rental car, shown in his travel order, or should he be reimbursed at a lower special per diem rate set by the agency and excluding the rental car because of available Government quarters that the employee was directed to use at the temporary duty site?<sup>1</sup> We find that in this case the employee should be reimbursed using the lower per diem rate set by the agency because the rate was properly established and the agency has shown that the use of Government quarters was essential to the accomplishment of the employee's mission as required by 5 U.S.C. § 5911(e).

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<sup>1</sup>The Assistant Regional Commissioner, Budget and Accounting Division, Immigration and Naturalization Service, submitted this question as a request for an advance decision.

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FACTS

Mr. Albert Armendariz, an Immigration Judge, traveled from his regular duty station in El Paso, Texas, to Fort Allen, Puerto Rico, in January 1982, for a 12-day assignment to preside over immigration hearings determining whether certain Haitians should be granted asylum in the United States. Fort Allen is located approximately 60 miles south of San Juan, and 10 miles east of Ponce, Puerto Rico, and there is no public transportation available between Fort Allen and those cities. The facility at Fort Allen is a former naval station which was reopened in July 1981 by the Immigration and Naturalization Service to be used as a processing center for the Haitian immigration hearings. During 1982 there were approximately 800 Haitians at Fort Allen awaiting hearings. Immigration Judges were brought to Fort Allen by the Service on a rotating basis from other duty stations along with other personnel to conduct the hearings.

When Mr. Armendariz arrived in San Juan from El Paso at about 8:30 p.m., he spent the night in San Juan because there was no ongoing transportation to Fort Allen at that hour. The next morning he rented a car in San Juan and drove to Fort Allen where he reported for duty that morning. He spent the next two nights at the Government-furnished quarters at Fort Allen and then took up commercial lodgings from which he commuted by rental car for the rest of his 12-day temporary duty assignment. His travel order authorized a rental car and the per diem rate applicable in the area--\$70 per day.

PARTIES' CONTENTIONS

The Service contends that the \$70 per diem rate shown on Mr. Armendariz's travel order was an inadvertent administrative error and that the lower "official" per diem rate of \$32.20 had been established by the Service and transmitted to Mr. Armendariz and others assigned to Fort Allen on temporary duty by a series of teletype communications issued well before the travel order. One of these messages (which was sent in September 1981 to all Immigration Judges and District Directors), besides establishing a lower per diem rate, stated that "\* \* \* the operational and management needs of INS require all detailed personnel to reside in the Government quarters at Fort Allen."

Mr. Armendariz indicates that neither the food service nor the lodging provided at Fort Allen were adequate for his use. Essentially, he argues that the quarters were of poor quality without adequate furniture and appliances, and the food was greasy and served in an unsanitary cafeteria. Thus, he contends that he should be reimbursed based on the \$70 per diem rate for the period he chose to use commercial quarters because "\* \* \* this travel was undertaken and completed in good faith reliance upon the written authorization which was submitted and approved well in advance of the commencement of this travel."

#### The Lower Per Diem Rate

The Service is empowered under paragraphs 1-7.3(a) and 1-7.6(f) of the Federal Travel Regulations to prescribe lower than usual per diem rates according to the particular traveling conditions. This is usually shown on the travel order, and the entitlement of the traveler is known and fixed accordingly. The Service in El Paso, where Mr. Armendariz's travel order was issued, failed to correctly prepare the travel order in this case, but administrative error in the preparation of a travel order which sets a per diem rate contrary to a rate established by an agency regulation need not be enforced. Matter of Wilkinson, B-189537, December 11, 1978.

It appears that the teletype messages communicating the special per diem rates in this case in effect modified the otherwise applicable rates provided in the travel regulations. The issuing office for the communications was designated under the Service's regulations to prescribe orders, and establish travel policy and regulations. The series of messages, which ordered the particular per diem rate in this case, was communicated to all the regional directors and hearing judges prior to the time Mr. Armendariz's travel order was issued. Mr. Armendariz does not claim that he was unaware of the provisions of these messages, and we note he did occupy Government quarters initially. Therefore, the lower rate established in the communications supersedes the rate shown on the travel order. Matter of Wilkinson, cited above.

The Service's "Necessity" Determination

Even though the Service effectively established the lower per diem rate, an employee may not be required to occupy Government quarters unless the agency head determines that "\* \* \* necessary service cannot be rendered, or that property of the Government cannot adequately be protected, otherwise." 5 U.S.C. § 5911(e). We have interpreted this statutory language to require a determination that the use of Government quarters was necessary to accomplish the employee's mission. Matter of Federal Aviation Administration, B-195859, March 18, 1980. Matter of Bureau of Indian Affairs, 60 Comp. Gen. 181, 188 (1981). Such determinations are to be made based on the circumstances attending particular assignments or prevailing at particular installations. 44 Comp. Gen. 626, 632 (1965).

The September 1981 teletype message, referred to above, stated in part:

"ALL INS personnel detailed to Fort Allen will be housed in adequate Government quarters when they become available. This should be no later than September 7, 1981. Both funding limitations and the temporary nature of the INS use of Fort Allen dictate that major improvements not to be undertaken. Further, it has been determined that the operational and management needs of INS require all detailed personnel to reside in the Government quarters at Fort Allen." (Emphasis added.)

While this statement in the September message indicates that the service required use of Government quarters because it was necessary to accomplish the Haitian processing mission, after receiving Mr. Armendariz's appeal, we specifically inquired whether the Service had made the required determination. The Service replied that it had done so, specifically determining "\* \* \* that it would best serve the operational needs of the Haitian processing center to have all employees lodged at Fort Allen for the purpose of assuring maximum available staffing to meet emergent needs."

In the circumstances of this case, we do not disagree with the Service's "necessity" determination. This special project, the efficient processing of the 800 Haitians present at Fort Allen during 1982, was undoubtedly an emergent need for the Service, and Fort Allen was specifically reopened for this purpose. Assuring "maximum available staffing" at the Haitian processing center for efficiently conducting the hearings by requiring the employees to stay in Fort Allen thus appears reasonable. Also, the determination was directed towards a problem located at a specific and limited geographic area for a particular project. See B-170194, September 15, 1970.

Conclusion

Accordingly, Mr. Armendariz may be allowed only the special per diem rate provided in the teletype communications applicable to Fort Allen when Government quarters were available to him unless the Service determines that the unusual circumstances Mr. Armendariz claimed pertained to him concerning the inadequate quarters and food at Fort Allen warrants his use of commercial lodging at a higher rate and related automobile rental expenses. The Service indicates that it has not yet considered Mr. Armendariz's arguments concerning whether the quarters and meals provided at Fort Allen were inadequate to his particular needs so as to permit use of commercial lodging in his case. The Service should make a determination on that matter prior to settlement.

*for*   
Comptroller General  
of the United States