

DECISION

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

FILE: B-185355

DATE: JUL 2 1976 ^{Ce 1071}MATTER OF: Robert L. Feder - Retroactive Modification of
Travel Orders

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DIGEST:

Where employee was detailed to Intergovernmental Personnel Assignment in a different city than his permanent duty station for six months but, through administrative oversight was not issued travel orders, no right to a particular per diem rate vests as and when the travel is performed so as to prohibit retroactive modification of travel orders issued after all travel was performed.

This action is in response to a request for an appeal from Claims Division Settlement Certificate No. Z-2570905, September 10, 1975. Mr. Robert L. Feder, an employee of the United States Environmental Protection Agency (U.S. EPA) thereby claims additional per diem payments resulting from an assignment to the Ohio Environmental Protection Agency (Ohio EPA) under the Intergovernmental Personnel Act (IPA), 5 U.S.C. 3371, et seq., (1970).

The claimant was employed with the U.S. EPA in Cincinnati, Ohio until October 1973 as a Sanitary Engineer, Office of Solid Waste Management Programs. In September 1973, claimant's assignment to the Ohio EPA under the IPA was requested. This assignment was to be in Columbus, Ohio. Prior to reporting to Columbus for duty under the IPA assignment, an agreement was entered into between the U.S. EPA, the Ohio EPA and the employee whereby Mr. Feder would be detailed from his position with the Federal Government to the State agency for a two year period. Part IX of that agreement provides:

"U.S. EPA will pay for travel and transportation expenses, including immediate family and household expenses, to assignment. Ohio EPA will pay for all travel on State business under State travel regulations. U.S. EPA will pay for all travel and transportation expenses including immediate family and household effects for return of employee at conclusion of assignment."

Notwithstanding the above indication that the expenses of transporting his family and household effects would be borne by the U.S. EPA, Mr. Feder was never issued travel orders during the period of his IPA assignment. The record reflects Mr. Feder's good faith efforts to obtain travel orders. On November 4, 1973,

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claimant inquired of the Region V, U.S. EPA Personnel Office, as to the status of his travel orders. No response was forthcoming from that office. On January 4, 1974, claimant sent a follow-up letter to the Region V office. Again the agency did not respond to Mr. Feder's inquiries.

The fact that appropriate travel orders were not issued caused Mr. Feder to live six months in a hotel in Columbus while his family remained in Cincinnati. Mr. Feder commuted weekly, leaving Columbus on Fridays and departing Cincinnati at an early hour on Mondays. He claims that because of the prospect that this arrangement would continue for an additional year and a half he resigned his position with the U.S. EPA, thus terminating his IPA assignment in favor of employment with the United States Army Corps of Engineers in Cincinnati.

Mr. Feder sought to be reimbursed for the per diem and travel expenses he incurred while commuting from Cincinnati to Columbus to perform his IPA assignment. The period involved is from October 20, 1973 through April 12, 1974. By the Settlement Certificate references above the Claims Division of our Office disallowed \$494.11 of the \$2,074.40 amount claimed. That disallowance was based in part on an erroneous computation of transportation expenses at 12¢ per mile for travel in a privately owned vehicle (POV) during the performance of the IPA assignment. The correct amount allowable for travel by an employee in a POV prior to February 9, 1974, is 11¢ per mile as prescribed by the Federal Travel Regulations, FPMR 101-7, para. 1-4.3a, (May 1973). The remainder of the \$494.11 was disallowed because the Travel Authorization issued Mr. Feder on January 22, 1975, authorized payment of per diem at the rate of \$16 per day in lieu of permanent change of station allowances.* Mr. Feder claimed a per diem allowance based on the actual cost of his lodgings plus \$10 for meals and miscellaneous expenses not to exceed \$26 per day. Throughout most of the period involved he has actually claimed per diem at a rate not in excess of \$20 per day.

