



Decision

Matter of: Everett J. Curry
File: B-256452
Date: November 21, 1994

DIGESTS

1. An employee in a travel status voluntarily returned home for weekends, but occasionally traveled during duty hours immediately before or following the nonworkdays. Since it was determined that he performed no official duties on those workday travel days, the agency charged him up to 8 hours annual leave for each such workday. On appeal, we sustain the agency's action. Under 41 C.F.R. § 301-7.11(b)(4) (1990), voluntary return home travel is to be performed during nonduty hours. When an employee is voluntarily absent from duty on a workday, it is within the discretion of the agency to charge the employee annual leave to cover the duty hours not worked that day.

2. An employee in a travel status voluntarily returned home for weekends. To establish travel reimbursement entitlement, the agency included per diem for the workdays he traveled before or after the nonworkdays for cost comparison purposes. Such method of computing the employee's constructive cost entitlement is incorrect. Under 41 C.F.R. § 301-7.11(b)(4) reimbursement for the voluntary return travel may not exceed the per diem and other allowable expenses which would have been paid had the employee remained at the temporary duty site. Therefore, the constructive cost comparison to be used is limited to the per diem and other allowable expenses for the nonworkdays actually involved.

DECISION

This decision is in response to correspondence from Mr. Everett J. Curry, appealing our Claims Group's settlement Z-2867285, June 24, 1992. That settlement sustained his agency's action disallowing reimbursement for certain travel expenses claimed and charging his annual leave account to cover duty hours where it was found no duty was

performed. We concur with the action taken, subject to certain modifications, for the following reasons.

Mr. Curry is an employee of the Federal Aviation Administration, U.S. Department of Transportation, stationed in Kansas City, Missouri. By travel authorization dated September 26, 1989, he was authorized to travel on official business during Fiscal Year 1990 to all points within the United States. During the early part of the period covered by that authorization, he performed an extended period of temporary duty in Washington, D.C. Beginning with the weekend of September 30-October 1, 1989, he voluntarily returned home to Kansas City every weekend through the long weekend of November 10-12, 1989. On three of those weekends, he performed travel during duty hours.

By travel authorization dated July 30, 1990, Mr. Curry was again ordered to perform temporary duty travel to Washington, D.C., to begin on or about August 13, 1990, for approximately 49 days. Unlike the travel authorization of September 30, 1989, item 13 of the July 30 authorization predetermined that "Return trips to official duty site on weekends are more advantageous to the government based on cost." During the period covered by this travel authorization, Mr. Curry made return trips to his residence in Kansas City on three separate weekends. He traveled from Washington to Kansas City early on the workday preceding the first nonworkday of the weekend on two of those occasions.

On September 28, 1990, a complaint was received by the Office of Inspector General (OIG), Department of Transportation, alleging that Mr. Curry had performed return home travel during duty hours, effectively working a 3-day week. On review, the OIG found that Mr. Curry had used duty time improperly and that he should be charged annual leave for use of duty time for his travel. The OIG also found that a proper cost comparison was not made between the cost of round trip travel between Kansas City and Washington, and the per diem reimbursements he would have received had he remained in Washington for those weekends. Based on those findings, the agency determined that Mr. Curry had been overpaid \$474 for travel expenses and that his annual leave account should be charged 38 hours. Our Claims Group concurred in that conclusion.

Mr. Curry appeals that action. He states that he had prior approval for his travel during duty hours. In addition, he contends that he spent a significant amount of personal time traveling on nonduty time to carry out his duties for the agency. In this regard, he has submitted copies of a number of memoranda and other documents in an effort to support his view that he is entitled to the \$474 and should not be charged 38 hours of annual leave incident to his weekend trips to Kansas City and return.

