



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Mary E. Toya, et al. - Per Diem - Temporary Duty
Located at or Near Headquarters

File: B-234346

Date: June 26, 1989

DIGEST

Per diem was denied to employees who were temporarily assigned as examiners and observers under the Voting Rights Act and who stayed at a motel at or near their permanent duty station. The Federal Travel Regulations expressly prohibit employees from receiving per diem at their permanent duty stations. Where the temporary duty station is outside, but within a short distance of, the permanent duty station, the agency has discretion to determine whether per diem should be authorized.

DECISION

The Office of Personnel Management (OPM) requests our decision regarding the payment of per diem to employees who perform temporary duty at or near permanent duty stations.^{1/} For the reasons stated below, we conclude that the employees may not be paid per diem at their permanent duty station but may be paid per diem for temporary duty near their permanent duty station within the discretion of the agency.

BACKGROUND

The request from OPM states that certain federal employees are temporarily assigned by OPM as examiners and observers under the Voting Rights Act to assist the Department of Justice in preventing practices and procedures which may deny citizens their right to vote on account of race, color, or language. These assignments may involve OPM employees or employees from other federal agencies.

^{1/} This request was submitted by Christopher H. Flaggs, Chief, Financial Management Division, OPM.

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In a typical situation, the teams of examiners and observers must report on the day preceding the election to the team headquarters (generally a hotel or motel) for training, briefings, or other administrative matters from 1 p.m. to 10 p.m.

On the day of the election, the observers must arrive at the polling places one-half hour before they open. Depending on the location of the polling place, the road conditions, and the weather, the teams sometimes depart the team headquarters as early as 3:30 a.m. in order to be in place by 5:30 a.m. These observers must stay in the polling places until they are officially closed, generally between 7 p.m. and 8 p.m., and then return to the team headquarters where they must prepare written reports which are reviewed by a Department of Justice attorney.

Sometimes the employees who are selected as examiners or observers have their permanent duty stations in the same or nearby locations to their Voting Rights Act assignments. This frequently occurs in the southwest area of the United States where fluency in various American Indian languages is required to enforce the Voting Rights Act. Most federal employees with such language skills are employed by OPM or other agencies in that area. Since it is inconvenient for the individuals performing this temporary duty to return home each night, OPM has always reimbursed the employing agency for the employees' expenses incurred as a result of remaining at a motel/hotel designated as the team headquarters. However, the Bureau of Indian Affairs (BIA) office in Albuquerque recently questioned the payment of per diem to BIA employees who participated in a Voting Rights Act assignment and who stayed in an Albuquerque hotel. Therefore, OPM asks us to determine an employee's entitlement to per diem during these assignments at the permanent duty station or near the permanent duty station.

OPINION

The statute authorizing the payment of per diem to federal employees refers to travel away from the employee's designated post of duty, home, or regular place of business. 5 U.S.C. § 5702(a)(1) (Supp. IV 1986). Under the implementing regulations, federal employees are expressly prohibited from receiving per diem at their permanent duty stations. See Federal Travel Regulations (FTR), para. 1-7.4a.2/ An employee's permanent duty station is synonymous with his

2/ FTR (Supp. 20, May 30, 1986), incorp. by ref.,
41 C.F.R. § 101-7.003 (1987).

"official station or post of duty" which is defined by regulation as the corporate limits of the city or town in which the officer or employee is stationed. FTR, para. 1-7.4a.

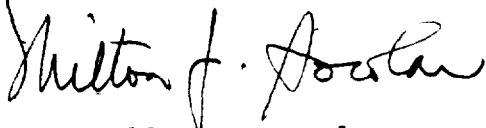
Consistent with the above regulation, we have denied claims for lodging expenses under circumstances similar to those in the present case. In Richard Washington, B-185885, Nov. 8, 1976, we considered the claim of an employee who was responsible for the arrangements for a conference held at his permanent duty station, and we disallowed his claim for the hotel room he occupied in order to carry out his convention duties. Similarly, in 53 Comp. Gen. 457 (1974), we denied the lodging expenses claimed by an employee for the nights he stayed in a hotel within the corporate limits of his duty station while serving as a tour guide.

Thus, we have consistently held that, in the absence of specific statutory authority, the government may not pay subsistence expenses or per diem to civilian employees at their headquarters, regardless of any unusual conditions involved. 57 Comp. Gen. 778, 781 (1978); B-182586, Dec. 17, 1974. Furthermore, where the temporary duty is performed outside the corporate limits of the city or town in which the employee is stationed, but within a short distance of his official duty post, the agency may define a radius or commuting area within which per diem will not be allowed for travel within one calendar day. FTR, para. 1-7.4a (Supp. 20, May 30, 1986).

On the other hand, we have allowed per diem where the temporary duty was performed outside the corporate limits of the permanent duty station and where the assignment required the employee's presence during such hours as to render daily travel between the temporary duty point and residence impracticable, thus putting the employee to greater subsistence expense than ordinarily incurred at the headquarters. See Joyce Price, B-228687, Dec. 5, 1988; Jon C. Geist, B-189731, Jan. 3, 1978.

In this case it appears from the vouchers submitted with the request that OPM paid for the hotel rooms directly and that the claims in dispute are for meal expenses for the 1- to 2-day period. In accordance with the above discussion, there would be no authority to reimburse employees whose permanent duty station was Albuquerque for subsistence expenses incurred in Albuquerque, absent specific statutory authority for such payments. We also question OPM's authority to contract for rooms for those employees whose permanent duty station is the same as the temporary duty assignment. See 60 Comp. Gen. 181 (1981). On the other

hand, if the subsistence expenses were incurred outside of the Albuquerque corporate limits, reimbursement may be authorized under circumstances similar to those in Price and Geist, cited above.

for 
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