Mr. Feder, in his appeal, challenges the disallowance based upon the \$16 per diem rate authorized in his Travel Order of January 22, 1975. His appeal raises the issue of the conclusiveness of the per diem rate prescribed in travel orders that, as the result of administrative oversight, were issued well after the completion of travel. It should be noted that the January 22, 1975, travel order was issued to Mr. Feder after he had completed the travel involved and incident to the U.S. EPA's response to the

GAO Claims Division's request for a report on Mr. Feder's claim. The Chief, Fiscal Policies and Procedures Branch, noted on that Travel Order: "Feder claimed lodging plus 10 NTE \$25. Order written after Travel performed cannot reduce rate." Consistent with that notation the U.S. EPA recommended payment to Mr. Feder on the basis claimed of actual lodging expenses plus \$10 not to exceed \$25 per day.

The record in this case indicates mismanagement by the U.S. EPA of Mr. Feder's IPA assignment. Apparently because of the transfer of function from the U.S. EPA office in Cincinnati to Washington, D.C., at the same time as Mr. Feder's IPA assignment, the administrative responsibility for that assignment was overlooked. According to administrative officials of the U.S. EPA, the non-issuance of his travel orders was a result of administrative oversight. The GAO Claims Division requested the U.S. EPA's report on Mr. Feder's claim on December 4, 1974. After U.S. EPA officials were informed of the petitioner's situation, action was taken to remedy the administrative error in failing to issue a travel order for Mr. Feder. Eventually, EPA Region V issued the order. We are informed that the \$15 per diem rate was prescribed in that travel order as a conservative per diem rate inasmuch as the authorizing official was unfamiliar with the circumstances surrounding Mr. Feder's IPA assignment.

There are no EPA regulations requiring use of the \$15 per diem rate in Mr. Feder's case. Employees on IPA assignment may be authorized per diem on a "lodging plus" basis not to exceed \$25 per day for the period of travel involved. 5 U.S.C. 3375(a) (1970), FPMR 101-7, para. 1-7.2a and 7.3c (May 1973); 5 U.S.C. 5702(a) (1970). As indicated by the notation on the January 22 travel orders and as informally confirmed by this Office, responsible U.S. EPA administrative official view the allowance of the \$15 per diem rate as improper in view of the fact that Mr. Feder had incurred reasonable but greater costs at a time when he had no travel orders in effect and where the travel orders as eventually issued were of a remedial nature. Notwithstanding the merit of the administrative position, the notation on Mr. Feder's travel order indicating that the \$15 rate is inappropriate does not itself constitute authority for payment of per diem at a higher rate inasmuch as the official responsible for that notation is

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without authority to issue or amend travel orders. Under the circumstances, however, we know of no prohibition against amendment of the January 22nd travel order by a properly authorized official to authorize a higher rate.

Our decisions on the matter of retroactive modification of travel orders formulate a general rule holding that a travel order may not be retroactively modified in such a manner as to increase or decrease the rights of the employee that vest when and as the travel is performed, except to correct errors apparent on the face of the authorization, or to make orders conform to the original intent of the authorizing official. 28 Comp Gen. 732 (1949); B-177665, March 9, 1973; B-180970, November 7, 1974.

At the time of his travel Mr. Feder, however, had no travel orders under which the right to a particular per diem rate could become vested. Mr. Feder's travel had been totally completed before travel orders were issued. The rule concerning retroactive modification of travel orders as set out in 28 Comp. Gen. 732 and B-177665, *supra*, indicates that the pivotal point for disallowance of a retroactive modification of travel orders is that the rights or obligations of the employee have already vested. Clearly, the language of the rule is not applicable to the claimant's situation. Mr. Feder's right to a specific per diem rate did not vest at the time of travel as no travel order was issued before he began his travel between Cincinnati and Columbus incident to the IPA assignment.

Under the particular circumstances here involved we would have no objection to the U.S. EPA's modifying the January 22 travel order to authorize per diem under the lodging plus system at a rate not to exceed \$25, consistent with the March 25, 1975, recommendation of the EPA Fiscal Policies and Services Branch.

Upon modification of Mr. Feder's January 22 travel order, his per diem entitlement may be recomputed and paid by the U.S. EPA on the basis of those newly modified orders.

Deputy

Comptroller General
of the United States