Charges to Annual Leave

As to weekend return travel, section 301-7.11(b)(4) (1990) of the FTR¹ provides, in part, that when an employee voluntarily returns to his/her official duty station or place of abode for nonworkdays, any such travel shall be performed "during nonduty hours or periods of authorized leave." Therefore, where it is determined that an employee performed voluntary return home travel during duty hours and otherwise performs no official duties on those travel days, it is within the employing agency's discretion to charge the employee for up to 8 hours of annual leave to cover the hours not worked on each such day.²

In the present case, based on the OIG findings, the agency determined that Mr. Curry's travels on Monday, October 2, 1989; Friday, October 6, 1989; Thursday, November 9, 1989; Monday, November 13, 1989; and Friday, August 24, 1990, were to be charged to annual leave since that voluntary return travel was performed during duty hours. We concur with that determination.

Travel Expense Reimbursement

Section 301-7.11(b)(4) (1990) of the FTR³ provides, in part, that when an employee voluntarily returns to his official station or residence for nonworkdays, the maximum reimbursement for that roundtrip transportation and per diem en route may not exceed the per diem and allowable expenses which would have been paid had the employee remained at the temporary duty station. For comparison purposes, the cost of remaining at the temporary duty station includes only the allowable expenses for the nonworkdays involved, i.e., the 2-day and the 3-day weekends.⁴ For all ten weekends, however, the constructive reimbursement base the agency used to determine Mr. Curry's entitlement included per diem for both the workday before and the workday following the weekend. That method was in error and the agency should recompute the constructive cost of staying at the temporary duty station to include only the nonworkdays involved.

¹41 C.F.R. § 301-7.11(b)(4) (1990), currently 41 C.F.R. § 301-7.15(b)(4) (1993).

²See B-157005, Aug. 13, 1965, and decisions cited. See also George K. Derby, B-203915, June 8, 1982.

³See footnote 1, supra.

⁴Hugo H. Huslig, 64 Comp. Gen. 236 (1985). See also Frank S. Nagy, B-237358, Feb. 12, 1990.

Moreover, since those travel days were workdays, Mr. Curry's entitlement to per diem for those days must be considered separately. In that regard, section 301-7.11(a)(1) of the FTR provides that where a leave of absence is more than one-half of the prescribed daily working hours, no per diem shall be allowed for that day. Therefore, for those workdays previously noted for which at least 6 hours of annual leave was charged, Mr. Curry was not entitled to per diem.⁵ That would also include the day of sick leave taken on Monday, October 30, 1989.

With regard to the three weekends in question for 1990, as previously noted the travel authorization issued on July 30, 1990, predicated return travel for weekends on an "advantageous to the government based on cost" basis. Section 301-7.11(b)(2) (1990) of the FTR authorizes an employee to return to his duty station for nonworkdays, but permits him to travel during duty hours "where a significant cost savings will be achieved" by doing so. In conjunction with that provision, section 4-0701C(2) of the Department of Transportation travel rules (DOT 1500.6A), further explains that, unless it would be a hardship on the employee to return home for nonworkdays, the employee, in effect, is directed to return if the cost of return is "significantly less than maintaining him at the temporary duty site." However, if the costs are about equal or even less to remain at the temporary duty location, and the employee chooses to return to his official duty station, the employee will be reimbursed on the basis of a voluntary return to his duty station.

In the present case, it was determined that Mr. Curry's return travel for each of the three weekends in 1990 effected no significant cost saving. Therefore, it is our view that Mr. Curry's return travel for the three weekends in August and September 1990 were properly for consideration under the rules governing voluntary returns to the official duty station.

⁵ 41 C.F.R. § 7.11(a)(1) (1990), currently 41 C.F.R. § 7.15(a)(1) (1993).

⁶ The required per diem repayments for workdays charged to leave referred to in Exhibit A of the IG report were shown to vary between \$0 and \$88. Based on the per diem rate authorized Mr. Curry, it would appear that each such leave status day should be charged at the rate of per diem actually paid him for that day.

⁷ 41 C.F.R. § 301-7.11(b)(2) (1990), currently 41 C.F.R. § 301-7.15(b)(2) (1993).

As indicated above, Mr. Curry's reimbursement entitlement has been incorrectly computed. Accordingly, we are remanding the matter to the agency for recomputation in accordance with this decision.

/s/ Seymour Efros
for Robert P. Murphy
Acting General Counsel