

DECISION



18556  
THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548

FILE: B-191696

DATE: June 22, 1981

MATTER OF: Navy Public Works Center - Per Diem Allowances - Temporary Duty in Foreign Area

DIGEST:

1. Fourteen civilian employees of the Navy Public Works Center, Norfolk, Virginia, received per diem while on extended temporary duty in Thurso, Scotland, during various dates between July 18 and December 15, 1977, at a rate of \$49 per day. Change in Standardized Regulations (Government Civilians, Foreign Areas) issued by Department of State, reduced per diem to \$34 per day for various locations in Scotland, effective August 1, 1977. No legal basis exists for allowance of higher rate of per diem for temporary duty performed after effective date of lower rate.
2. The claims of 14 civilian employees of the Navy Public Works Center, Norfolk, Virginia, for reimbursement of expenses incurred while on extended temporary duty to Thurso, Scotland, caused by reduction in rate of per diem, are not unusual in nature and are likely to constitute a recurring problem. Such claims do not present such elements of legal liability or equity so as to justify reporting the claims to the Congress under the Meritorious Claims Act, 31 U.S.C. § 236.

This decision is rendered with respect to 14 civilian employees of the Navy Public Works Center (NPWC), Department of the Navy, Norfolk, Virginia, who, while performing temporary duty assignments in Thurso, Scotland, for periods ranging from 30 to 135 days commencing at various dates during the period July 18 to December 15, 1977, were paid per diem

*[Claims for Reimbursement of Expenses Incurred While Performing Temporary Duty in Foreign Area]*

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allowances in excess of that authorized by the Standardized Regulations (Government Civilians, Foreign Areas). The Public Works Center has collected all of the indebtednesses allegedly owed the United States from each of the 14 employees.

The facts and circumstances upon which the claims for reimbursement are based have been well stated by the Chief of Naval Operations in his memorandum of September 30, 1980, to the Commander, Navy Accounting and Finance Center, and forwarded to this Office by the Commander, Navy Accounting and Finance Center, for remedial consideration under the provisions of the Meritorious Claims Act of 1928, 31 U.S.C. § 236 (1976), and are as follows:

"Fourteen employees of the Public Works Center were assigned temporary duty in Thurso in the latter part of 1977. Prior to commencing the temporary duty assignments, the employees were advanced travel funds in the amount of \$49.00 per day. The Department of State, which is responsible for establishing per diem rates for foreign areas, revised the rates for various locations in Scotland, and a new rate of \$34.00 became effective on August 1, 1977, for Thurso. The Public Works Center, however, was not informed of this change until September 29, 1977, when the Comptroller Officer obtained from the Fleet Accounting and Disbursing Center, U. S. Atlantic Fleet, Norfolk, Virginia, a copy of a memorandum issued by the Department of Defense Per Diem, Travel and Transportation Allowance Committee. (The Public Works Center is at a loss as to why they were not notified of this change. They have indicated that they are notified of changes in per diem rates well in advance of the date the change is to

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become effective. Notification is usually in the form of naval message followed by the actual change to the travel regulations.) On October 13, 1977, the Public Works Center notified the employees in Thurso by naval message that the per diem rate had been reduced. By that time, however, some of the employees had returned to the United States and the others had completed a major portion of their temporary duty assignments."

The Commander of the Navy Accounting and Finance Center concurred in the view previously expressed by the Chief of Naval Operations that the claims of the 14 employees appropriately fall within the scope of the Meritorious Claims Act and that there is no legal basis for payment.

The Department of the Navy has supplied a list of the employees involved, the exact dates of travel, and the amount of money each was indebted to the United States. The list is as follows:

<u>Names of Employees</u>	<u>Dates of Travel</u>	<u>Amount of Overpayments of Per Diem</u>
Alessi, Bruce T.	8/1/77-9/2/77	\$ 435.00
Ballard, Boyce E.	8/1/77-10/6/77	831.58
Borte, Gerald	8/1/77-12/15/77	976.00
Carter, Wesley C.	7/18/77-11/24/77	1,107.99
DeWit, Gerald M.	7/18/77-12/6/77	910.76
Flores, Ernest M.	9/1/77-9/30/77	1,273.50
Gettier, Russell L.	8/1/77-12/15/77	1,120.50
Hudson, Warren C.	8/15/77-12/15/77	60.80
Johnson, Moses, Jr.	8/1/77-11/24/77	1,081.25
Jones, Phillip E.	8/1/77-12/15/77	490.50
Relchenback, R.L.	8/28/77-11/30/77	688.69
Scott, W.	8/1/77-10/6/77	1,632.50
Sizemore, Donald C.	8/1/77-12/15/77	661.00
Walker, Buel C.	8/1/77-11/10/77	\$ 399.95

