



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Mason E. Richwine - Per Diem on Temporary Duty -
Barring Act
File: B-224811
Date: September 25, 1987

DIGEST

1. An employee of the Forest Service claims per diem in connection with tours of duty at two worksites for the period from May 14, 1979, to November 16, 1984. His claim was received in the General Accounting Office (GAO) on October 8, 1985. That portion of his claim prior to October 8, 1979, is barred and may not be considered by GAO since it accrued more than 6 years prior to the date it was received by GAO. 31 U.S.C. § 3702(b) (1982).
2. A Forest Service employee claims per diem while assigned to a remote, seasonal worksite 6 months of every year. Although the agency designated two official duty stations for this employee and officially transferred him every 6 months from one station to the other, we conclude that the remote, seasonal worksite was a temporary duty location. The employee is entitled to appropriate per diem and mileage allowances while performing this temporary duty.

DECISION

This decision is in response to a request from Mr. Clarence E. Tipton, Authorized Certifying Officer, Forest Service, United States Department of Agriculture, concerning the entitlement of Mr. Mason E. Richwine, an employee of the agency, to per diem, mileage allowances, and miscellaneous expense allowances for tours of duty at two worksites, the Hungry Horse Ranger Station and the Spotted Bear Ranger Station, both located in the Flathead National Forest, Montana.

The basic issue is whether, as the agency contends, Mr. Richwine was properly transferred between the two ranger stations, thus making each ranger station an official duty station or whether, as the employee asserts, Hungry Horse was his official duty station and the duty he performed at Spotted Bear was temporary duty, which entitles him to reduced per diem allowances. For the reasons stated later

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in this decision, we conclude that Mr. Richwine was in a temporary duty status at Spotted Bear and is entitled to reduced per diem, except for that portion of his claim which is time-barred for the period more than 6 years prior to the receipt of his claim by this Office. The claims for mileage allowances submitted by Mr. Richwine are also allowed, subject to deduction of the commuting allowances previously paid to him.

BACKGROUND

Mr. Richwine is a Forestry Technician employed by the Forest Service in the Flathead National Forest, Montana. During the winter and early spring (approximately November 15 to May 14), he works at the Hungry Horse Ranger Station, and his residence is located nearby in Columbia Falls, Montana. During the remaining 6 months of the year, Mr. Richwine works at the Spotted Bear Ranger Station which is located 55 miles away from Hungry Horse. Spotted Bear is in an isolated area of the Flathead Forest and has no commercial amenities. The Forest Service furnished living quarters and utilities to Mr. Richwine at Spotted Bear, without charge, but these government-furnished quarters at Spotted Bear are rudimentary.

During the period of the claim, May 14, 1979, to November 16, 1984, the Forest Service established two (dual) official duty stations for Mr. Richwine at the Hungry Horse and Spotted Bear Ranger Stations. Since the Spotted Bear Ranger Station is only accessible for one half of the year, mid-May to mid-November, field work is performed at Spotted Bear for approximately 6 months and office work is performed at Hungry Horse during the winter months. The Forest Service issued transfer-of-station travel authorizations and SF-50's, Notifications of Personnel Action, transferring Mr. Richwine to and from the two ranger stations each year. Forest Service officials state that each ranger station was designated as an official duty station because about equal amounts of work time were spent at each station. These officials report that Mr. Richwine performed major work activities at each station and, therefore, the Forest Service felt that the designation of dual official duty

stations was appropriate, based upon our decision, 32 Comp. Gen. 87 (1952). The Forest Service does not believe that our holding in Frederick C. Welch, 62 Comp. Gen. 80 (1982), was intended to override the concept described in 32 Comp. Gen. 87, if the agency has properly changed the employee's official duty station as was done in this case.

Since Spotted Bear had been designated as one of Mr. Richwine's official duty stations, the Forest Service determined that he was not entitled to per diem. On the other hand, Mr. Richwine contends that he was performing temporary duty at Spotted Bear and that he is entitled to a reduced per diem allowance of \$9 per day. This rate of per diem is authorized for all Flathead National Forest employees while traveling or performing official duties in field situations in Flathead, away from their official duty stations, when commercial facilities are not available, when lodging facilities and utilities are provided by the government, and when the employees are required to provide their own meals.

