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

FILE: B-180010.09 DATE: December 9, 1976

MATTER OF: Joseph Pradarits - Arbitrator's Award of Travel Expenses

DIGEST:

1. Employee's request to use privately owned vehicle (POV) as advantageous to Government for temporary duty travel was denied although official told him it would be approved. Arbitrator held that employee should be paid as though request had been approved since agency's failure to act on it within time frame in its regulations and official's statement amounted to approval. Award may not be implemented since no determination was made that POV is advantageous to Government on basis of cost, efficiency or work requirements as required by Federal Travel Regulations.

2. Although agency official indicated to an employee that his request to use POV as advantageous to the Government for temporary duty travel would be approved, such statement does not bind Government since official had no authority to approve POV use and Government is not estopped from repudiating advice given by one of its officials if that advice is erroneous.

This action involves the request of July 13, 1976, by the Executive Director of the Federal Labor Relations Council (FLRC) for an advance decision as to the legality of an arbitrator's award which granted reimbursement of certain travel expenses and recredit of leave in the case of Professional Air Traffic Controllers Organization and Federal Aviation Administration, Eastern Region (Wolf, Arbitrator), FLRC No. 76A-10. The case is before the Federal Labor Relations Council as a result of a petition for review filed by the the Department of Transportation alleging that the arbitration award violates applicable law and appropriate regulations.

FACTS

The record indicates that on March 12, 1974, the grievant, Mr. Joseph Pradarits, an employee of the New York Air Route Traffic Control

Center of the Federal Aviation Administration (FAA), was tentatively selected for a position as an air traffic control instructor at the FAA Academy, Oklahoma City, Oklahoma, subject to his successful completion of basic instructor and manager training courses which were to commence on April 2, 1974. For some unexplained reason, the latter commencement date was postponed for several weeks.

On April 1, 1974, Mr. Pradarits requested authorization to use his privately owned vehicle (POV) as being "advantageous to the Government" for the travel to Oklahoma City from New York City. Mr. Pradarits' justification for the request was that if he went to Oklahoma City by common carrier, he would subsequently have to make a 6-day house-hunting trip and incur other costs incident to his permanent change of station move to Oklahoma City at a total estimated cost of $1,450, whereas if he were allowed to use his POV he would be able to perform the temporary duty travel and perform his househunting and other chores at the same time thus incurring a lesser cost estimated at $971.

On or about April 11, 1974, Mr. Harold Eisbrock, Operation Specialist of the Air Traffic Division, whose function it was to evaluate such requests, called Gerald Shipman, who was then Personnel Management Specialist in the New York center, requesting the facility's recommendation regarding the request. Mr. Eisbrock did not say that if the facility recommended approval it would definitely be approved, but he did say that the request would probably be approved. The facility's recommendation to allow the use of a POV as being advantageous to the Government was sent to Mr. Eisbrock on April 12.

Mr. Eisbrock reviewed the request and the recommendation and concluded that the criteria in the pertinent FAA regulations were not met since it was not cheaper for Mr. Pradarits to travel by POV, nor was it more efficient for him to have the vehicle in Oklahoma City nor would it enhance his work at the Academy. Mr. Eisbrock considered the advice of the FAA's Accounting Division that it was not customary to authorize POV use when the employee's tentative selection as air traffic control instructor at the FAA Academy was contingent upon his satisfactorily completing the basic instructor and manager training courses since unless he satisfactorily completed the courses, he would not be transferred and would not incur permanent change of station expenses. Mr. Eisbrock did not

advise Mr. Shipman of his denial of Mr. Pradarits' request until about April 19, 1974.

On April 15, 1974, Mr. Pradarits left for the FAA Academy in his personal vehicle without travel orders under the impression that his request to use the POV as being advantageous to the Government would be approved. However, on April 19, 1974, a travel order was issued allowing Mr. Pradarits use of a POV under "Personal preference" conditions only. Mr. Pradarits did not receive the travel order until May 23, 1974.

ARBITRATOR'S AWARD

Mr. Pradarits filed a grievance against the FAA's decision to deny him the use of his personal vehicle as being advantageous to the Government. The grievance went to arbitration with the issue presented being whether or not Mr. Pradarits was reimbursed for his travel consistent with the provisions of Article 18, sections 1 and 2 of the 1973 PATCO-FAA agreement, which provide:

"Travel and Per Diem

"Section 1. The desires of the traveler will be considered to the extent that they are not inconsistent with the principle that travel by common carrier generally results in the least costly and most expeditious method of travel. This method will be used unless the circumstances involved make travel by Government owned vehicle, privately owned conveyance, or special conveyance preferred for reason of cost, efficiency or work requirements.

