

DECISION

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

FILE: B-215305

DATE: December 26, 1984

MATTER OF: Thomas S. Swan, Jr.

DIGEST:

An employee who is delayed by a breakdown of his automobile en route to a new duty station may be allowed travel time and be reimbursed for an additional day of per diem where the agency determines that the reason for delay was beyond the employee's control and acceptable to the agency.

An employee may be paid per diem expenses and afforded travel time for the period he was delayed en route to his new duty station by the breakdown of his automobile when the agency determines the delay was for reasons beyond the employee's control or acceptable to the agency.^{1/}

BACKGROUND

Mr. Thomas S. Swan, Jr., an employee of the National Park Service, Department of the Interior, was issued a travel authorization dated September 26, 1983, for a permanent change of duty station from Point Reyes National Seashore, California, to Yellowstone National Park, Wyoming. Mr. Swan departed Petaluma, California, his old residence, at 10 a.m. on Saturday, October 15, 1983. On Sunday evening, October 16, his vehicle broke down near Twin Falls, Idaho. He notified the Park Service of his delay and received approval for the delay. Repairs took all day Monday and were completed on Tuesday, October 18. He arrived at Yellowstone National Park on Wednesday, October 19, at 12 noon.

Mr. Swan filed a voucher for his trip on November 15, 1983, claiming per diem for 4-1/4 days. He included a statement explaining the delay. He was initially allowed

^{1/} Mr. James D. Clark, Chief, Division of Finance, Rocky Mountain Regional Office, National Park Service, has requested an advance decision on the claim of Mr. Thomas D. Swan, Jr., for an additional day of per diem en route to his new duty station.

3-1/4 days' per diem under Department of the Interior regulations on the basis of 1 day of travel for every 350 miles distance and LeRoy A. Ellerbrock, B-190149, December 23, 1977, which denied additional per diem under similar circumstances. However, the Park Service notes our recent decision Robert T. Bolton, 62 Comp. Gen. 629 (1983), permitted payment of additional per diem where an employee's mobile home broke down en route to his new duty station. Therefore, the certifying officer asks if Mr. Swan may now be reimbursed for an additional day of per diem for the delay caused by repairs to his automobile. He indicates that an appropriate official at the Park Service has approved the delay and that the agency considers the delay beyond control of the employee, since he has demonstrated that he maintained his vehicle in good working condition.

DISCUSSION

The payment of travel, transportation, and relocation expenses of transferred Government employees is authorized under 5 U.S.C. §§ 5724 and 5724a (1982), as implemented by the Federal Travel Regulations, incorp. by ref., 41 C.F.R. 101-7.003 (1983). Among the expenses authorized to be paid is per diem while en route to the new duty station. In this connection the governing regulations provide a maximum per diem allowance which may be paid when an employee uses a privately owned vehicle in a transfer of station in the following terms:

"(2) Maximum allowance based on total distance. Per diem allowances should be paid on the basis of actual time used to complete the trip, but the allowances may not exceed an amount computed on the basis of a minimum driving distance per day which is prescribed as reasonable by the authorizing official and is not less than an average of 300 miles per calendar day. An exception to the daily minimum driving distance may be made by the agency concerned when travel between the old and new official stations is delayed for reasons clearly beyond the control of the travelers such as acts of God, restrictions by Governmental authorities, or other reasons acceptable to the agency; e.g., a physically handicapped employee. In such cases, per diem may be allowed for the period of the delay or for a shorter period as determined by the agency. The traveler must provide a

statement on his/her reimbursement voucher fully explaining the circumstances which necessitated the en route travel delay. The exception to the daily minimum driving distance requires the approval of the agency's authorizing official." (Emphasis added.) FTR para. 2-2.3d (2).

Prior to 1977 that provision did not specifically provide that agencies could make an exception to the daily minimum driving distance requirement when an employee was delayed en route for reasons beyond his control or acceptable to the agency. Thus, we held in the case cited by the agency, LeRoy A. Ellerbrock, B-190149, supra, that the regulation did not permit payment of an increased per diem allowance due to extenuating circumstances such as the breakdown of an employee's rented truck en route to the new duty station. As amended in 1977, however, FTR para. 2-2.3d(2) clearly provides that agencies may make exceptions to the daily minimum driving distance and, therefore, allow additional per diem when an employee is delayed en route to his new duty station for reasons beyond his control or otherwise acceptable to the agency.

We held in Robert T. Bolton, 62 Comp. Gen. 629, supra, that Ellerbrock would no longer be followed for transfers whose effective date was on or after June 1, 1977. Under Bolton an employee who does not meet the minimum daily mileage requirement may nevertheless be authorized additional per diem if the agency determines that his delay in traveling between duty stations was for reasons beyond his control or acceptable to the agency. See also, Oscar Hall, B-212837, March 26, 1984. However, we have not stated specifically that the breakdown of the vehicle in which the employee is traveling to his new duty station may be considered as a reason beyond the employee's control for purposes of paragraph 2-2.3d(2). In cases involving temporary duty travel by automobile when travel by that means is in the interest of the Government we have held that per diem may be continued to be paid to an employee whose travel is delayed due to the breakdown of his vehicle. 42 Comp. Gen. 436 (1963). We see no reason why the same rule should not be applied in cases where the employee is traveling on permanent change of station to permit vehicle breakdowns which delay an employee's travel to be considered by an agency as valid reasons beyond an employee's control which would justify payment of per diem for periods longer than justified in the 300-mile-per-day rule.

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The certifying officer indicates that the Park Service considers Mr. Swan's delay to be beyond his control and additional per diem has been approved by the authorizing official. Accordingly, Mr. Swan may be allowed travel time and reimbursed for an additional day of per diem, if otherwise proper.

for *Milton J. Fowler*
Comptroller General
of the United States