In the spring of 1985, the Forest Service reorganized the Hungry Horse and Spotted Bear Districts. Under the reorganization, Hungry Horse was designated as the official duty station for all employees working at Spotted Bear, and an on-forest field per diem of \$9 per day was authorized. Thus, while working at Spotted Bear, employees are now paid reduced per diem allowances. The change was effective in June 1985, to coincide with the commencement of the field season for that year.

The Forest Service points out that the Office of Personnel Management (OPM) designated the Spotted Bear Ranger Station as a remote worksite and authorized \$10 per roundtrip for commuting between Spotted Bear and Hungry Horse. The OPM determined that it was practical to commute between Spotted Bear and Hungry Horse on a daily basis. However, both the Forest Service and Mr. Richwine have stated that daily commuting between the two ranger stations is impractical since the distance between the ranger stations (55 miles) must be traveled over a winding and curvy gravel road which is very dusty, with huge pot holes, and which traverses over mountainous terrain. The commuting time is about 2 hours each way.

Mr. Richwine is also claiming mileage allowances for his travel by privately-owned vehicle (POV) between Spotted Bear and his residence each time (usually weekly) he traveled to or from Spotted Bear in his POV. Mr. Richwine has been reimbursed for each round trip he made between Spotted Bear and his residence at the \$10 commuting allowance per round trip as established by OPM.

Mr. Richwine has not claimed reimbursement for any miscellaneous expenses he may have incurred in relocating between Hungry Horse and Spotted Bear each year. However, the Forest Service requests that we clarify whether reimbursement for miscellaneous expenses is appropriate in this case should Mr. Richwine's claim for per diem be denied.

OPINION

The Barring Act

The Barring Act of October 9, 1940, as amended, now codified at 31 U.S.C. § 3702(b) (1982), provides that every claim or demand against the United States presented to the General Accounting Office (GAO) must be received in GAO within 6 years from the date the claim first accrued. The record shows that a portion of the claim asserted by Mr. Richwine (May 14 to October 8, 1979) arose prior to the 6-year time limitation. Although this portion of his claim may otherwise be valid, it is barred and may not be considered by this Office since it accrued more than 6 years prior to the date his claim was received by GAO, October 8, 1985.

Dual Duty Stations

The Forest Service contends that an employee can have alternate official duty stations where his duties are equally split between the two locations. We disagree with the contention that an agency may establish alternate or "dual" duty stations for an employee. Our Office has repeatedly held that an agency may not designate an employee's official duty station at some place other than the place at which he is expected to perform the preponderance of his or her duties in order to pay (or not to pay) a per diem allowance at such place. 31 Comp. Gen. 289 (1952); B-172207, July 21, 1971. In 25 Comp. Gen. 136 (1945), we stated at page 138:

"The post of duty of an employee is required by regulation to be the place at which the employee actually is stationed; and, under rulings of many years standing, such post of duty is the place where the employee expects, and is expected, indefinitely to spend the greater part of his time - where, normally, his residence would be established and there would be no extra subsistence expenses to be incurred or to be reimbursed through the medium of a per diem."
(Emphasis supplied.)

We have also long held that the location of an employee's official station is a question of fact, not limited by the agency's designation, to be determined from the orders directing the assignment and from the nature and duration of the assignment. Frederick C. Welch, 62 Comp. Gen. 80, cited above. We have stated that the duration and nature of the duties assigned are of particular importance in making the determination of whether an assignment to a particular duty station is a permanent change of station. 36 Comp. Gen. 757 (1957); 33 Comp. Gen. 98 (1953). We have also determined that there is no hard and fast rule as to the length of time for which an employee may be entitled to subsistence at a particular place. It is dependent not so much on the length of time as upon the nature of the duties and whether, as a matter of fact, that place constitutes his permanent duty station or a temporary assignment. 18 Comp. Gen. 423, 424 (1938).

