DECISION

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

FILE: B-219121 DATE: August 4, 1986

MATTER OF: Kelly G. Nobles - Travel by Privately-Owned Vehicle - Expenses for Traveltime Charged to Annual Leave

DIGEST:

An employee who elected to travel by privately-owned vehicle rather than common carrier and was charged annual leave for his excess traveltime claims subsistence expenses for that traveltime. The employee's claim may not be allowed, since we have held and the Federal Travel Regulations provide that subsistence expenses may not be paid during traveltime charged to annual leave. In view of the prohibition against paying subsistence expenses during a period of annual leave, it is not material that the employee's actual costs of travel, including the claimed subsistence expenses, were less than the contructive cost of travel by common carrier.

Mr. E. M. Keeling, Director of Accounting of the Federal Aviation Administration (FAA), has requested our decision concerning Mr. Kelly G. Nobles' claim for subsistence expenses associated with his use of a privately-owned vehicle (POV) rather than common carrier for temporary duty travel. Specifically, the FAA questions whether Mr. Nobles is entitled to receive subsistence expenses for traveltime which exceeded that which would have been required for common-carrier travel and has been charged to annual leave. For the reasons stated below, we hold that Mr. Nobles may not be paid subsistence expenses for his excess traveltime charged to annual leave.

BACKGROUND

Mr. Nobles, an FAA employee stationed in Terre Haute, Indiana, was scheduled to attend a training course at the FAA Academy in Oklahoma City, Oklahoma, during the period

June 6 to June 20, 1984. His travel orders authorized him to use a POV as a matter of personal preference, and indicated that air travel would have been more advantageous to the government. Had Mr. Nobles traveled by air, he would have departed for Oklahoma City on June 5, 1984, and his allowable transportation and subsistence costs would have totaled $1,326.04.

Mr. Nobles left his residence in Terre Haute on June 4, 1984, charging annual leave for his travel that day, and he arrived in Oklahoma City on the afternoon of June 5. He completed his course at the FAA Academy on June 20, and, during the following day, he traveled home. Mr. Nobles submitted a claim for mileage expenses and subsistence costs in the amount of $1,014.26, including $72.97 for the subsistence expenses he incurred during his first day of travel on June 4. The FAA disallowed Mr. Nobles' claim for subsistence expenses on that day since he was in an annual leave status, citing our decision in B-171420, March 3, 1971. In B-171420, discussed below, we held that an employee who travels by POV rather than common carrier may not receive per diem for the excess traveltime involved if that traveltime is charged to annual leave.

The FAA now questions whether it was proper to deny Mr. Nobles' subsistence expenses for the extra day's travel based on our decision in B-171420, cited above. Specifically, the agency suggests that our decision in B-171420 may have been superseded by our subsequent decision in 55 Comp. Gen. 192 (1975), interpreting para. 1-4.3 of the Federal Travel Regulations, incorp. by ref., 41 C.F.R. § 101-7.003 (1985) (FTR). In 55 Comp. Gen. 192, discussed below, we applied FTR para. 1-4.3 to hold that an employee who travels by POV as a matter of personal preference may be reimbursed for such travel on the basis of his total actual costs limited to the total constructive cost of travel by common carrier. As the FAA interprets our decision in 55 Comp. Gen. 192 and the provisions of FTR para. 1-4.3, an employee who elects to travel by POV would be entitled to reimbursement for subsistence costs incurred during excess traveltime as long as those costs, when combined with mileage expenses, do not exceed the constructive cost of

common-carrier travel. Under the agency's interpretation of 55 Comp. Gen. 192 and FTR para. 1-4.3, Mr. Nobles would be entitled to reimbursement for his subsistence expenses on June 4, 1984, even though he was charged annual leave for that day, because his total actual costs of $1,014.26 were less than the $1,326.04 he would have been allowed had he traveled by air.

Against this background, the question for our determination is whether an employee whose actual costs of traveling by POV are less than the constructive cost of common-carrier travel may, on that basis, be reimbursed for subsistence expenses incurred during excess traveltime which has been charged to annual leave. In order to answer this question, we must decide whether the principles stated in B-171420, cited above, have been superseded by our subsequent decision in 55 Comp. Gen. 192 and the provisions of FTR para. 1-4.3.

DISCUSSION

In B-171420, cited above, we held that an agency may, in its discretion, charge an employee annual leave for excess traveltime attributable to his use of a POV rather than common carrier. We then determined that, under section 6.3 of the Standardized Government Travel Regulations (the predecessor to FTR paras. 1-7.5a and 1-8.4a), an employee may not be paid per diem while he is in an annual leave status. Based on the prohibition contained in the travel regulations, we concluded that an employee traveling by POV may not receive per diem for the excess traveltime involved if that traveltime is charged to annual leave.

