

Putnam
149113



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of : Jay D. Cronk and Maxwell E. Harden
File: B-251142
Date: April 21, 1993

DIGEST

Two agency employees took a day of informally approved annual leave after an authorized rest stop upon completion of an overseas temporary duty assignment. Since an agency has the discretionary authority under 41 C.F.R. § 301-7.11(a) (1991), to authorize or approve rest stops, and since it is Department of Defense policy to negate a rest period when taken in conjunction with annual leave, reimbursement of per diem for the rest period is not authorized. See 2 JTR paras. C1058-3 and C2000, Feb. 1, 1991, and May 1, 1989, respectively.

DECISION

This decision is in response to a request by Jay D. Cronk and Maxwell E. Harden, employees of the National Security Agency (NSA), Department of Defense (DOD), as to their entitlement to per diem for an authorized rest period which occurred prior to their taking of a day of annual leave upon completion of an overseas temporary duty assignment.¹

Messrs. Cronk and Harden performed temporary duty overseas from July 19 to August 17, 1991. Their travel orders authorized each of them a 1-day rest stop in Hawaii on the outgoing and return trips. The travel orders did not authorize annual leave at any point during their temporary duty assignment. Their request for 1 day of annual leave on the return trip to the continental United States (CONUS) was informally approved.

Messrs. Cronk and Harden stopped in Hawaii for 1 day en route to their overseas assignment and were reimbursed for that rest stop. On the return trip, however, since each employee took a day of annual leave following the authorized

¹The request was submitted by Mr. J. Stephen Turett, Comptroller, NSA, Serial: N-074-92.

1-day rest period, NSA officials disallowed reimbursement of per diem for the rest period.

Paragraph C1058-3, Joint Travel Regulations (JTR), Volume 2, Feb. 1, 1991, provides that, when travel is direct between an authorized origin and destination point separated by several time zones in excess of 14 hours flight time and either the origin or destination point is outside CONUS, a rest period not in excess of 24 hours may be authorized or approved.²

Based upon DOD's interpretation of this paragraph, NSA concluded that the word "direct" means uninterrupted. The agency states that once an employee interrupts normal scheduling by the taking of annual leave, the employee's entitlement to a rest stop is negated. NSA officials state that they have consistently applied this interpretation to all travel involving rest periods in determining the traveler's entitlement to reimbursement of per diem. They, therefore, denied per diem to Messrs. Cronk and Harden for the rest period on August 14, 1991.

Messrs. Cronk and Harden state that they were not aware and were not advised that annual leave taken immediately after an authorized rest stop negates the payment of per diem for the rest period. Therefore, they request reimbursement of per diem and transportation costs to and from the airport on the stopover day. They acknowledge personal responsibility for their lodging, meals, and other expenses incurred on August 15, the day annual leave was taken.

This Office has interpreted the previously discussed regulations as granting agencies a broad degree of flexibility in applying their provisions.³ The term "direct" may refer to the direct route of travel, or in a broader sense, to travel that is continuous, without interruption.⁴ The FTR, 41 C.F.R. § 301-2.5(b) (1991) (2 JTR para. C2000, May 1, 1989), provides that when a person for his own convenience travels by an indirect route or interrupts travel by direct route, the extra expense shall be borne by him.⁵ Excess

²Similar language is contained in the Federal Travel Regulation (FTR), 41 C.F.R. § 301-7.11(a) (1991).

³Karels and Lynch, 70 Comp. Gen. 656 (1991); Kathleen Pinette and Warner J. Rhodes, 72 Comp. Gen. 3 (1992).

⁴See 41 C.F.R. § 301-2.5(b) (1991) and 2 JTR, para. C2000, May 1, 1989.

⁵See Laxman S. Sundae, B-185652, Dec. 28, 1976; Richard B. Gentile, B-188689, Feb. 7, 1978.

travel time that is not officially necessary is charged to annual leave.

Accordingly, we believe that it is proper for NSA to place limitations upon reimbursement of per diem for rest periods, i.e., by negating the rest stop where annual leave is taken during the period of travel. Although the two employees were not informed that, by taking such leave, they would forfeit their entitlement to per diem for the rest period, the failure to inform them does not establish a basis for disregarding the applicable regulatory provisions and established agency policy. It is a well established rule that, in the absence of specific authority therefor, the government is not liable for the erroneous actions of its officers, agents, or employees, even though committed in the performance of their official duties.⁶

Accordingly, Messrs. Cronk and Harden are not entitled to reimbursement of per diem for expenses incurred during the rest period on August 14, 1991.

JFH
James F. Hinchman
James F. Hinchman
General Counsel

⁶See Federal Crop Insurance Corp v. Merrill, 332 U.S. 380 (1947); Utah Power & Light Co. v. United States, 243 U.S. 389 (1917); Joseph Pradarits, 56 Comp. Gen. 131, 136 (1976); 44 Comp. Gen. 337 (1964).