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DECISION

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

FILE: B-202855 DATE: April 5, 1982

MATTER OF: Richard D. Bachmeier - Use of automobile contrary to agency regulation

DIGEST: Employee who used privately owned vehicle (POV) in lieu of common carrier was denied reimbursement for mileage based on local region policy that use of POV was incompatible with performance of the mission for reasons of energy conservation. Employee's claim may be paid because local region policy conflicts with agency regulation stating that energy conservation cannot be sole basis for determining whether use of POV is incompatible with agency mission.

The issue in this decision is whether an employee will be reimbursed for mileage for use of his privately owned vehicle (POV), in lieu of common carrier, for temporary duty travel where the local region policy, based on energy conservation, precludes reimbursement of POV mileage as incompatible with the performance of the mission. We hold that where the local region policy is in conflict with agency regulations, the claim for mileage must be allowed.

This decision is in response to an agency-filed appeal of our Claims Group settlement allowing the claim of Mr. Richard D. Bachmeier for mileage incident to a temporary duty assignment.

Mr. Bachmeier, an employee of the Defense Logistics Agency (DLA), Defense Contract Administration Services Region (DCASR), San Antonio, Texas, was scheduled to attend a conference in Dallas during the period November 27 - December 7, 1979. His travel order dated November 20, 1979, stated that Mr. Bachmeier was authorized use of his privately owned vehicle (POV) "at no cost to the Government, in accordance with employee's request." This limitation stemmed from a DCASR, Dallas Region, memorandum dated August 15, 1979, concerning fuel conservation. The memorandum established a Dallas Region policy that constructive cost travel by POV would

not be allowed where commercial carrier travel was authorized since use of a POV would not be advantageous to the Government and would be incompatible with the performance of the mission.

After he performed the travel, Mr. Bachmeier claimed reimbursement for the applicable mileage based on constructive cost travel since, in his view, the DLA policy was in conflict with applicable provisions of DLA regulations and the Joint Travel Regulations (JTR). Our Claims Group instructed DLA to allow Mr. Bachmeier's claim for POV mileage in lieu of common carrier travel in the amount of $98.05.

The agency has appealed our Claims Group settlement stressing that under these circumstances travel by private conveyance was incompatible with the performance of the mission. The agency also distinguishes two prior decisions of our Office cited in the Claims Settlement Certificate, involving agency prohibitions on the use of POV's, Lawrence B. Newell, B-181151, January 3, 1975, and B-166271, March 20, 1969, since in Newell there was no indication that travel by POV was incompatible with the performance of the mission, and in B-166271 there was no common carrier service available.

Under the provisions of 5 U.S.C. S 5704 (1976) and the implementing regulations contained in the Federal Travel Regulations (FTR) (FPMR 101-7), an employee who is engaged on official business for the Government is entitled to mileage for the use of his privately owned vehicle. Where travel by common carrier is authorized, mileage reimbursement may be limited to the cost of travel by common carrier, including applicable per diem. See FTR para. 1-4.3.

Volume II of the Joint Travel Regulations implements the FTR for civilian employees of the Department of Defense. Paragraph C 2152 of the JTR provides that an employee who uses a POV as a matter of personal preference will have his mileage reimbursement limited to the cost of constructive travel by common carrier, except where travel by POV has been determined to be incompatible with the performance of the mission and no reimbursement will be made.

Although the Dallas Region of DCASR had adopted a policy that use of a POV for personal preference was incompatible with the performance of the mission for reasons of energy conservation, this policy appeared to be in conflict with DLA regulations and with the JTR. The applicable provision of DLA regulations, DLAR 5000.1, III 0, states that energy conservation may not be the sole basis for determining that use of a POV is incompatible with the performance of the mission. After questions about the DCASR policy were raised by the Inspector General and Headquarters offices of DLA in 1979, the Director of DLA advised the Dallas Region of DCASR by letter dated July 14, 1980, that, in order to establish a standard agency policy, energy conservation could not be the sole basis for determining whether use of a POV is incompatible with the performance of the mission.

Although the letter from the Director of DLA states that the DCASR policy was proper, we conclude that the local policy cannot be used to deny Mr. Bachmeier's claim since the local policy was in conflict with existing agency regulations. As we held in Newell, supra, denial of reimbursement for mileage under these circumstances cannot be based solely on grounds of encouraging energy conservation. See also our decision in B-166271, supra, where the policy of the local activity on mileage reimbursement was in conflict with agency regulations.

Since it appears that the DCASR determination in Mr. Bachmeier's case was based solely on grounds of energy conservation, we hold that Mr. Bachmeier is entitled to reimbursement for mileage not to exceed the constructive cost of travel by common carrier.

Accordingly, we sustain our Claims Group settlement allowing Mr. Bachmeier's claim for mileage.

for Milton J. Socolar
Comptroller General
of the United States