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**DECISION**



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

**FILE:** B-200750

**DATE:** August 4, 1981

**MATTER OF:** Robert L. Singson - Per Diem -  
Lodgings Furnished by Government

- DIGEST:**
1. Ordinarily when a Government contracting officer arranges to have a hotel room made available at no charge to an employee traveling on temporary duty, he is essentially acting as the employee's agent. Since a contracting officer may not do indirectly for an employee that which a statute or regulation forbids the employee from doing directly, in such circumstances the lodging expenses incurred by the Government together with the per diem allowed the employee for meals and incidentals may not exceed the maximum per diem rate prescribed by statute or regulation. B-195133, January 19, 1981, 60 Comp. Gen. \_\_\_\_.
  2. Occasionally, the Government may be required to purchase or lease quarters for rent-free use by employees on temporary duty because commercial lodgings are unavailable or unsuitable. The expenses incurred in obtaining and maintaining the Government-controlled quarters in those situations need not be taken into account in establishing a per diem rate to cover an employee's meals and incidental expenses. If a special flat per diem rate is not established, the amount payable is the allowance prescribed by the Federal Travel Regulations for meals and incidental expenses under the "lodgings-plus" system of computing per diem.
  3. The Department of the Interior leased camp trailers in the summer of 1980 for use by employees detailed to a drilling project in Wyoming. Department officials reasoned that because the Government's average daily expense for providing a trailer was computed at \$21 and the maximum statutory per diem rate was then \$35, the cash per diem allowable

*[Propriety of Supplemental Travel Voucher Payment]*  
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to an employee for meals and incidentals could therefore not exceed \$14. However, since the trailers were Government quarters, rather than commercial lodgings rented indirectly on behalf of the employees, that limitation should not have been applied and a per diem rate should instead have been set commensurate with the employees' subsistence needs exclusive of the expense of those quarters.

This action is in response to correspondence received from the Certifying Officer of the Water and Power Resources Service (Pacific Northwest Region), United States Department of the Interior, requesting an advance decision on the propriety of making payment on a supplemental travel voucher in the amount of \$19 submitted by Mr. Robert L. Singson, an agency employee who claims additional per diem of \$2 for each day of a 9-1/2-day temporary duty assignment performed at Jackson Lake, Wyoming, between August 12 and 21, 1980. Our decision in this case will also apply to the computation of per diem for several other employees on temporary duty in the same circumstances during the summer of 1980. We have concluded that the additional amounts claimed may be paid.

The Certifying Officer indicates that the Department of the Interior detailed crews of employees to Jackson Lake, Wyoming, to conduct drilling operations for 4 months during the summer of 1980. The Department arranged to have camp trailers brought to Jackson Lake for the summer to accommodate the drilling crews, since commercial lodgings at that place were costly and difficult to obtain. The trailers were leased from a private firm in Caldwell, Idaho, transported to the drilling site in Wyoming by that firm, and placed on rented lots in a trailer park near Jackson Lake.

At that time the maximum per diem rate authorized by statute for travel inside the continental United States was \$35. Employees furnished with camp trailers at Jackson Lake at no personal out-of-pocket expense were paid reduced per diem at the rate of \$14 to provide for their meals and incidental expenses. The \$21 reduction represented the average daily expense the Department had incurred for installing one camp

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trailer at Jackson Lake during the 4-month drilling season, computed on the basis of the total costs involved in: (1) leasing all the trailers, (2) transporting them to the drilling site, and (3) renting lots for them in a trailer park at that site.

Drilling crews worked on rotating details at Jackson Lake throughout the summer of 1980. Mr. Singson served on several of those details. He lived in one of the Government-leased camp trailers while on detail, and the \$19 supplemental travel voucher he has submitted for the 9-1/2-day period between August 12 and 21, 1980, covers one such detail. He suggests that he should have been paid per diem at the rate of \$16 rather than \$14, and he is claiming the \$2 difference for each day of that detail.

Essentially, Mr. Singson questions the correctness of the method used by Department officials in arriving at a determination that the maximum \$35 per diem rate should have been reduced by \$21 in his case due to his use of a Government-leased camp trailer. He notes that by reducing the per diem rate by \$21, the Department was, in effect, passing on the costs it incurred in leasing, transporting, and parking the trailers to the employees who resided in them. While he does not necessarily object to including the total costs of leasing the trailers and parking lots in the computation used by Department officials to arrive at an average daily lodging expense, he suggests that the costs of transporting the trailers between Caldwell, Idaho, and Jackson Lake, Wyoming, should have been excluded from the computation. He notes that if the transportation costs had been excluded from the computation, the average daily lodging expense would have amounted to \$19 rather than \$21. He further notes that if the per diem rate had been reduced by only \$19, his daily allowance for meals and incidental expenses could have been increased from \$14 to \$16 without exceeding the \$35 statutory maximum. He therefore suggests that he could and should have been paid that additional \$2 in per diem for each day he was on detail at Jackson Lake.

