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DECISION



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

FILE: B-189317

DATE: November 23, 1977

MATTER OF: Jack O. Padrick - Specific - Per Diem Rate
for Noncommercial Lodgings

- DIGEST:**
1. While 55 Comp. Gen. 856 (1976) authorizes agencies to establish specific per diem rates for general application under FTR para. 1-7.3c for employees who obtain noncommercial lodgings, as with friends or relatives, per diem rate of \$25 based in part on \$9 lodgings costs determined without a consideration of the cost a host would generally incur as a result of the employee's stay, is inappropriate in light of the considerations set forth in 55 Comp. Gen. 856 (1976) and 52 Comp. Gen. 78 (1972).
 2. For travel to high-rate geographical areas where employee lodges with friends or relatives, FTR para. 1-8.1b(1) authorizes the agency to establish a specific per diem rate under para. 1-7.3c insofar as the appropriate official determines that such a per diem rate is justified under the particular circumstances of the employee's travel.
 3. Where a specific per diem rate is established under FTR para. 1-7.3c for instances in which the employee stays in noncommercial lodgings, as with friends or relatives, that rate may be applied to the specific days on which he in fact obtains noncommercial lodgings and his per diem under the lodgings-plus system for the remainder of the period covered by the voucher would be determined without regard to those particular days.

By letter dated June 10, 1977, Mr. Richard F. Noyes, an authorized certifying officer for the Department of Commerce, has requested a decision regarding payment of \$25 per diem

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claimed by Mr. Jack O. Padrick, Federal Cochairman of the Pacific Northwest Regional Commission.

The Cochairman's claim arises in connection with official travel performed during the period from February 21 to 25, 1977. For February 21, 22, and 25, Mr. Padrick has been reimbursed per diem at the rate of \$35 per day based on his actual lodgings costs and computed under the lodgings-plus system as set forth at para. 1-7.3c of the Federal Travel Regulations (FPMR 101-7) (May 1973) as amended by FPMR Temporary Regulation A-11, Supp. 3. On February 23 and 24, 1977, Mr. Padrick's temporary duty was in San Francisco, a high-rate geographical area as defined in FTR para. 1-8.6. For February 24, he has been reimbursed actual subsistence expenses in the amount of \$41. However, on February 23, Mr. Padrick lodged in noncommercial quarters. For that day he claims a specific per diem rate of \$25 as authorized by Policy Memo #2, Travel Policies and Procedures, Office of the Federal Cochairman, dated November 1, 1976. That memorandum establishes a uniform per diem rate of \$25 where lodgings are obtained in noncommercial quarters as follows:

"Effective immediately, the following policies are adopted for the Office of the Federal Co-chairman:

"1. A uniform per diem rate of \$25.00 per day is hereby established for all travelers under situations where lodgings are obtained in noncommercial quarters, provided that such lodgings are not provided or secured by another U. S. Government agency. Such per diem rates are applicable for the entire day in which lodgings occurs.

"The above rate determination is based upon an allowance of \$16 per day for meals and miscellaneous expenses and \$9 per day for lodgings in noncommercial quarters. This policy is consistent with Comptroller General decision B-183814 of March 10, 1976."

The certifying officer questions the authority of the Cochairman to establish a fixed per diem rate for all circumstances of travel

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in which the employee lodges with relatives or friends, based on his understanding that our holding in B-183814, March 10, 1976, published at 55 Comp. Gen. 856 (1976), contemplates the setting of a specific rate of per diem on a case-by-case basis. In addition, he asks whether such a rate can be made applicable to travel to high-rate geographical areas. He further inquires whether such a rate may be applied to specific days of a particular temporary duty assignment with per diem for the remainder of the period paid under the lodgings-plus system.

In 55 Comp. Gen. 856, supra, we held that an employee may not be paid per diem under the lodgings-plus system based on payment of \$14 per night for lodging at the home of his son's neighbor, absent information showing that the \$14 amount reflects additional expenses incurred by the host as a result of the employee's stay. We suggested that it would be appropriate for agencies to establish a specific per diem rate under FTR para. 1-7.3c for cases where it is known in advance that the employees will stay with friends or relatives. We there stated:

"We have recognized that the lodgings-plus system may well be inappropriate in the situation where an employee occupies a trailer or other recreational vehicle in lieu of commercial facilities while on a temporary duty assignment. In such cases we have held that it would be appropriate for the agency involved to establish a specific per diem rate to be paid in connection with the employee's occupancy of a mobile home or similar accommodation. B-175322, April 28, 1972, and B-178310, June 8, 1973.

