

**DECISION**

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

FILE: B-185376

DATE: AUG 19 1976

MATTER OF: Mr. Edward H. Brumit, and others.

## DIGEST:

1. Agency policy requiring civilian employees to use Government quarters, if available, when on temporary duty (TDY) overseas is valid under 5 U. S. C. 5911(e)(1970) only if use of such quarters is essential to the mission. However, where TDY was at overseas military station where only enlisted personnel quarters were available in which officer-grade civilians were not required to stay and at which Government messing facilities were not fully available, and where agency failed to inform employees of the need to occupy such quarters as essential to the mission in an unequivocal manner, full per diem and reimbursement for rental car used for transportation between hotel and TDY station may be allowed.
2. Three enlisted military members were on temporary duty (TDY) as part of team with civilian employees at station where Government quarters and mess were available for enlisted personnel but not for officer-level civilians. Entire team moved to commercial quarters. While civilians are entitled to full per diem, military members are not so entitled since mess and quarters were available unless under the circumstances TDY order-issuing authority certifies that use of Government quarters would have adversely affected mission.

This action is in response to a letter dated November 10, 1975 (Serial: N41/1052), with enclosures, from Mr. W. Smallets, Chief, Finance and Accounting, National Security Agency (NSA), requesting a decision as to the entitlement of three civilian employees and three

B-185376

enlisted military members to per diem and reimbursement of one of the civilians for use of a rental car incident to temporary duty travel they performed at a United States military installation in Italy for NSA. The request has been assigned control number 75-38 by the Per Diem, Travel and Transportation Allowance Committee.

The submission shows that by separate travel orders issued November 8, 1974, the three employees (Mr. Edward H. Brumit, GS-12; Mr. James M. Simmons, GS-11; and Mr. Kenneth Madison, GS-7) and the three enlisted members (Robert A. Apone, SSGT, USMC; John L. Caulfield, CTISN, USN; and Bradley C. Chillson, CTISN, USN) were authorized to perform temporary duty (TDY) travel beginning on or about November 17, 1974, for about 23 days from Baltimore, Maryland, or Washington, D. C., to Crete, Italy, and return. Apparently, the six individuals were to constitute a "team" and were to travel and perform their duties together, with Mr. Brumit as the team leader. The submission states that a TDY planning message pertaining to the mission to be performed during such travel was addressed to the stations to be visited, and stated that "accommodations and transportation will be required." In addition it is stated that a memorandum for the record attached to the planning message said in part:

"Billeting and Transportation have been requested but if Government Quarters are not available and TDY'ers are required to stay at a distance from the site, request approval of car rental at both locations in the name of Mr. Brumit, as working hours will be irregular, day and night, and local transportation cannot be relied upon with any assurance." (Emphasis added.)

In accordance with those statements, the military members' travel orders stated:

"Certificate of non-availability for government quarters and messing is required."

And, the civilian employees' travel orders included this statement:

"UP PMM CHAP 701.2, when available, government quarters will be used during this operational TDY."

B-185376

In addition Mr. Brumit's orders authorized "commercial rent-a-car" for official business.

The submission states that upon arrival at the TDY site in Italy on November 28, 1974, the six team members were assigned and occupied Temporary Airmens Quarters. The following day, November 29, the entire team moved into a hotel in a nearby community, Brindisi, where they stayed until their departure from that station on December 7, 1974. Mr. Brumit apparently procured a commercial rental car which was used for travel to and from the TDY site. No certificates of nonavailability of Government quarters were furnished to the civilian employees or military members for the period of TDY in Italy.

The submission states that upon receipt of the six individuals' travel vouchers covering the period in question, November 29 through December 7, 1974, the Finance and Accounting Office computed the vouchers on the basis of Government quarters and mess available for the enlisted members and Government quarters available for the civilian employees, thus allowing only reduced per diem for that period. In addition Mr. Brumit's claim for rental car charges was disallowed since it appeared that the move from Government quarters to the hotel was voluntary and the rental car would not have been necessary except for that voluntary relocation.

The three civilian employees have protested that computation on the basis that the enlisted members' quarters, were inadequate. For that reason they indicate they moved to the hotel. Thus, they assert entitlement to full per diem and reimbursement for the rental car. It is noted further that Government mess at the TDY station was not available for any civilians or officers, and that the officers open mess was only available for two meals a day for six days a week. Government mess for enlisted members was available.

Under 5 U. S. C. 5911(e) (1970), and the regulations which implement that provision, civilians on TDY may not be required to occupy Government quarters unless it is determined that occupancy of Government quarters is essential to the performance of the mission. On the other hand, that provision of law does not prohibit the assignment of military personnel to Government quarters when they are

B-185376

performing temporary duty. A full discussion of those rules is contained in 44 Comp. Gen. 626 (1965), which involves the provision later codified as 5 U. S. C. 5911(e).