In our subsequent decision in 55 Comp. Gen. 192, cited above, we did not address the charging of annual leave for excess traveltime or the regulatory prohibition against paying per diem during traveltime charged to leave. Rather, in 55 Comp. Gen. 192, we evaluated and decided to change our prior rules for computing the "actual versus constructive" costs payable to an employee who travels by POV rather than common carrier. First, we noted that, in our prior decisions in 45 Comp. Gen. 592 (1966) and 47 Comp. Gen. 686 (1968), we interpreted regulations issued

by the Bureau of the Budget (now Office of Management and Budget (OMB)) as imposing separate restrictions on the payment of actual per diem and mileage expenses, limiting an employee's reimbursement to the following:
(1) the lesser of actual per diem or the constructive per diem allowable for travel by common carrier; plus
(2) the lesser of actual mileage expenses or the constructive cost of common carrier transportation. We then noted that, subsequent to our decisions in 45 Comp. Gen. 592 and 47 Comp. Gen. 686, OMB issued superseding regulations which prescribed a different method for computing reimbursable costs. These regulations, which eventually became codified in FTR para. 1-4.3, are quoted in 55 Comp. Gen. 192 at 194 as follows:

> "* * * Whenever a privately owned conveyance is used for official purposes as a matter of personal preference in lieu of common carrier transportation under 2.2d payment for such travel shall be made on the basis of the actual travel performed * * * plus the per diem allowable for the actual travel but the total allowable will be limited to the total constructive cost of appropriate common carrier transportation including constructive per diem by that method of transportation. * * *" [Emphasis added in 55 Comp. Gen. 192.]

Because the above-quoted regulations refer to the "total allowable" and the "total constructive cost," we concluded in 55 Comp. Gen. 192 that an employee electing to travel by POV may be reimbursed for such travel on the basis of his total actual travel costs (transportation and per diem), limited to the total constructive travel costs (transportation and per diem). Accordingly, we overruled our prior decisions in 45 Comp. Gen. 592 and 47 Comp. Gen. 686.

We do not agree with the FAA that our decision in 55 Comp. Gen. 192 and the provisions of FTR para. 1-4.3 have superseded the principles we expressed in B-171420, above. Rather, an examination of our decisions and the applicable travel regulations discloses that, over the years, the principles underlying our determination in

B-171420 have been reinforced. Thus, subsequent to our decision in 55 Comp. Gen. 192, we have held that an agency should charge an employee annual leave for excess traveltime occasioned by his use of a POV. See 56 Comp. Gen. 865 (1977); Department of Energy and International Brotherhood of Electrical Workers, B-197336, January 28, 1981; and Timothy W. Joseph, 62 Comp. Gen. 393 (1983). Furthermore, although the specific travel regulations cited in B-171420 are no longer in effect, the superseding provisions in FTR paras. 1-7.5a and 1-8.4a are substantially the same, prohibiting the payment of per diem or actual subsistence expenses during periods for which a traveler is charged annual leave. Consequently, based on FTR paras. 1-7.5a and 1-8.4a, and in line with our determination in B-171420, we continue to believe that an employee who is charged annual leave for excess traveltime may not be reimbursed for subsistence costs incurred during such traveltime.

Furthermore, we do not agree that FTR para. 1-4.3 or our decision in 55 Comp. Gen. 192 can be read as automatically entitling an employee to full reimbursement for subsistence costs simply because those costs, when combined with mileage expenses, do not exceed the total constructive cost of travel by common carrier. The purpose of the cost comparison required by FTR para. 1-4.3 is to set an upper limit on the government's liability for an employee's travel expenses, rather than to vest employees with an absolute entitlement to those expenses which do not exceed constructive costs. See generally Frederick Benedict, B-195908, January 22, 1981; and James C. Meyers, B-181573, February 27, 1975. Furthermore, under the specific terms of FTR para. 1-4.3, quoted previously, the actual costs of a traveler's subsistence are reimbursable only to the extent that those costs are otherwise "allowable." Whether subsistence costs are allowable depends upon the various restrictions imposed by the FTR, one of which is the prohibition against paying per diem or actual subsistence expenses during traveltime charged to annual leave.

Based on the foregoing considerations, we hold that an employee who elects to travel by POV and is charged annual leave for the excess traveltime involved may not

be reimbursed subsistence expenses for that traveltime, even if his total actual travel costs are less than the total constructive costs of travel by common carrier. Therefore, since Mr. Nobles was charged annual leave for his traveltime on June 4, 1984, he is not entitled to reimbursement for the subsistence expenses he incurred on that day.

Accordingly, Mr. Nobles' claim for subsistence expenses may not be paid.

Milton J. Socolar

for Comptroller General
of the United States