

Faulkner  
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**DECISION**



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

14367

FILE: B-193813

DATE: July 22, 1980

MATTER OF: Ms. Lynn C. Willis et al. - Training -  
Per Diem

DIGEST: Where agency is sending employees on training assignments, before agency decides to pay for the transportation of employee's dependents and household goods, cost comparisons, on individual basis, are required by 5 U.S.C. § 4109 and the applicable agency regulations. In this case since proper cost comparisons were not made prior to issuing orders authorizing payment for transportation of employee's dependents and household goods, such orders were not competent and may be retroactively modified to implement Grievance Examiner's recommendations to allow payment of per diem. In each of these cases a cost comparison showed that per diem would have been less costly, but apparently actual as opposed to projected transportation costs were less than per diem.

We have been asked to decide whether the Department ~~of the Army~~ may implement a Grievance Examiner's "Findings and Recommendations," calling for the retroactive modification of travel orders to permit [payment of per diem during a long-term training assignment] instead of shipment of household goods and transportation of dependents to the training location. For the reasons set forth below the "Findings and Recommendations" may be implemented.

On about September 1, 1976, nine Army employees began a 15-week training course at the U.S. Army Management Engineering and Training Activity (AMETA) at Rock Island Arsenal, Rock Island, Illinois. These nine employees had just been accepted as Automatic Data Processing (ADP) Career Field Interns within the U.S. Army Materiel Development and Readiness Command (DARCOM). All nine employees were either career or career-conditional Federal employees, holding appointments at the grade GS-5 level. Under the terms of the agreement signed by each employee, upon entrance into the ADP Career Field Intern program, after completing the training each intern would

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be assigned to a permanent duty location where he or she would work in the ADP field, and each intern would become eligible for non-competitive promotions to grades GS-7 and GS-9 after stated intervals.

Of the nine interns involved here, two, Mr. Kenneth Nienkamp and Ms. Deborah Kieffer, were to return to their original duty station following the training assignment. Six of the interns, Mr. Fred Smith, Ms. Lynn C. Willis, Ms. Mary Mitchell, Mr. Joseph Page, Mr. John Fetrow, and Ms. Deborah Williams, were to be assigned to a new duty station at the completion of the training assignment, and the location of that duty station was known prior to the beginning of the training course. One intern, Mr. Robert Hawks, was to be assigned to a new duty station, but its location was not known at the time the training began.

From the record it appears that prior to the assignment of this "class" of interns (identified in the record as AMETA Class #22), DARCOM decided that the interns would only be authorized transportation of their household goods and immediate family, not per diem. The circumstances surrounding this decision will be discussed below. The members of AMETA Class #22 were given as little as 1 day's notice of the fact that they would not receive per diem while attending the training program.

The nine individuals involved jointly took the steps necessary to initiate a grievance. They pursued their grievance through all the required stages resulting in the "Report of Findings and Recommendations" filed by Mr. Joseph C. Klein, the assigned Grievance Examiner. Mr. Klein recommended that Mr. Nienkamp, Ms. Kieffer, Ms. Willis, Mr. Fetrow, and Mr. Hawks be granted per diem for the period of training instead of transportation of household goods and dependents as originally authorized. He recommended that the remaining four individuals' entitlements remain as originally authorized.

This matter was submitted to us by the Assistant Secretary of the Army, Manpower and Reserve Affairs, because of language contained in the syllabus of our decision 34 Comp. Gen. 355 (1955), to the effect that

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claims for travel expenses which are based on retroactive modification of travel orders should be submitted to this Office. The submission raises the question of whether orders authorizing movement of an employee's family and household goods to a training location may be amended even after transportation to the training site has begun on the basis that cost comparisons justifying such transportation in lieu of paying per diem as required by law and regulation were not made.

The authority for paying expenses of training is found in 5 U.S.C. § 4109 (1976), which provides in pertinent part that the head of an agency may authorize payment of the necessary costs of travel and per diem to persons undergoing training. The cost of transportation of immediate family, household goods and personal effects, packing, crating, temporarily storing, draying, and unpacking are authorized to be paid but only "\* \* \* when the estimated costs of transportation and related services are less than the estimated aggregate per diem payments for the period of training. \* \* \*"

We have held that under this discretionary authority it is up to the head of the agency to determine what part, if any, of the training expenses will be paid. Matter of Raymond F. Moss, B-180599, November 14, 1974. We have recognized that agencies may in fact require employees to pay some of the indirect costs of training. Matter of Thomas B. Cox, B-187213, October 1, 1976.

Although the discretionary authority of agency heads allows them to pay or reimburse less than the full cost of training, under section 4109(a)(2)(B), they may pay for the transportation of an employee's family and household goods only if the estimated cost of that transportation is less than the aggregate cost of per diem for the period of training.

Before DARCOM decided to pay only for the transportation of the employee's dependents and household goods for AMETA Class #22, they performed cost comparisons on the basis of average costs not specifically

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related to each individual case. The Grievance Examiner requested advice from the Office of the Chief, Civilian Personnel, Field Operations Agency, Headquarters, Department of the Army, as to the proper method of doing the cost comparisons. In a second endorsement to that letter, the Examiner was advised that "[c]ost comparisons must be performed on an individual case by case basis and not on estimated generalized averages." We agree with that advice and concur with the Examiner's Finding that DARCOM did not comply with the mandate that individualized cost comparisons be done before employees may be paid or reimbursed for the transportation of their dependents and household goods while on training assignments. The Examiner's recommendation that five of the nine interns be granted per diem for the period of training is predicated on his determination that in each of those five cases the projected costs for transportation of dependents and household effects exceed the projected costs of per diem. Apparently, although the projected transportation costs exceeded projected per diem, actual transportation costs incurred by the employees were not equal to per diem.

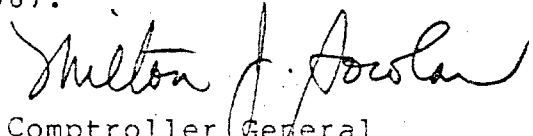
While, as a general rule, travel orders may not be retroactively modified to either increase or decrease the rights and/or benefits due employees, this rule applies only to competent orders. Where orders are clearly in conflict with a law or regulation they may be modified to make them consistent with the applicable law or regulation. Matter of Charles O. Dougherty, B-188106, March 3, 1977, and B-151457, May 23, 1963.

While we would not normally question a travel order authorizing transportation of dependents and household goods in connection with a training assignment, here, as a result of the immediate objections of the employees involved, it has been demonstrated that the authorization of such transportation was not properly included in certain travel orders. In the circumstances the orders are invalid to the extent that they restrict the employees concerned to reimbursement of these transportation costs instead of per diem which would otherwise have been paid. Therefore, we will not object to payment on a per diem

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basis to those employees whom the Grievance Examiner found were entitled to per diem instead of the costs of transportation of dependents and household goods. Our answer in that regard is the same even if the employee concerned has been paid this cost of transportation of dependents and household goods. Such employee may be paid the difference between the transportation cost paid and the allowable per diem.

Regarding the temporary storage cost incurred by Ms. Willis, since it was known in advance of her training assignment that she was to be transferred to St. Louis, she may be reimbursed for those expenses incident to that permanent change of station in accordance with our decision B-161795, June 29, 1967.



For The Comptroller General  
of the United States