In requesting an advance decision in this case, the Certifying Officer generally questions whether the Department used the correct method in establishing a per diem rate for members of the drilling crews, and whether any

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proper basis may exist for making payment on the voucher submitted by Mr. Singson.

At the time in question, the statute which establishes a per diem rate, 5 U.S.C. 5702, provided in pertinent part:

"(a) Under regulations prescribed under section 5705 of this title, an employee while traveling on official business away from his designated post of duty, or in the case of an individual described under section 5703 of this title, his home or regular place of business, is entitled to (1) a per diem allowance for travel inside the continental United States at a rate not to exceed \$35 \* \* \*."

Normally, an individual employee on temporary duty is responsible for obtaining and paying for his own lodgings and meals. The employee then submits a voucher which details his expenses, and he is reimbursed on the basis of the voucher. Regulations in effect in August 1980 provided that when lodgings are required, per diem shall be established on the basis of the average amount the traveler pays for those lodgings, plus an allowance of up to a maximum of \$16 for meals and incidental expenses, subject to the above-quoted statutory limitation of \$35 prescribed by 5 U.S.C. 5702(a). See Federal Travel Regulations (FTR) para. 1-7.3, FPMR 101-7, Temp. Reg. A-11, Supp. 4, April 1977. This is known as the "lodgings-plus" system of computing allowable per diem.

When it is known in advance that Government-procured lodgings will be furnished to the employee at no personal expense for the entire trip, however, the "lodgings-plus" system is normally unsuitable. Rather, a specific per diem rate should be established in advance under FTR para. 1-7.3c(3), FPMR 101-7, Temp. Reg. A-11, Supp. 4, April 1977.

Ordinarily when a Government contracting officer arranges to have a hotel room or similar commercial lodgings made available to an employee during a temporary duty assignment, he is primarily acting on the employee's behalf. The room rent is paid from appropriated funds and the employee incurs

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no out-of-pocket expense, so that under the above-cited provisions of the Federal Travel Regulations the "lodgings-plus" method of computing per diem is normally inappropriate. Nevertheless, since the contracting officer is essentially acting as an agent of the employee in procuring the lodgings, and it is a well established rule that a contracting officer may not do indirectly for an employee that which a statute or regulation forbids the employee from doing directly, we have held that in such circumstances the expenses incurred by the Government for commercial lodgings together with the per diem allowed the employee for meals and incidentals may not exceed the maximum per diem rate prescribed by statute or regulation. See B-195133, January 19, 1981, 60 Comp. Gen. \_\_\_\_\_.

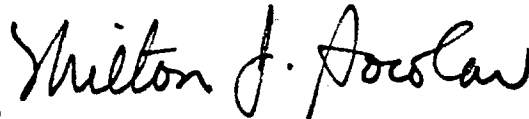
On the other hand, in certain other circumstances such as those presented in the present case, a contracting officer may be required to purchase or lease living quarters that remain under direct Government control for extended periods to be used exclusively and at no personal expense by agency employees on temporary duty assignments because commercial lodgings are unsuitable. In our view, the "lodgings-plus" method of computing per diem would also normally be inappropriate in such situations. However, in those circumstances the lodgings are under direct, exclusive Government control and are procured primarily as an item of necessary agency expense in the direct conduct of official business. It is our view that the expenses incurred by the agency in obtaining and maintaining those lodgings need not be taken into account in establishing the per diem allowable to an employee for meals and incidentals. Rather, it is our view that the agency should set a flat per diem rate commensurate with the employee's particular subsistence requirements exclusive of the lodging expenses in those circumstances. In the event the agency fails to establish a specific flat per diem rate to fit the particular situation, then the allowance prescribed for meals and incidental expenses under the "lodgings-plus" system would be payable. Compare B-195133, supra.

For the reasons stated it is our view that the employees were entitled to per diem for meals and incidentals without taking lodging expenses into account. Since the Department failed to establish a specific per diem rate to fit the requirements of the particular situation, we also conclude that the

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employees were entitled to per diem at the rate of \$16, the allowance then prescribed in applicable travel orders under the Federal Travel Regulations for meals and incidental expenses under the "lodgings-plus" method of calculating per diem.

Accordingly, we allow Mr. Singson's claim for additional per diem at the rate of \$16 rather than \$14. The voucher is returned for payment, if otherwise correct.

A handwritten signature in black ink, reading "Milton J. Rowland". The signature is written in a cursive style with a large initial 'M' and 'R'.

Acting Comptroller General  
of the United States