The Federal Travel Regulations, FPMR 101-7 (September 1981) incorp. by ref., 41 C.F.R. § 101-7.003 (1986) (FTR), do not contain a formal definition of a temporary duty assignment. However, under the provisions of FTR para. 1-7.6a, an employee may not be paid per diem at his permanent duty station or at the place of abode from which he commutes daily to his official station.

In the instant case, the Forest Service issued transfer-of-station travel authorizations to Mr. Richwine each time he was reassigned to and from Spotted Bear. However, due to the onset of winter at Spotted Bear, neither the Forest Service nor Mr. Richwine expected the employee to perform the preponderance of his duties at Spotted Bear. Mr. Richwine was not expected, indefinitely, to spend the

greater part of his time at Spotted Bear; his residence was not at that location; and he did, in fact, incur extra subsistence expenses at Spotted Bear. The Forest Service and Mr. Richwine knew that the performance of duty at Spotted Bear would only be permitted for a short period of time, and would terminate each year in approximately 6 months. Thereafter, Mr. Richwine would return to Hungry Horse where his residence is located to perform his official duties for approximately 6 months. Therefore, recognizing the facts and circumstances as they actually occurred, we hold that the designation of Spotted Bear as Mr. Richwine's official or "dual" duty station was improper and that his performance of his duties at Spotted Bear was, in fact, temporary in nature. Even though Mr. Richwine performed official duties for about 6 months of the year at Spotted Bear in the summer and fall, his assignment at that location was more in the nature of a long-term temporary assignment away from his official duty station at Hungry Horse. See Welch, supra; Robert E. Larrabee, 57 Comp. Gen. 147 (1977); Don L. Hawkins, B-210121, July 6, 1983.

Our conclusion that the designation of both Hungry Horse and Spotted Bear as dual duty stations was inappropriate is supported by the subsequent actions of the Forest Service which, effective June 1985, designated Hungry Horse as the official duty station for employees working at Spotted Bear. An on-forest field per diem of \$9 per day is now being paid for temporary duty performed at Spotted Bear.

The Forest Service relies upon our earlier decision, 32 Comp. Gen. 87 (1952), as supporting their designation of dual duty stations for Mr. Richwine. However, the cited decision does not support this conclusion made by the Forest Service. Our decision in 32 Comp. Gen. 87 stands for the proposition that the official station of an employee is a matter of fact and not merely one of administrative determination and that it is the place where the employee expects, and is expected, to spend the greater part of the work time. See also Welch, supra; 31 Comp. Gen. 289 (1952). In Welch, we agreed with the agency grievance examiner who

determined that the duty performed by Mr. Welch at a seasonal worksite for 6 months of the year (similar to Spotted Bear) was in the nature of a long-term temporary assignment away from his official duty headquarters. Thus, the holding in Welch is applicable to the facts and circumstances of the case under consideration.

Entitlement to Reduced Per Diem

The statutory authority for the payment of per diem allowances is contained in 5 U.S.C. § 5702 (1982) and 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 * * *." The implementing regulations, Federal Travel Regulations, FPMR 101-7 (September 1981), provide, at paragraph 1-7.1a, that "[p]er diem allowances * * * shall be paid for official travel." Thus, Federal employees have a basic statutory entitlement to be paid per diem allowances while traveling on official business away from their official duty stations. Jack C. Smith, et al., 63 Comp. Gen. 594 (1984). At the same time, paragraph 1-7.3a of the FTR states that it is the responsibility of the agency to authorize only such per diem allowances as are justified by the circumstances affecting the travel. Further, we have upheld the refusal by an agency to authorize or approve the payment of any per diem where the employee was performing temporary duty in close proximity to his official duty station for a relatively short period of time and where the employee incurred no additional expenses. See Gilbert C. Morgan, 55 Comp. Gen. 1323 (1976); 31 Comp. Gen. 264 (1952); B-176477, February 1, 1973.