"In line with the cited cases we believe it would be appropriate for DSA, as well as other agencies, to establish a specific per diem rate when it is known in advance that employees will not use commercial facilities but stay with friends or relatives. We do not, however, agree with DSA's suggestion that the per diem rate payable should be based on the lowest amount charged for suitable commercial accommodations in the area, even where the agency is justified in establishing a specific per diem rate under 1-7.3c of the FTR.

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As was stated in 52 Comp. Gen. 78, supra, it is neither necessary nor reasonable for an employee to pay commercial rates to friends or relatives for lodgings or meals. In our opinion, a reasonable basis for reimbursing friends or relatives for the use of noncommercial lodgings or meals would be an amount considerably less than motel or restaurant charges." (Emphasis added.)

As in effect at the date of the Cochairman's travel, FTR para. 1-7.3c provided in pertinent part as follows:

"(3) An agency may determine that the lodging-plus method as prescribed herein is not appropriate in circumstances such as when quarters or meals, or both, are provided at no cost or at a nominal cost by the Government or when for some other reason the subsistence costs to be incurred by the employee can be determined in advance. In such instances a specific per diem rate may be established and reductions made in accordance with this part, provided the exception from the lodging-plus method is authorized in writing by an appropriate official of the agency involved."

With regard to the certifying officer's concern that our holding in 55 Comp. Gen. 856 authorizes the setting of a specific per diem rate on a case-by-case basis only, we specifically indicated in that decision that to facilitate the processing of claims for per diem in the future, the agency could issue regulations providing for establishment of specific per diem rates in situations where employees will lodge with friends or relatives. Thus, the decision clearly recognizes that agencies may set a specific per diem rate or rates for general application.

While the reasonableness of the \$25 rate has not been questioned by the certifying officer, it would appear that the \$25 rate is excessive and, in part, arbitrarily derived. The Cochairman used a \$16 amount to determine that portion of the specific rate to be attributed to meals. As that rate comports with the \$16 rate established for meals and miscellaneous expenses under the lodgings-plus system, we believe that the Cochairman's

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reliance on that amount is not inappropriate. However, there is no indication that the \$9 factor attributable to lodgings was determined on a basis consistent with the principles expressed in 55 Comp. Gen. 856 and 52 Comp. Gen. 78, and no justification for the use of that factor has been furnished. We understand that the \$9 amount was determined by the Cochairman without appropriate consideration of the expense which a relative or friend would generally incur in providing noncommercial lodging to an employee. For these reasons the reclaim voucher submitted by the Cochairman on the basis of the \$25 rate may not be certified for payment. However, he may submit a further reclaim for actual subsistence expenses for February 23, 1977, based on the principles set forth in the above-cited decisions. In this connection we note that the documentation provided does not indicate that the Cochairman in fact incurred any lodging expenses for the day that he stayed in noncommercial lodgings.

The certifying officer questions whether a specific per diem rate authorized by FTR para. 1-7.3c, quoted above, may be established for travel to high-rate geographical areas. Effective July 1, 1975, Temporary Regulation A-11, Supplement 1, amended the FTR to specifically provide that in the case of travel to a high-rate geographical area, a per diem allowance may be authorized under FTR para. 1-7.3 if the factors cited in para. 1-7.3a would reduce the employee's travel expenses. Paragraph 1-8.1b now provides in pertinent part:

"b. Travel to high rate geographical areas.
Actual subsistence expense reimbursement shall normally be authorized or approved whenever temporary duty travel is performed to or in a location designated as a high rate geographical area (see 1-8.6), except when the high rate geographical area is only an enroute or intermediate stopover point at which no official duty is performed. Agencies may, however, authorize other appropriate and necessary reimbursement as follows:

"(1) A per diem allowance under 1-7.3 if the factors cited in 1-7.3a would reduce the travel expenses of an employee provided the agency official designated under 1-8.3a(1) determines the

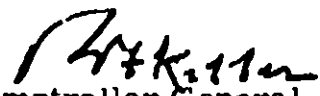
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existence of such factors in a particular travel assignment and authorizes an appropriate per diem rate* * *."

Paragraph 1-7.3a, quoted therein, sets forth the factors that may reduce an employee's travel expenses and provides that the rules contained in para. 1-7.3 shall be applied in the situations covered. Accordingly, an agency may provide by regulation for a specific per diem rate for staying with friends or relatives in high-rate geographical areas. However, the determination to apply that rate must be made on a case-by-case basis.

Where an appropriate specific per diem rate is established in advance for instances in which the employee lodges in noncommercial quarters, that rate may be applied to the specific days on which he in fact obtains noncommercial lodgings and his per diem under the lodgings-plus system for the remainder of the period covered by the voucher would be determined without regard to those particular days.

Deputy


Comptroller General
of the United States