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The statutory authority vested in the President by section 3 of the Travel Expense Act of 1949, 63 Stat. 166, as amended, and codified at 5 U.S.C. § 5702(a), to establish maximum rates of per diem for civilian officers and employees of the Government in travel status at localities in foreign areas has been delegated, by Executive Orders 10970 (superseded), October 27, 1961, and Executive Order 11294, August 4, 1966, to the Secretary of State. The regulations issued pursuant thereto and published in the Standardized Regulations (Government Civilians, Foreign Areas), are statutory in nature and have the full force and effect of law.

Amendatory regulations changing per diem rates also have the force and effect of law and are applicable from the stated effective date. The rule is applicable even if the individual employee has not received notice of the increase or decrease in rate, and also to cases in which the installation responsible for the employee's temporary duty assignment is not on actual notice of the amendment. Bruce Adams, 56 Comp. Gen. 425 (1977); Long Beach Naval Shipyard, B-190014, August 30, 1978; B-183633, June 10, 1975; and B-177417, February 12, 1973.

In B-173927, October 27, 1971, a case similar to the case at bar, we considered the situation of a decrease in the per diem rate applicable to travel to a foreign area. In that case the claimant, a civilian employee of the Department of the Navy, had performed temporary duty in Saigon, South Vietnam, for 33 days. There, as in the instant case, the employee's installation had received delayed notification of the reduction in the rate of per diem. The Standardized Regulations issued by the Department of State were deemed to be applicable to the factual situation inasmuch as the civilian employee traveled to and performed temporary duty in a foreign area. It was held that employees are regarded as having constructive notice of the effective date of the change in the per diem rate, whether upward or downward, regardless of when they receive actual notice of

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any changes in the Standardized Regulations. See also Lawrence H. Weintrob, B-198399, April 6, 1981.

In the case before us, pursuant to the authority vested in him by the President, the Secretary of State revised the rate of per diem from \$49 to \$34 per day, effective August 1, 1977. Although the Navy Public Works Center did not receive advance notice in the usual form of a naval message followed by receipt of the actual change to the Standardized Regulations until September 29, 1977, and did not notify the 14 employees until October 13, 1977, the claimants are regarded as having constructive notice of the August 1, 1977, effective date. While the delay in their receiving information of the reduced rate is unfortunate, there is no legal basis for this Office to waive the application of the \$34 per diem rate which was duly prescribed by regulations promulgated by the Secretary of State.

Accordingly, the claims of the 14 affected employees of the Navy Public Works Center for reimbursement of expenses they incurred while performing temporary duty assignments in Thurso, Scotland, may not be paid.

The Department of the Navy has requested that the Comptroller General of the United States submit the claims of the 14 employees to the Congress of the United States for consideration under the provisions of the Meritorious Claims Act of 1928, 31 U.S.C. § 236. In this regard, the Meritorious Claims Act provides that when a claim is filed in the General Accounting Office that may not be lawfully adjusted by use of an appropriation theretofore made, but which claim, in our judgment, contains such elements of legal liability on the part of the Government or equities in favor of the claimant as to be deserving of the consideration of the Congress, it shall be submitted to the Congress with our recommendations. We have consistently interpreted the statute as providing an extraordinary remedy whose use is limited to extraordinary circumstances.

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The cases we have reported for the consideration of the Congress have involved equitable circumstances of an unusual nature and which are unlikely to constitute a recurring problem, since to report to the Congress a particular case when similar equities exist or are likely to arise with respect to other claimants would constitute preferential treatment over others in similar circumstances. The rationale for this rule is that where the problem is a recurring one, affecting a class or group, the problem is properly for the consideration of the Congress as general legislation. Accordingly, it is not every case containing elements of equity which is deserving of relief, but only those instances, on a case-by-case basis, which contain a unique or unusual set of circumstances.

