



The Comptroller General  
of the United States

Washington, D.C. 20548

Blatch

## Decision

Matter of: Mary Ann Relford -- Per Diem  
File: B-224636  
Date: June 1, 1987

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### DIGEST

Agency's determination that employee cannot be paid per diem for temporary duty because her lodgings at the temporary duty site were also the residence or place of abode from which she commuted daily to her permanent duty station is sustained. Although the employee initially acted prudently in establishing a residence at the temporary duty site in view of her recurring assignments there, there is no explanation as to why she continued to lodge at the temporary duty site and commute to her permanent duty station after all temporary duty had ended. Accordingly, we cannot conclude that the agency's determination is incorrect. See FTR para. 1-7.6a and cases cited.

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### DECISION

This is a request from Michael J. McAuley, National Counsel, National Treasury Employees Union, for a decision concerning the claim of Mary Ann Relford for per diem for the period June 3 through August 30, 1985.<sup>1/</sup> The agency has denied her claim because it found that she had established a residence at the temporary duty site from which she commuted daily to her permanent duty station. We sustain the agency's denial of her claim.

### FACTS

Prior to July 2, 1984, Ms. Relford was a tax auditor at the Terre Haute, Indiana office of the Internal Revenue Service.

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<sup>1/</sup>This is a labor relations matter filed pursuant to 4 C.F.R. Part 22 (1986). The agency was served with a copy of the union's submission but has filed no response or comments. Accordingly, this is considered a joint request. 4 C.F.R. § 22.7(b) (1986).

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On July 2, 1984, she was selected for promotion to the position of revenue agent in Lafayette, Indiana. She accepted the position but, as noted below, did not report for duty at Lafayette at that time.

From July 2 to August 10, 1984, she was detailed to Cincinnati to teach a tax auditor course. Thereafter, from August 15, 1984, to January 31, 1985, she was assigned to Indianapolis on a combination work and training detail. She was informed at that time that after a short period at her new permanent duty station in Lafayette, she would have to return to Indianapolis to continue her training.

Accordingly, she and her daughter lodged in Indianapolis; first at a hotel, then at a rented condominium, and later at a rented house. Her daughter attended school in Indianapolis. The union states that Ms. Relford moved only a few belongings such as beds and a television to Indianapolis. She left the bulk of her household goods in Terre Haute. She claimed and was paid per diem for this period.

On February 1, 1985, Ms. Relford reported for duty at her permanent duty station in Lafayette, but worked there only 2 or 3 days a week. The other half of the week, she reported to Indianapolis to finish up her assigned cases there. During this period, she and her daughter continued to occupy lodgings in Indianapolis and she commuted to Lafayette 2 or 3 days per week.<sup>2/</sup> She did not claim per diem for this period because her supervisor told her that the Federal Travel Regulations precluded her from receiving per diem if she did not move to Lafayette, her permanent duty station. As expected, from June 3 to August 30, 1985, Ms. Relford was again detailed to Indianapolis for training.

The record indicates that Ms. Relford continued to lodge in Indianapolis and commute to Lafayette even after her temporary duty in Indianapolis was over. She and her daughter continued to occupy the same house in Indianapolis and apparently never obtained a permanent residence in Lafayette. In June 1986, Ms. Relford obtained other employment in Terre Haute and left the service of IRS.

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<sup>2/</sup>The union states that Ms. Relford commuted approximately 45 miles between Indianapolis and Lafayette. The atlas lists this distance as 66 miles.

Thus, from August 1984 through June 1986, Ms. Relford occupied lodgings in Indianapolis, with only minimal furnishings. She left her remaining goods in Terre Haute and returned there almost every weekend.<sup>3/</sup> She owned a home in the Terre Haute area and, when that home was rented out, she maintained a residence at the second floor apartment at the home of her parents. She also operated an approved outside small business in Terre Haute. She hoped to return to Terre Haute completely as soon as an opening as a revenue agent occurred in the Terre Haute office of IRS.

Ms. Relford submitted a voucher for per diem for the period June 3 - June 30, 1985, and \$1,137.94 was ultimately paid on that voucher. However, her vouchers for July and August were returned unpaid and the agency has apparently advised her that it seeks recovery of the amount they now believe was incorrectly paid on the June voucher.

#### POSITION OF THE PARTIES

The agency's position that Ms. Relford is not entitled to per diem for the period June through August 1985 is based upon section 312(1) of the Internal Revenue Manual (IRM), which provides that per diem is prohibited at either an employee's permanent duty station or the place of residence from which he or she commutes daily to the official station. The agency determined that Ms. Relford had made Indianapolis her residence and, therefore, she was not entitled to per diem for periods of temporary duty at Indianapolis.

The union argues that the actual residence of Ms. Relford was Terre Haute, not Indianapolis, and goes into some detail describing the many personal and legal ties Ms. Relford has to the community of Terre Haute. The union argues that since Terre Haute was Ms. Relford's residence, the IRM provision referred to above does not apply and she is entitled to per diem.

