

DECISION

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

FILE:

B-185429

DATE: JUL 2 1976

61072
098353

MATTER OF:

Thomas M. Bowman -
Retroactive amendment of travel orders

DIGEST:

Travel order authorized per diem at flat rate of \$33 for first 30 days of extended temporary duty assignment contrary to agency instruction setting per diem at "\$14 plus lodgings not to exceed \$33 for the first 30 days." Certifying Officer properly reduced allowable per diem to amount prescribed by instruction. General rule against retroactive modification applies only to orders issued within scope of authority of authorizing official under applicable law and regulations and does not prohibit correction of orders issued in contravention or disregard thereof.

By letter of November 20, 1975, K. J. Townsend, an authorized certifying officer for the United States Department of the Interior, Bureau of Reclamation, has requested this Office's opinion as to whether a reclaim voucher in the amount of \$128.75 submitted by Mr. Thomas M. Bowman may be certified for payment.

Mr. Bowman's claim is for additional per diem for the first 30 days of his 90 day temporary duty assignment, commencing August 3, 1975, to Auburn, California, and arises as a result of the retroactive reduction in the per diem allowance authorized in connection with that assignment. Prior to commencing his temporary duty assignment, the employee's travel authorization was amended twice, each time to authorize a different rate of per diem reimbursement. After completing the first 30 days of this temporary duty assignment, Mr. Bowman was issued a third amendment, retroactively changing the basis for payment of per diem.

The submission shows the following chronological order of events related to the claim. Travel authorization No. A-76-2 was issued to the employee on July 1, 1975, and prescribed a per diem allowance at the "prevailing rate." Shortly thereafter,

Mr. Bowman was issued the first amendment to his travel orders authorizing a per diem allowance at a "flat rate of \$30 per day for the first 30 days, reduced to \$20 per day for the period in excess of 30 days." This rate was consistent with the Regional Supplement to Reclamation Instructions, Section 395.2.3B released June 9, 1975.

On July 9, 1975, the Commissioner of Reclamation issued an instruction setting forth revised per diem rates for extended temporary duty assignments. Insofar as pertinent, that instruction prescribed per diem rates to be determined in accordance with the lodgings plus system as follows:

"1. When an employee will be in a travel status for more than 30 days at the same location, the per diem rate will be \$14 plus lodging, not to exceed \$33, for the first 30 days. Thereafter, the per diem rate will be \$14 plus lodging, not to exceed \$22. * * *."

Thereafter, but prior to commencement of his temporary duty assignment, Mr. Bowman's travel authorization was amended a second time. Amendment #2 was intended to change the per diem allowance to conform with the July 9th instruction, but it erroneously prescribed a per diem allowance on the basis of a flat rate as follows:

"Flat rate of \$33 per day for the first 30 days, reduced to \$22 per day for the period in excess of 30 days."

As modified by the above language, that travel authorization was in effect during the first 30 days of Mr. Bowman's assignment to Auburn.

On August 28, 1975, the employee submitted a voucher for travel and per diem expenses for the first 24 3/4 day period of his assignment from August 3 to August 27, 1975. In processing the voucher, the erroneous authorization of per diem on a flat rate basis was discovered. Payment was disallowed for the flat rate per diem and, instead, was made on a corrected travel voucher based on the average cost of lodging plus \$14.

On September 4, Mr. Bowman was issued a third amendment, changing the basis for payment of a per diem allowance as follows:

"Per diem rate will be \$14 plus average cost of lodging, not to exceed \$33 for the first 30 days. Thereafter, the per diem rate will be \$14 plus average cost of lodging, not to exceed \$22. Per Commissioner's Faxogram of 7/9/75 to all Regional Directors."

Mr. Bowman claims the difference between the \$33 flat rate authorized by Amendment #2 and the allowed per diem for the first 30 days, and he questions the correctness of the administrative action retroactively amending his travel authorization to decrease his per diem entitlement. He explains that he relied on the authorization of a flat rate per diem and therefore occupied less than first rate accommodations during the first 30 days of his assignment with the intent of saving enough during that period to somewhat offset the reduction in per diem allowed after 30 days.

It is well established that legal rights and liabilities in regard to travel allowances vest as and when travel is performed under competent orders and that, in general, such orders may not be revoked or modified retroactively so as to increase or decrease the rights and benefits which have become fixed under the applicable statutes and regulations. We have recognized an exception to the above rule when an error is apparent on the face of the orders or where all the facts and circumstances clearly demonstrate that some provision previously determined and definitely intended has been omitted through error or inadvertence in preparing the orders. 23 Comp. Gen. 713 (1944); 24 id. 439 (1944); 47 id. 127 (1967); 54 id. 638 (1975); B-171315, November 20, 1970; B-173361, September 14, 1971; B-176477, August 27, 1973.

It should be noted that the prohibition against retroactive modification except in the limited circumstances described above applies only to competent orders. It is not a mechanism by which an authorizing official may expand the scope of his authority as otherwise limited by applicable law and regulations.

B-185429

For this reason, the general rule against retroactive modification applies only to the extent the specific provision in the orders is properly within the scope of authority granted the authorizing official. B-174428, April 17, 1972. Thus, while a travel order may not be amended to correct an error in judgment committed in the proper exercise of authority, it is not a bar to retroactive amendment of an order whose provisions are clearly in conflict with a law, agency regulation or instruction. B-151457, May 23, 1963; B-161732, October 5, 1967; B-171315, November 20, 1970. In B-183886, July 30, 1975, we held that retroactive modification is permissible where the agency initially misconstrues or misapplies its written policy guidelines in authorizing a rate or reimbursement other than that prescribed by law or regulation.

In the case at hand, the language of the second amendment to Mr. Bowman's orders, purporting to authorize per diem at a flat rate of \$33 for the first 30 days of his assignment, was directly contrary to the Commissioner of Reclamation's instruction issued July 9, 1975, requiring use of a per diem rate under the lodging-plus system prescribed at Federal Travel Regulations (FPMR 101-7) para. 1-7.3 (May 1973). Inasmuch as it was not within the scope of authority of the authorizing official to prescribe a flat rate of per diem at \$33 per day for the first 30 days of an extended assignment, the certifying officer properly disallowed payment for the flat rate and allowed payment computed on the lodging-plus basis, even though such action amounted to a retroactive modification of the travel orders.

For this reason we find no basis for certification of the employee's reclaim voucher for per diem expenses in the amount of \$128.75.

R.F.KELLER

Deputy

Comptroller General
of the United States