

This law authorizes the Secretary of War, in his discretion, to make regulations for the payment of leave granted by law to employees at arsenals where such leave is not granted and the employees perform duty on the days they might have been granted leave. It gives to the employee no vested right to thirteen months' pay for twelve months' work. Nor does it authorize the employee, himself, to determine whether he will take leave or collect an additional month's pay.

Should conditions warrant, the Secretary of War could, by proper regulations, deny all leave; that is, for practical purposes, suspend the law granting leave and in lieu increase the pay of the operatives by one-twelfth.

The employees' rights under the act of July 9, 1918, are subject to the exercise of this discretion by the Secretary of War; and the employee's failure to apply for and be granted leave does not give rise to a valid claim for pay therefor by virtue of the act. No general regulations issued under the authority of the act of July 9, 1918, are known to this office, and in the absence thereof Miss Schnell can assert no rights under the act.

You are therefore advised that payment to Miss Schnell for leave earned but not taken prior to her separation from the service at the Quartermaster's depot at Jeffersonville, Ind., is not authorized.

TRAVELING EXPENSES—PER DIEM IN LIEU OF SUBSISTENCE.

Where travel regulations provide that a per diem in lieu of subsistence will be allowed only for continuous absence from official headquarters exceeding six hours each day, an employee absent from headquarters a total of more than six hours each day, but who reports to headquarters at intervals during the day so as to reduce his continuous absence to less than six hours, is in the status of an employee operating from a central office to near-by points in the surrounding country, the cost of transportation only being paid and is not entitled to per diem in lieu of subsistence.

Decision by Assistant Comptroller Foree, August 21, 1919:

Moses Sonnenberg applied June 28, 1919, for a revision of the action of the Auditor for the State and Other Departments in disallowing by certificate 18148, dated May 5, 1919, his claim for \$44 for 11 per diems at \$4 during October and November, 1918.

The appellant was in the employ of the United States fuel administrator for Westchester County, N. Y. The headquarters were at White Plains, from which place appellant was sent on trips to various other points in the county. On the dates involved in the appeal appellant, in going from one point in the county to another, had to pass through White Plains, his headquarters, and was required to

stop at the office on such occasions and report the results of his investigations to that hour and then proceed to the next point to be visited.

The auditor disallowed the claim on the ground that the travel regulations of the United States Fuel Administration allowed a per diem only for continuous absence from official headquarters exceeding six hours.

On each of the days in question appellant's absence from White Plains, counting from his first departure in the morning to his last return in the evening, exceeded six hours, the greatest period of absence being 7 hours and 45 minutes on November 14, and the shortest period of absence 6 hours and 30 minutes on October 14. On the latter date he was in White Plains and at the office of the fuel administrator twice during the day and on November 14 once during the day. These are typical of the other days involved.

It would appear, therefore, that on the days in question he was more nearly in the status of an employee operating from a central office to near-by points in the surrounding country, the cost of transportation only being paid, rather than in the travel status of an employee away from his official station for such a period of time as would cause the incurring of living expenses over and above those which he would be otherwise required to bear. This distinction seems to have been the purpose of the rule requiring a continuous absence of six hours or more from official station to entitle an employee to a per diem.

The auditor's construction of the regulations appears to be correct; his action is therefore affirmed, and a certificate of no differences will issue.

LEASE OF BUILDINGS IN THE DISTRICT OF COLUMBIA.

Unless an appropriation act in express terms authorizes a department or establishment of the Government to rent or lease buildings in the District of Columbia, the matter of obtaining quarters in the District of Columbia is for the consideration of the Public Buildings Commission, created by section 10 of the act of March 1, 1919, 40 Stat., 1269, with power to control and allot space in all owned or leased Government buildings in the District of Columbia with certain exceptions therein mentioned.

The provision for "leases" in the act of July 19, 1919, 41 Stat., 175, making appropriation for the Public Health Service, is not so specifically an authority to rent quarters in the District of Columbia as meets the requirements of the act of March 3, 1877, 19 Stat., 370, or in such express terms as to except the Public Health Service from the operation of section 10 of the act of March 1, 1919, 40 Stat., 1269, creating the Public Buildings Commission.