In the situation where an employee is performing temporary duty a substantial distance from his or her permanent duty station, our decisions have recognized that the required use of government quarters, with a consequent lowering of the rate of per diem, is permissible where an appropriate administrative determination has been made that the use of government quarters is essential to the accomplishment of the mission of the employee. B-177752, May 17, 1973. The record in this case reveals that the Forest Service has apparently made such a determination because of inadequate housing facilities for its employees at Spotted Bear.

We have denied the payment of any per diem where the employees incurred no additional living expenses or were provided both quarters and meals. B-180111, March 20, 1974; Barbara J. Protts, B-195658, March 19, 1980. However, we have also held that it is unreasonable to deny the payment of a per diem allowance where the employee has incurred additional expenses over those that would have been normally incurred had the employee remained at his or her designated post of duty. Smith, cited above. Only in the unusual circumstance where the employee has not incurred any additional living expenses is an agency justified in not paying any per diem allowance.

With respect to Mr. Richwine's claim, we note that additional expenses were, in fact, incurred by him since he was required to purchase groceries for himself while working at Spotted Bear and also purchase groceries for his family and maintain the family residence at Columbia Falls. We have been informally advised that he also was required to purchase cooking utensils, brooms, mops, cleaning materials, etc., while occupying the government-furnished temporary quarters at Spotted Bear. Thus, since the employee did, in fact, incur additional expenses by virtue of his temporary duty assignments at Spotted Bear, we conclude that he is entitled to a reduced per diem allowance during those assignments.

In reaching our conclusion to permit the payment of a reduced per diem, we again point out that effective in June 1985, by virtue of a reorganization, Hungry Horse has been designated as the official duty station for Forest Service employees working at Spotted Bear and an on-forest field per diem of \$9 per day was authorized. Thus, the Forest Service now recognizes that Mr. Richwine's permanent duty station is Hungry Horse and that his performance of work at Spotted Bear constitutes temporary duty for which a reduced per diem allowance is currently being paid.

Allowances at Remote Worksite

As noted above, OPM designated the Spotted Bear Ranger station as a remote worksite and allocated the sum of \$10 per round trip for commuting between the Spotted Bear and Hungry Horse Ranger stations. The OPM, under the authority granted by 5 U.S.C. § 5942 (1982), and the implementing

regulations, 5 C.F.R. Part 591, Subpart C and Appendix A of Subpart C, has determined that daily commuting is practical between Spotted Bear and Hungry Horse and established a commuting allowance rate of \$10. However, section 591.302(b) states that payment of the remote worksite allowance applies to each employee assigned to a permanent duty station at or within a designated remote duty post.

Inasmuch as we concluded earlier in this decision that Spotted Bear Ranger Station is a temporary duty station and not a permanent duty station for Mr. Richwine, the allowances based on duty at a remote worksite are not payable. Therefore, Mr. Richwine is entitled to payment of appropriate mileage allowances, at the mileage rates in effect at the time the travel was performed, while driving his POV between Spotted Bear and Hungry Horse. However, such mileage allowances should be offset by the \$10 remote duty station allowance previously paid to Mr. Richwine for each round trip between the two ranger stations.

Finally, since we have concluded that no permanent changes of station were involved in this claim, there would be no entitlement to reimbursement for miscellaneous relocation expenses.

Therefore, we conclude that Mr. Richwine is entitled to the payment of reduced per diem allowances at the rate in effect during the periods he performed temporary duty at Spotted Bear. We also hold that he is entitled to the payment of mileage allowances, at the mileage rates in effect at the time the travel was performed, between the Spotted Bear and Hungry Horse Ranger stations, but the payment of such allowances is subject to deduction of the \$10 commuting allowance previously paid to Mr. Richwine for each round trip between the two ranger stations. Both claims are barred for the period of time prior to October 8, 1979, by the provisions of the Barring Act, 31 U.S.C. § 3702(b) (1982).

for *Larry R. Van Cleave*
Comptroller General
of the United States