"Section 2. An employee permitted to travel by privately owned vehicle will be paid the mileage rate authorized for such travel by agency directives."

The arbitrator held for Mr. Pradarits as follows:

"The grievance is granted.

"The FAA is directed to reimburse the grievant as though he had traveled POV under conditions 'Advantageous to the Government,' and that his time and leave credits be corrected accordingly."

The basis for the arbitrator's award was his belief that Mr. Pradarits had complied with the Department of Transportation's regulation 1500.14 EA SUP 5, February 6, 1974, concerning criteria that must be considered for determining whether the use of POV is advantageous to the Government for en route travel to and from the Aeronautical Center. The latter regulation states in part:

"The requirement that authorizing officials make individual determinations of POV use as advantageous to the Government is not changed. As a minimum, criteria set forth in paragraph 451-S1, of Order 1500.14, Appendix 1, as revised herein must be used in making these determinations. (i.e., paragraph 451-S1 subparagraph b, must be considered in conjunction with paragraph 451-S1, subparagraph a.) It is incumbent upon authorizing officials to first determine the mode of travel which will best assure that the mission is accomplished.

"With the Departmental objective of encouraging the reduction in motor vehicle fuel consumption for official Government travel, and in view of the expanded FAA bus service available at the Aeronautical Center, the basic policy is that the use of POV cannot be considered as advantageous to the Government. Use of POV should not be justified solely on the basis of cost, but rather on the basis of need. Although travel by POV should be discouraged, this will not preclude the use of POV for personal convenience on a comparative cost basis provided the extra travel time (annual leave) does not conflict with workload before or after the training course.

> "Requests for exception of the policy which necessitate POV travel as advantageous to the Government must be justified including the extenuating circumstances thereof. Exceptions require the approval of the Division Chief and should therefore be submitted in writing through the Facility Chief or Sector Manager sufficiently in advance (at least 15 days prior) of the scheduled departure for the training course. * * *"

The arbitrator held that under regulation 1500-14 EA, SUP 5, supra, it was incumbent upon the authorizing officials to determine the mode of travel within the 15-day time period stated therein. Since Mr. Pradarits had submitted his request for POV use 14 days prior to his departure and the FAA had been alerted to his travel in March, the arbitrator found that Mr. Pradarits had done all that was expected of him under the FAA-PATCO agreement and the regulations. Moreover, the arbitrator held that although the agency official had not approved the use of POV as being advantageous to the Government as required by appropriate regulations, those regulations also provided that the authorizing official had discretion to approve use of POV and the use of POV could have been approved. The arbitrator concluded:

> " * * * The errors delayed the non-approval until too late and, under the circumstances, must be deemed an approval at the time Pradarits departed.
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> "The Government must necessarily shoulder the responsibility for the negligence of those officials whose duty it was to act. It is unrealistic to expect an employee to assume the burden of official negligence even if his request might have been disapproved under regulations. The burden must be borne by the Government. A principal is responsible for acts of its agents within their ostensible authority."

OPINION

Paragraph 1-2.2c of the Federal Travel Regulations (FPMR 101-7) (May 1973) states in pertinent part:

"c. Presumption as to most advantageous method of transportation.

"(1) Common carrier. Since travel by comon carrier will generally result in the least costly and most expeditious performance of travel, this method shall be used unless the circumstances involved make travel by Government, privately owned, or special conveyance preferred for reasons of cost, efficiency, or work requirements. The advantages which may result from common carrier transportation must be fully considered by the agency before it is determined that some other method of transportation should be used.

"(2) Government-owned or Government-contract rental automobiles. When it is determined that an automobile is required for official travel, a Government-owned automobile shall be used. A Government-contract rental automobile shall be used when a Government-owned automobile is unobtainable or its use is impracticable. Privately owned or special conveyances shall be approved for use in lieu of Government-owned or Government-contract rental automobiles only when preferred for reasons of cost, efficiency, or work requirements. Cost advantages which will normally result from use of Government-owned automobiles must be fully considered since these vehicles are operated at a relatively low cost. Costs involved in using a Government-owned or Government-contract rental automobile shall include any administrative costs and any costs associated with picking up and returning the automobile.

