

Faulkner

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**DECISION**



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

PLMII

FILE: B-195903

DATE: September 15, 1980

MATTER OF: Ernest F. Saker - Temporary Duty  
Aboard Vessels - Per Diem

DIGEST: Insofar as applicable to non-lodging portion of per diem, the "3 days in port" rule of 50 Comp. Gen. 388 (1979) was not affected by enactment of section 853 of Defense Appropriation Act, 1978, restricting use of appropriated funds to pay lodging cost when Government quarters are available. Since October 1, 1977, amendment to 2 JTR 4552-3b(6) to reflect appropriation restriction did not define per diem entitlement when meals were procured ashore, the "Government Quarters Available" rate of per diem prescribed by 2 JTR 4552-3d should be paid after the third day in port for period from October 1, 1977, until December 1, 1978.

Determination of

[The question presented is what method the Naval Oceanographic Office should have used to determine the amount of per diem payable to its employees who were on temporary duty assignments aboard ships outside the continental United States (CONUS) for the periods during which these ships were in port.] For the reasons stated below, we hold that for the period in question, October 1, 1977, to December 1, 1978, the Naval Oceanographic Office should compute the per diem payments for employees involved by paying one-half of the locality per diem rate for all in-port periods beyond 3 days.

[The issue was presented by a letter from the Disbursing Officer, Naval Oceanographic Office, dated July 26, 1979, forwarding a travel voucher submitted by Mr. Ernest F. Saker, a civilian employee of that office. Mr. Saker served on temporary duty assignments aboard survey vessels between October 1, 1977, and December 1, 1978. The question is how his per diem should be computed.

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Prior to October 1, 1977, the method to be used in computing per diem for Naval Oceanographic employees on temporary duty assignments aboard ships outside CONUS was set out in Volume 2 of the Joint Travel Regulations (2 JTR), paragraph C4552-3b(6) which provided that:

"Aboard Government Ships. The per diem rates in subpar. 2c are prescribed for travel and temporary duty aboard a Government ship outside the continental United States. In the event the traveler uses commercial quarters during stopovers in port, the following per diem rates are applicable for the stopover period:

- "1. when assigned to extended voyages of 7 or more consecutive calendar days, the rate of per diem for the first 3 days in port is the appropriate \$2 or \$4 rate prescribed in subpar. 2c, increased by the actual charges for meals, if any, and rounded to the next higher dollar, and the rate of per diem beginning with the 4th day in port is the appropriate rate prescribed in Appendix A (a 24-hour period is treated as a day);
- "2. when assigned to voyages of less than 7 consecutive calendar days, the appropriate per diem rate prescribed in Appendix A;
- "3. when quarters aboard ship are not available during stopover in port involving voyage of

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7 days or more, the appropriate per diem rate prescribed in Appendix A.

If an employee for his personal convenience uses available accommodations aboard a Government ship while the ship is in port, the appropriate \$2 or \$4 per diem rate prescribed in subpar. 2c, increased by the actual charges for meals, if any, and the resulting amount rounded to the next higher dollar is applicable for the stopover period. When an employee reports to a Government ship for temporary duty while the ship is in port, he is paid the same per diem rate as all other employees assigned to duty aboard the ship. The rule in par. C4553-3a will be observed when computing the per diem for the day the per diem rate changes. In port increased per diem rates will continue through the quarter day in which the ship sails."

The "subpar. 2c" referred to above is 2 JTR para. C4552-2c, applicable to travel within CONUS. Prior to October 1, 1977, that paragraph provided:

"Government Ship. Except as limited in subpar. 3b(6), a per diem rate of \$2 is prescribed for travel and temporary duty aboard a Government ship when meals and quarters are furnished without charge, and a per diem rate of \$4 is prescribed when the traveler is required to pay for quarters. Neither rate is subject to further reduction. When the traveler is required to pay for meals, the appropriate \$2 or \$4 rate of per diem will be increased by the actual charges for meals and the resulting amount will be rounded to the next higher dollar. Receipts for actual charges for meals will not normally be required but may be required in individual

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cases. In the event that the traveler must maintain commercial quarters ashore for use following the completion of one or more short trips at seas, the rates of per diem prescribed in this subparagraph will be increased, before rounding to the next higher dollar, by the actual daily commercial cost of quarters maintained ashore during the period of travel aboard the Government ship."