Ms. Relford filed a grievance contesting the agency's position and the record contains a copy of the agency's final decision on the fourth-step grievance meeting. The

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<sup>3/</sup>The union states that Terre Haute is approximately 65 miles from Indianapolis and 60 miles from Lafayette. The atlas gives the distance between Terre Haute and Indianapolis as 71 miles and the distance between Terre Haute and Lafayette as 84 miles.

union advises that arbitration has not been invoked because the matter has been referred to the Comptroller General.

#### DISCUSSION

We first point out that the fact that Ms. Relford maintained a residence in Terre Haute for the entire period of her assignments to Indianapolis and Lafayette is not determinative of her entitlement to per diem. The agency did not assign her to Terre Haute at any time after August 1984. Her reasons for continuing to maintain a residence after that were purely personal and are unrelated to any entitlements she may have as a result of the government's actions in assigning her to Lafayette and Indianapolis. Employees are, of course, free to maintain a second residence away from their duty station if they wish, but the government is not responsible for any additional costs or inconvenience arising out of the maintenance of that second residence.

Secondly, we point out that the IRM regulation relied upon by the agency is based upon paragraph 1-7.6a of the Federal Travel Regulations (FTR) (Supplement 1, September 28, 1981), which provides, in pertinent part, as follows:

"a. No allowance at permanent duty station. Per diem instead of subsistence may not be allowed an employee either at his/her permanent duty station or at the place of abode from which he/she commutes daily to the official station. \* \* \*

The difference in terms--"residence" in the IRM provision and "place of abode" in the FTR provision--is also not determinative of Ms. Relford's entitlement to per diem.

Whether the term used is residence or place of abode, the purpose of the FTR provision and the corresponding IRM provision is to preclude the payment of per diem at the employee's permanent duty station or, when the employee chooses to live at a location away from the permanent duty station and commute to his permanent duty station, to preclude payment of per diem at that location. Per diem is precluded at these locations because the purpose of per diem is to compensate an employee for additional expenses incurred when the government assigns him to duty away from the location of the residence which he or she maintains in connection with the permanent duty station. Frederick C. Welch, 62 Comp. Gen. 80 (1982).

In view of the above, the issue in this case is not whether Ms. Relford maintained a residence or place of abode in Terre Haute. (In fact, she maintained two residences or places of abode, one in Terre Haute for personal reasons, and one in Indianapolis in connection with her assignment there and her assignment in Lafayette.) Rather, the issue is whether her residence or place of abode in Indianapolis was maintained in connection with her permanent duty station in Lafayette or whether it was maintained solely because of her extended temporary duty in Indianapolis.

If her residence in Indianapolis was maintained solely because of her temporary duty there, and is not the residence she maintained in connection with her permanent assignment to Lafayette, she would be entitled to per diem for the 2 to 3 days per week she reported to Indianapolis during the period February through May 1985, and for the period of her training in Indianapolis for the months June through August 1985.<sup>4/</sup> If, however, her residence in Indianapolis was the residence from which she commuted daily to her official duty station in Lafayette, FTR para. 1-7.6a precludes per diem for either period.

There are facts in this case which would support either point of view. Ms. Relford initially obtained lodgings in Indianapolis because of her temporary duty assignment to that location. Moreover, she acted prudently in maintaining her residence or place of abode in Indianapolis and commuting to Lafayette half of each week for the period February through May 1985, since she worked the other half of each week in Indianapolis and knew that she would be reassigned there shortly for another 3 months of training. Were these the only relevant facts, it would be difficult to conclude that she was not entitled to per diem. Compare Nicholas G. Economy, B-188515, August 18, 1977.

However, as noted by the agency, even after all of her temporary duty in Indianapolis was concluded, Ms. Relford continued to lodge in Indianapolis and commuted daily to Lafayette. She never established a residence in Lafayette and resided in Indianapolis (with weekends in Terre Haute) until she left the agency in June 1986. The record contains no explanation as to why Ms. Relford continued to reside in Indianapolis after her temporary duty there ended. Compare

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<sup>4/</sup> Robert E. Larrabee, 57 Comp. Gen. 147 (1977); James H. Quiggle, B-192435, June 7, 1979; Scott E. MacPherson, B-197227, July 28, 1980; and Robert Gray, B-203820, October 19, 1981.

Nicholas G. Economy, supra; and Gary R. Carini, B-203440,  
February 26, 1982. In the absence of further information,  
we cannot conclude that the agency was incorrect in  
determining that her residence in Indianapolis was the  
residence she maintained in connection with her permanent  
duty station in Lafayette, from which she commuted daily.

In view of the above, the agency's denial of per diem for  
July and August 1985 is sustained. There remains the  
question of the \$1,137.94 already paid based on the voucher  
for June 1985. Based upon the present record, payment of  
this amount is erroneous and subject to recoupment. We note  
that the record does not state when this payment was made.  
If the payment was made on or after December 28, 1985, it  
may be considered for waiver pursuant to 5 U.S.C. 5584, as  
amended by Public Law 99-224, 99 Stat. 1741-1742,  
December 28, 1985. See B-197290, February 24, 1986.

*for*   
Comptroller General  
of the United States