"(3) Privately owned conveyance. A determination that use of a privately owned conveyance would be advantageous to the Government shall normally be made when the use of a commercially rented conveyance would otherwise be authorized for the travel involved. A determination that use of a privately owned conveyance would be advantageous to the Government must be preceded by determinations that both common carrier and Government-owned vehicle transortation are not feasible in the circumstances or that transportation by those means would be

> more costly to the Government. Those determinations shall be based on both the direct transportation cost and the economies which result from the more expeditious and effective performance of Government business through the use of one or another method of transportation. Other factors to be considered are the total distance of travel, the number of points visited, and the number of travelers."

The Federal Travel Regulations applicable here are prescribed pursuant to statutory authority. See 5 U.S.C. §§ 5702(a), 5704(a) and 5707. Accordingly, an agency's internal regulations implementing the Federal Travel Regulations must be consistent with and may not void any mandatory provisions contained in the Federal Travel Regulations. 40 Comp. Gen. 704 (1961); B-171947.78, July 9, 1976; B-184789, October 30, 1975. Moreover, Executive Order 11491, as amended, 3 C.F.R. 254 (1974), entitled "Labor Management Relations in the Federal Service," provides in section 12(a) that labor management agreements are subject to applicable laws and regulations. Therefore, the issue here is whether the Department's regulation 1500.14 EA, SUP 5, supra, as interpreted by the arbitrator, is a proper exercise of the agency's authority in view of paragraph 1-2.2c of the Federal Travel Regulations and Executive Order 11491, supra. Or more simply, can regulation 1500.14 EA, SUP 5, supra, properly bind the agency to make a favorable disposition of employee requests to use POV as advantageous to the Government when the agency delays giving an employee a response to his request under the circumstances applicable to Mr. Pradarits' situation.

We hold that regulation 1500.14 EA, SUP 5, as interpreted by the arbitrator, contradicts the express requirements of the Federal Travel Regulations. Paragraph 1-2.2b. of those regulations states that "[i]n selecting a particular method of transportation to be used, consideration shall be given to the total cost to the Government * * *." Paragraph 1-2.2c(1) requires that the advantages of using common carrier transportation "* * * must be fully considered by the agency before it is determined * * *" that an alternate mode may be used. Moreover, "[a] determination that use of a privately owned conveyance would be advantageous to the Government must be preceded

by determinations that both common carrier and Government-owned vehicle transportation are not feasible in the circumstances or that transportation by those means would be more costly to the Government." Paragraph 1-2.2c(3).

It is evident that the above regulatory requirements would be completely nullified if an agency could set an arbitrary time limit within which, if it does not make the required determinations, it must allow the employee to use POV as advantageous to the Government regardless of the facts of the case. An agency could evade the requirements of the Federal Travel Regulations merely by failing to make the appropriate findings within the specified period. The determining factors as to whether POV use is advantageous to the Government would be subordinated to an artificial constraint of time.

The purpose of the paragraphs of the Federal Travel Regulations cited above is quite clearly to prohibit the use of privately owned vehicles as being advantageous to the Government unless specified conditions have been determined to be met. The arbitrator however, held that the agency bound itself to grant approval of POV use as advantageous to the Government on a basis not sanctioned nor contemplated by the Federal Travel Regulations. Regulation 1500.14 EA, SUP 5, supra, as interpreted by the arbitrator, would allow constructive approval of POV use. Since the arbitrator's basis for his award would circumscribe the agency's responsibility to make certain determinations required by the Federal Travel Regulations, and since the agency is without authority to void those provisions of the Federal Travel Regulations, we find that the arbitrator's award is improper.

The fact an agency official indicated to Mr. Pradarits that his request would be approved does not bind the Government as that official was without authority to approve Mr. Pradarits' request. When a Government employee acts outside the scope of the authority actually held by him, the United States is not estopped to deny his unauthorized or misleading representations, commitments, or acts, because those who deal with a Government agent, officer, or employee are deemed to have notice of the limitations on his authority, and also because even though a private individual might be estopped, the public should not suffer for the act or representation of a single Government agent. Utah Power & Light Co. v. United States, 243 U.S. 389 (1917); Bianco v. United States, 171

Ct. Cl. 719 (1965); Potter v. United States, 187 Ct. Cl. 28 (1964); cert. denied, 382 U.S. 817 (1965); Vest Bros. Mfg. Co. v. United States, 160 Ct. Cl. 578 (1960). The Government is not estopped from repudiating advice given by one of its officials if that advice is erroneous. von Kalinowski v. United States, 151 Ct. Cl. 172 (1960), cert. denied, 368 U.S. 829 (1961).

In view of the above, the arbitrator's award may not be implemented.

Deputy Comptroller General
of the United States