Paragraphs C4552-3b(6) and C4552-2c mutually refer to each other and must be read together to understand the rules for computation of per diem of civilian employees serving tours of temporary duty aboard ships while in port whether in or outside CONUS. These sections, when read together, reflect the "3 days in port" rule established in our decision 50 Comp. Gen. 388 (1970). In holding that employees could not be required to occupy quarters aboard vessels during periods exceeding 3 days in port that decision drew no distinction between ports within and those outside CONUS. The way in which the rule is set out in 2 JTR may be less than clear, but the overall meaning was recognized by the Court of Claims in Boege v. United States, 206 Ct. Cl. 560 (1975), and we understand that prior to October 1, 1977, the "3 days in port" rule was applied whether or not the port was in CONUS.

[Effective October 1, 1977,] section 853 of the Department of Defense (DOD) Appropriation Act, 1978, Public Law 95-111, September 21, 1977, 91 Stat. 908, was enacted. Under that section employees of the DOD could be required to use available Government quarters while on temporary duty assignments or face a reduction in their per diem or actual subsistence allowance. This section rendered the "3 days in port" rule in the above-quoted section moot as to the lodgings portion of the per diem payment.) Section 853 provided that:

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"\* \* \* None of the funds appropriated by this Act or available in any working capital fund of the Department of Defense shall be available to pay the expenses attributable to lodging of any person on official business away from his designated post of duty \* \* \* when adequate government quarters are available, but are not occupied by such person."

Following the enactment of this restriction on the use of appropriated funds, several paragraphs in 2 JTR were amended by Change 146, December 1, 1977, effective October 1, 1977, to incorporate its limitations. The most extensive amendment was to paragraph C4552-3b(6) which, after revision, provided that:

"Aboard Government Ships. The per diem rates in subpar. 2c are prescribed for travel and temporary duty aboard a Government ship outside the continental United States. When an employee reports to a Government ship for temporary duty while the ship is in port, he is paid the same per diem rate as all other employees assigned to duty aboard the ship."

The reference to "subpar. 2c" was still to paragraph C4552-2c which was also revised. The only revision, however, was the deletion of the phrase "Except as limited in subpar. 3b(6) \* \* \*" from the beginning of the paragraph. With these revisions, 2 JTR no longer contained any provisions implementing the "3 days in port" rule.

From October 1, 1977, until December 1, 1978, the regulations did not specifically define the per diem entitlement of employees who procured their meals ashore. We have been advised that when the ships were in port, as a general rule, Naval Oceanographic Office employees on temporary duty aboard those ships could

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continue to eat their meals on the ships if they chose to do so. The Naval Oceanographic Office was charged by the commands operating the vessels only for the meals actually eaten by their employees while the ships were in port. There was no specific guidance in either paragraph C4552-2c or in paragraph C4552-3b(6) as to how per diem was to be computed when meals were procured ashore and no mention of the "3 days in port" rule. Whether the employees actually used the quarters on board the vessels was irrelevant since the appropriation restriction meant that, under any circumstances, only the subsistence portion of the per diem could be paid.

We have not modified or overruled the "3 days in port" rule. While 2 JTR was amended effective October 1, 1977, to reflect the fact that the lodgings portion of per diem could not be paid, even after 3 days in port, the amendments failed to incorporate the 3 days in port rule insofar as it pertains to the other elements of per diem entitlement. Understandably, the Naval Oceanographic Office was unsure of the manner in which it should compute per diem for its employees who were on temporary duty assignments aboard vessels while those vessels were in port. The documentation furnished in connection with Mr. Saker's claim indicates that the Naval Oceanographic Office felt that the rate of per diem established under 2 JTR C4552-3d for "Government Quarters Available" should be paid, at least after the third day in port. As in effect subsequent to October 1, 1977, that paragraph provided:

"Government Quarters Available.