It was also held in 44 Comp. Gen. 626 at 632 that blanket determinations on a service-wide basis that civilians should use Government quarters were not in keeping with the governing provision of law and that determinations that civilian employees were required to use Government quarters while on TDY should be based on "the circumstances attending particular assignments or prevailing at particular installations." Cf. B-170194, September 15, 1970.

The Defense Department regulations applicable to the civilian employees here involved are contained in Volume 2, Joint Travel Regulations (2 JTR), paragraph C1057-3 (change 108, October 1, 1974) which provides as follows:

"3. SPECIAL PROJECTS AND MISSIONS. Employees assigned to special projects or missions may be required to occupy available Government quarters when a determination is made by the Secretary of a separate military department or the head of an agency of the Department of Defense that the exigencies of the service require occupancy of such quarters to assure accomplishment of the project or mission. Travel orders will include citation of the determination and applicable conditions and limitations."

The regulations also contemplate a reduction in per diem when Government quarters are not used if a determination has been made that such use is necessary, as under paragraph C1057-3, above.

A determination to use Government quarters has been made based on the uniqueness of the mission and projects and on security considerations. Under that provision civilian NSA employees traveling overseas are to use Government quarters where such quarters are available for visitors. See paragraph 2-3a(1), NSA/CSS Personnel Management Manual 30-2 (Tvl. Amend. 40, Oct. 1974). The NSA Personnel Management Manual, paragraph 2-3a(2), also

B-185376

requires that in cases of such overseas travel, travel orders will contain a remark, such as was included in the civilian employees' travel orders in this case, citing the applicable chapter of the manual and stating that "when available" Government quarters will be used.

Those regulations obviously intend to make the determination required by 2 JTR, C1057-3, and thus to comply with the rule in 44 Comp. Gen. 626. We have not been provided information which would support such a blanket determination in the case of NSA; however, we cannot say from the information available that it is not justified. The information presented in connection with this case shows that the civilian employees involved were not made aware of the implications of the determination since, if occupancy of Government quarters is essential for the carrying out of the mission, the adequacy of the quarters as they relate to the grade and seniority of the individual employee would not be a matter for consideration. As stated, in the NSA regulation, if quarters are available for visitors they will be used by civilian employees on TDY.

On the other hand, it appears that the team here involved accomplished their mission while occupying commercial quarters. Further, it is apparent that the meaning of the NSA determination that civilians must use Government quarters was not properly communicated to the civilian employees involved. If a blanket determination with regard to use of Government quarters is justified and made, it is incumbent upon the agency to make this fact clear to all employees traveling under that restriction. The provision in the individual travel orders that "when available, government quarters will be used during this operational TDY" does not seem to us to be sufficiently clear to convey the meaning apparently intended by NSA.

In the circumstances, we feel that the civilian employees involved in this case should be allowed per diem based upon authorized occupancy of commercial quarters. Future restrictions placed on civilian employees with respect to the use of Government quarters should be specific and should be based strictly upon the need for such occupancy to the accomplishment of the mission.

Since it has been determined that the civilian employees were authorized to occupy commercial quarters, the cost of renting an automobile would also be for reimbursement under the orders issued Mr. Brumit.

B-185376

Concerning the per diem entitlement of the military members, Volume 1, Joint Travel Regulations (1 JTR) paragraphs M4254 (change 261, November 1, 1974) and M4451 (change 258, August 1, 1974), issued under 37 U.S.C. 404 and 405 (1970), require the use of Government quarters and mess when available for enlisted members in a travel status. If such quarters and mess are available, whether or not they are used, generally only reduced per diem is payable. However, paragraph M4451-1 makes several exceptions to those requirements including, 1. when the order-issuing authority either prior to or subsequent to the travel issues a statement to the effect that the utilization of existing Government facilities would adversely affect the performance of the assigned mission or, 2. when the commanding officer or his designee who is responsible for existing Government facilities at the TDY point furnishes a statement to the effect that utilization of existing Government facilities was impracticable.

While it is clear from the record that Government quarters considered adequate and messing facilities were available for the enlisted military members and certificates of unavailability were not issued by the installation commander, we note that the military members and civilian employees constituted a team which was apparently to work together at "irregular, day and night hours." Accordingly, if the order-issuing authority should now determine that the performance of the mission required all the team members (military and civilian) to be billeted and take their meals together, we would not object to payment of full per diem to the three military members also. However, without such a determination the military personnel involved are entitled only to per diem they apparently have received, that is, per diem reduced based on the availability of Government quarters and mess. See decision B-176838, March 12, 1973, and 52 Comp. Gen. 75 (1972).

R. F. Keller

Deputy, Comptroller General  
of the United States