DECISION

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

40949

JUL 30 1975

FILE: B-183886 DATE: 97334

MATTER OF: Retroactive correction of authorized mileage rate for Forest Service employees

DIGEST: Travel authorization of Forest Service employees may be modified to correct a mileage rate that was erroneously fixed at a lower rate than authorized under the agency's travel manual based on the FTR. The employees were originally authorized the lower rate (5 cents per mile) on the erroneous basis that they were "committed" to use a Government vehicle. Under the agency's travel manual they were entitled to the higher rate (9 cents per mile) since they were in a travel status on temporary duty for over 15 consecutive days and therefore were not "committed" to use a Government vehicle.

This matter concerns a request by an authorized certifying officer for an advance decision on the travel claims for 11 employees of the Forest Service, Department of Agriculture. The claims stem from a general travel authorization covering the 11 employees and authorizing their use of privately owned automobiles to perform temporary duty travel with a mileage allowance at the rate of 5 cents per mile. The employees claim reimbursement at the higher rate of 9 cents per mile, and the Forest Service recommends approval of the claims at that rate. The matter was submitted for our decision since allowance of the claims would require retroactive modification of the travel authorization originally issued for these employees. It is noted that the request for an advance decision lists by name 10 employees who are making claims. In the enclosures there are 11 vouchers, one of which is for Mr. George L. Bard whose name is not listed in the request for an advance decision. However, since his claim is similar to the other claims this decision will also be applicable to his case.

Under 5 U.S.C. § 5704 (1970) employees properly authorized to use their privately owned automobiles on official business are entitled to reimbursement at a rate not to exceed 12 cents per mile. Allowances under the cited statute are payable in accordance with paragraph 1-4.4 of the Federal Travel Regulations (FPMR 101-7) (May 1973). In addition, the employees in this case

are subject to the travel allowance policies set forth in the Forest Service Manual, more specifically paragraphs 6543.03 and 6543.04.

The original travel authorization specified 5 cents per mile on the basis of paragraph 6543.04b-3a in the cited manual which provides in substance that the 5-cent rate is the maximum rate authorized when the employee is "committed" to use a Government-owned vehicle, but for personal reasons prefers to travel in his own vehicle. This administrative policy is derived from FTR para. 1-4.4(c) (May 1973), which provides:

> "c. Partial reimbursement when Government automobile is available. When an employee who is committed to using a Government-owned automobile or who because of the availability of Government-owned automobiles would not ordinarily be authorized to use a privately owned conveyance in lieu of a Government-owned automobile nevertheless requests use of a privately owned conveyance, reimbursement may be authorized or approved at the rate of 5 cents per mile, the approximate cost of operating a Government-owned automobile, fixed costs excluded."

Subsequent to performance of the travel in question, the Forest Service concluded that an administrative error had been made in prescribing the lower rate since the subject employees were not "committed" to using a Government-owned vehicle for their travel. Paragraph 6543.03g-3b(1) of the cited manual provides in substance that an employee is not considered "committed" to use a Government vehicle when the travel in question requires him to be away from his official station 15 or more consecutive days. The record shows that the 11 employees were in a continuous travel status for more than 15 consecutive days with the exception of Mr. David T. Mahoney. The voucher submitted by Mr. Mahoney shows that he left his official station at Littleton, New Hampshire, on August 2, 1974, arriving at his official station at Bartow, West Virginia, on August 3, 1974. This would indicate a permanent change of station and if this is so Mr. Mahoney would apparently be entitled to reimbursement at a mileage rate provided in paragraph 6543.5 of the cited manual. Thus the agency asserts that the 9-cent rate should have been authorized to conform to agency policy and that the original travel authorization should be so modified.

Our decisions have frequently cited and relied on the general rule that legal rights and liabilities in regard to travel allowances vest when the travel is performed pursuant to the travel authorization and that the authorization may not be revoked or modified retroactively so as to increase or decrease the rights and benefits which have vested or become fixed under applicable statutes or regulations. Exceptions have been made to correct apparent errors or to complete an incomplete travel order in accordance with the original intent of the official who issued the order. See 54 Comp. Gen. 638 (1975); 51 id. 736, 738 (1972); B-180970, November 7, 1974, and decisions cited therein. We believe that retroactive modification is also permissible in this case where the agency by its own admission initially misconstrued or misapplied its written policy guidelines in fixing a lower mileage rate than was mandated by statute, the FTR, and the Forest Service Manual.

Accordingly, with the exception in the case of Mr. Mahoney, since the applicable agency policy was not initially followed, we have no objection to an amendment of the travel authorization which would fix a mileage rate that is otherwise proper under the agency's policy guidelines and the FTR. Such an amendment would also validate mileage allowances previously paid at the 9-cent rate.

R.F.KELLER

Deputy Comptroller General
of the United States