We are aware of other cases, some of which have been cited herein, wherein civilian employees have been denied reimbursement of expenses which they incurred while on temporary duty assignments to foreign areas caused by a reduction in the per diem rate of which they received delayed notice. Therefore, we do not regard such claims as being unusual in nature and they are likely to constitute a recurring problem. Granting relief here in the form of a Meritorious Claim submission would constitute preferential treatment of the employees herein over others similarly situated. Consequently, we do not believe that the instant case presents such elements of unusual legal liability or equity which justify reporting the claims to the Congress under the Meritorious Claims Act.

  
Acting Comptroller General  
of the United States



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

In Reply  
Refer to: B-191696(BRP)

June 22, 1961

The Honorable Robert W. Daniel, Jr.  
House of Representatives

Dear Mr. Daniel:

Enclosed is a copy of our decision in B-191696, dated today, in the matter of the Navv Public Works Center. The decision holds that, after the effective date of the change in the Standardized Regulations (Government Civilians, Foreign Areas) reducing per diem rates for various locations in Scotland, there was no authority for the Public Works Center to continue to pay higher rates of per diem to the 14 employees who were performing or had performed temporary duty in Thurso, Scotland. Hence, the 14 affected employees are legally obligated to repay the excess payments for per diem and actual subsistence expenses which each of them received after the effective date of the change. The excess payments have been collected from each employee.

We have given due consideration to submission of the claims by the Comptroller General of the United States to the Congress for consideration under the provisions of the Meritorious Claims Act of 1928, 31 U.S.C. § 236 (1976). However, we do not believe that the instant case presents such elements of unusual legal liability or equity so as to justify reporting the claims to the Congress under the Meritorious Claims Act.

Sincerely yours,

*Milton J. Acosta*  
Acting Comptroller General  
of the United States

Enclosure



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

In Reply  
Refer to: B-191696(BRP)

June 22, 1981

The Honorable John F. Lehman, Jr.  
The Secretary of the Navy

Dear Mr. Lehman:

Enclosed is a copy of our decision in B-191696, dated today, in the matter of the Navy Public Works Center. The decision holds that, after the effective date of the change in the Standardized Regulations (Government Civilians, Foreign Areas) reducing per diem rates for various locations in Scotland, there was no authority for the Public Works Center to continue to pay higher rates of per diem to the 14 employees who were performing or had performed temporary duty in Thurso, Scotland. Hence, the 14 affected employees are legally obligated to repay the excess payments for per diem and actual subsistence expenses which each of them received after the effective date of the change. As you are aware, the excess payments have been collected from each employee.

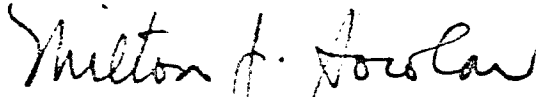
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liability or equity so as to justify reporting the claims to the Congress under the Meritorious Claims Act.

Sincerely yours,



Acting Comptroller General  
of the United States

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cc: Commander  
Navy Accounting and Finance Center

Chief of Naval Operations  
Office of the Chief of Naval Operations

Executive Director  
Per Diem, Travel and Transportation  
Allowance Committee  
Department of Defense

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

In Reply  
Refer to: B-191696(BRP)

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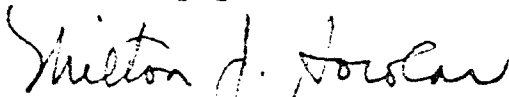
The Honorable G. William Whitehurst  
House of Representatives

Dear Mr. Whitehurst:

Enclosed is a copy of our decision in B-191696, dated today, in the matter of the Navy Public Works Center. The decision holds that, after the effective date of the change in the Standardized Regulations (Government Civilians, Foreign Areas) reducing per diem rates for various locations in Scotland, there was no authority for the Public Works Center to continue to pay higher rates of per diem to the 14 employees who were performing or had performed temporary duty in Thurso, Scotland. Hence, the 14 affected employees are legally obligated to repay the excess payments for per diem and actual subsistence expenses which each of them received after the effective date of the change. The excess payments have been collected from each employee.

We have given due consideration to submission of the claims by the Comptroller General of the United States to the Congress for consideration under the provisions of the Meritorious Claims Act of 1928, 31 U.S.C. § 236 (1976). However, we do not believe that the instant case presents such elements of unusual legal liability or equity so as to justify reporting the claims to the Congress under the Meritorious Claims Act.

Sincerely yours,



Acting Comptroller General  
of the United States

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