Comptroller Warwick to the Secretary of the Treasury, August 25, 1919:

I have your request of August 21, 1919, for decision whether quarters may be leased in the District of Columbia to provide additional accommodations for the officers and clerks of the Public Health Service who are employed under authority of section 11 of the act of March 3, 1919, 40 Stat., 1302, and the appropriation made by the sundry civil act of July 19, 1919, 41 Stat., 175, which provides:

"For medical, surgical, and hospital services and supplies for war-risk insurance patients and other beneficiaries of the Public Health Service, including necessary personnel, regular and reserve commissioned officers of the Public Health Service, clerical help in the District of Columbia and elsewhere, maintenance, equipment, leases, fuel, lights, water, printing, freight, transportation and travel, maintenance and operation of passenger motor vehicles, and reasonable burial expenses (not exceeding \$100 for any patient dying in hospital), \$4,000,000."

The act of March 3, 1919, authorized the Secretary of the Treasury to provide hospital and sanatorium facilities for discharged sick and disabled soldiers, sailors, and marines, and it provided an appropriation therein similar in terms to that provided in the sundry civil act. There were other provisions in the said act for providing hospital facilities at various places for which appropriations were made. The specific provision in the appropriation quoted above for leases is not wholly clear as to whether the leasing is limited to hospital facilities or can be applied to the general purposes for which the personnel is appropriated for. I, however, think that so far as concerns the District of Columbia it is not so specifically an authority to rent there as meets the requirements of the act of March 3, 1877, 19 Stat., 370; and further, whatever doubt there may be therein would not justify an affirmative use for such rental in view of the provisions of section 10 of the act of March 1, 1919, 40 Stat., 1269, placing the control and allotment of space in owned or leased Government buildings in the District of Columbia under a public buildings commission. I think this act contemplates that the matter of acquiring quarters in the District of Columbia shall be for the consideration of this commission, and that unless authority appears in express terms to rent in the District of Columbia, the matter of obtaining quarters is for the consideration of that commission and is not to be granted by construction of an appropriation act.

INCREASE OF COMPENSATION OF CIVILIAN EMPLOYEES.

A teamster employed under a contract for personal services at a stipulated rate per diem contingent upon a further contract to furnish his own equipment, payment for which on a per diem basis is made by a different voucher, is not a civilian employee of the United States within the meaning of the act of March 1, 1919, 40 Stat., 1267, granting increased compensation during the fiscal year ending June 30, 1920, at the rate of \$240 per annum.

Comptroller Warwick to the Secretary of War, August 25, 1919:

I received on August 14 your letter of August 9, requesting a decision of the question presented by the commanding officer of the Rock Island Arsenal, in letter dated June 17, 1919, stated as follows:

"2. This arsenal employs a number of teamsters and the services of the majority of them may be considered as continuous. Whenever civilian employees are engaged as teamsters at this arsenal two separate agreements are entered into, viz:

"(a) As civilian employees, they follow the prescribed civil service procedure, by filling out the required civil service application blanks, etc., and upon entering the service they are taken up on the pay rolls for their personal services only.

"(b) In addition, they agree to furnish a team, harness, and necessary vehicles required for the work in hand, and at a price determined at the time they are hired. The payments for the use of team and equipment are treated strictly as of a nonpersonal nature, and are made upon the execution of separate vouchers. In other words, the pay for the personal services of the teamster is not intermingled with the pay for the nonpersonal services of the team and equipment. It frequently happens that the team and equipment is not the property of the teamster, but belongs to a third party. In such cases, the vouchers in payment for the nonpersonal services are made out in the names of the individuals or firms who own such equipment.

"3. In view of the manner in which this arsenal is handling its transactions with civilians engaged as teamsters, it is thought that where an employee is qualified to receive the increased compensation, the fact that he furnishes a team and equipment (for which he is paid separately) should not preclude his participating in such increased compensation.

"4. Instructions are therefore requested as to whether or not it will be proper to pay increased compensation to the teamsters at this arsenal, in accordance with section 7 of the act approved March 1, 1919, 40 Stat., 1267, granting increased compensation during the fiscal year ending June 30, 1920, at the rate of \$240.00 per annum?"

It has been held in 20 Comp. Dec., 137, quoting from the syllabus:

"Where compensation for personal services is so intermingled with compensation for nonpersonal services that it can not be separated therefrom, as in the case of a person employed by the Government as a teamster, who furnishes his own team and vehicle, no payment can be allowed for holidays, for leave of absence, or for time lost on account of personal injuries."

The question is whether, by paying the contractor for his personal services on the pay rolls and by a separate agreement paying him for the use of his equipment, he is, for his personal services, given the status of an employee.

Fundamentally, there is one agreement, to team; separated into two contracts, one to accept employment as a teamster at a stipu-