When Government quarters are available with or without a charge to the traveler, the prescribed per diem rate will be 50% of the applicable overseas per diem locality rate for the area. When a charge for the use of Government quarters is paid by the traveler, the per diem payable will be increased in an amount equivalent to the charge for quarters. The resultant amounts not to

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be rounded off to the next higher dollar. The period of applicability of the rate prescribed by this subparagraph will be as indicated in par. C4553-3b. In no case will the total per diem payable exceed the applicable overseas per diem locality rate for the area."

All of the above sections remained unchanged until paragraph C4552-3b(6) was amended by Change 158, December 1, 1978, to provide that:

"Aboard Government Ships. The per diem rates in subpar. 2c are prescribed for travel and temporary duty aboard a Government ship outside the continental United States. When an employee reports to a Government ship for temporary duty while the ship is in port, he is paid the same per diem rate as all other employees assigned to duty aboard the ship. When the employee procures meals ashore at personal expense, after the third day in port, reimbursement is authorized in the amount of 14% of the locality per diem rate for the port for each meal procured, not to exceed three meals daily (50 Comp. Gen. 388)."

This change, at least for stopovers in ports outside CONUS, returned the "3 days in port" rule to 2 JTR. Change 167 dated September 1, 1979, amended paragraph C4552-2c to incorporate a similar version of the "3 days in port" rule to travel within CONUS.

The December 1, 1978 change to paragraph C4552-3b(6), however, did not clarify the manner in which per diem was to be computed during the preceding 14 months. In response to inquiries by the Naval Oceanographic Office, the Chief of Naval Operations, by letter dated November 20, 1978, advised that the revision to paragraph 4552-3b(6) reflected a change in DOD policy and could not be applied retroactively. This response,

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however, did not explain what in fact the policy was during the 14-month period in question. The same lack of clarification exists as to the policy in effect prior to September 1, 1979, for stopovers at points within CONUS.

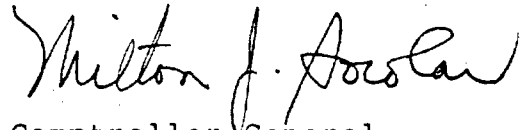
The current provisions of 2 JTR now, more clearly than at any other time, provide for the application of the "3 days in port" rule to other than the lodgings portion of per diem in all ports no matter where they are located. These most recent amendments accurately reflect the sense of our holding in 50 Comp. Gen. 388 (1970). Consistent with the sense of that decision and with DOD's current implementation authorizing per diem for meals ashore after the third day in port, we believe that the regulations in effect between October 1, 1977, and December 1, 1978, applicable to stopovers outside CONUS, should be read in the manner suggested by the Naval Oceanographic Office to authorize per diem after the third day in port at the rate prescribed by 2 JTR C4552-3d for "Government Quarters Available." This construction is consistent with the fact that there is nothing to indicate that the October 1, 1977 changes to 2 JTR were for any purpose other than to bring the regulations into accord with the restriction on the use of appropriated funds to pay for lodgings when Government quarters were available. For the period from October 1, 1977, to September 1, 1978, the provisions of 2 JTR for travel within CONUS should be similarly construed.

Therefore, for the period in question, October 1, 1977, to December 1, 1978, when Mr. Saker and employees on temporary duty aboard vessels procured meals ashore after the third day in port, for ports outside CONUS, their per diem should be computed in accordance with paragraph C4552-3d. For ports inside CONUS, if the lodgings-plus system is applicable, and meals are procured ashore after the third day in port, an average cost of lodgings of zero should be used.



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For ports covered by the actual expense system, actual expenses for meals procured ashore after the third day in port should be paid. ]

A handwritten signature in cursive script, reading "Milton J. Arosan".

For the Comptroller General  
of the United States