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**DECISION**



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

**FILE: B-190508**

**DATE: May 8, 1978**

**MATTER OF: Allen W. Rotz - Temporary duty, per diem,  
lodging with relatives**

- DIGEST:**
1. Employee may not be paid per diem based on payment of \$17 per night for lodging with relatives notwithstanding that amount is reasonable in relation to cost of commercial accommodations and notwithstanding that employee may not have been advised by NSA that amounts reimbursable for lodging with friends or relatives must not only be reasonable but must also reflect additional expenses incurred by host as result of employee's stay. 55 Comp. Gen. 856 (1976).
  2. Where employee claims per diem based on payment of \$17 per night lodging provided by relative, employee may be paid only amount shown to reflect host's additional expenses in accommodating employee and, absent such showing by employee, agency may not reimburse amount which it in general determines to be reasonable. Such independent determination is tantamount to determination of a minimum allowance contrary to FTR para. 1-7.3c(2) and is in essence a determination to apply a specific per diem rate without compliance with FTR para. 1-7.3c(3).

By letter dated October 19, 1977, and assigned PDTATAC Control No. 77-30, the Per Diem, Travel and Transportation Allowance Committee has forwarded a request for advance decision submitted by the Chief, Finance and Accounting Office for the National Security Agency (NSA). The decision request relates to a reclaim for per diem in the amount of \$398 submitted by Mr. Allen W. Rotz, an NSA employee.

Mr. Rotz' claim for additional per diem arises in connection with a temporary duty assignment in Sudbury, Massachusetts, from February 28 to April 13, 1977. For the 44 days of that assignment he resided with a Mr. J. Joseph Rotz in a private residence.

On his voucher submitted April 27, 1977, Mr. Rotz claimed per diem under the lodgings-plus system based on lodging costs of \$17 per night, in support of which he submitted cancelled checks in the total amount of \$748 written to the order of J. Joseph Rotz. Based on its understanding of our decisions Matter of Clarence A. Foltz, 55 Comp. Gen. 856 (1976), and Matter of Barry A. Smith, B-184946, March 10, 1976, NSA reimbursed Mr. Rotz per diem predicated on lodging costs of \$7.95 per night, totaling \$350 for the 44 days of his temporary duty assignment. By letter of May 23, 1977, Mr. Rotz was advised that the lodgings portion of his claim had been so reduced pending his submission of information as to those factors which were taken into consideration in determining the amount paid to his host. On June 30, 1977, Mr. Rotz submitted a reclaim voucher for the \$398 portion of his payments to J. Joseph Rotz for lodgings that had been denied. Mr. Rotz was advised by NSA that his reclaim should be supported by cost data reflecting the increased costs incurred by his host as a result of his stay and that factors for consideration included "increased utility cost, additional help that may have been hired, additional work performed, purchase or rental of additional furniture \* \* \*."

By memorandum dated September 15, 1977, Mr. Rotz submitted the following estimate of increased costs incurred by J. Joseph Rotz as a result of his stay:

"\* \* \* Estimated increased utility costs (natural gas, electricity, water and sewer) \$56; maid service provided \$115.50; depreciation, wear and tear, damage to household goods \$45; bed linen service \$23; bath towel service \$23."

In addition he explained:

"I did not base my payment to J. Joseph Rotz on direct and increased costs because N411 did not advise me of such a requirement when I consulted with them before TDY TD701940. This December 1976 TDY, TD70194, was paid at the rate of \$17/day, the same rate as the claim in dispute, TD703764. I again reiterate that the only input I had from N411 was that my claim had to be reasonable and less than that of commercial accommodations. Considering the spaciousness and comfort

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of the accommodations, I believe that it was a good value, especially in comparison to the box-like rooms that one has difficulty finding at the standard housing per diem of \$19/day."

Inasmuch as the cost data submitted by Mr. Rotz indicates increased costs to his host of \$5.97 per day, an amount of \$1.98 per day less than the \$7.95 figure on the basis of which his initial voucher was paid, the finance and accounting officer asks whether NSA should initiate collection action to recover amounts of per diem paid to Mr. Rotz that are not justified on the basis of the cost data provided. Also, in view of the employee's argument that the \$17 amount on which his reclaim is predicated is reasonable in terms of the accommodations provided in the private residence, the finance and accounting officer asks whether Mr. Rotz may instead be reimbursed additional per diem.

The questions posed in connection with Mr. Rotz' reclaim relate to application of our decision 55 Comp. Gen. 856, supra, wherein we held that the claimant could not be paid a per diem allowance based on the \$14 daily amount paid for lodgings in noncommercial lodgings provided by friends or relatives in the absence of a showing that the amount claimed was reasonable and based on additional expenses incurred by the host as a result of the employee's stay. That decision adopted for purposes of application to per diem claims the principles established by 52 Comp. Gen. 78 (1972) for temporary quarters subsistence expenses claimed for lodgings provided by friends or relatives. While recognizing that charges for temporary quarters supplied by friends or relatives may be reimbursed where reasonable in amount, 52 Comp. Gen. 78, supra, defines the requirement of reasonableness in terms of an amount "considerably less than motel charges" and requires a correlation between the amount paid by the employee for such noncommercial lodgings and the additional costs actually incurred by the host to provide such lodgings. The holding in Barry A. Smith, supra, is to the same effect.

In support of his claim for additional per diem, Mr. Rotz argues that he was not advised by NSA that reimbursement for noncommercial lodgings was contingent upon the amount being other than reasonable and less than the cost of commercial accommodations, that the \$17 amount paid met both those

conditions and that in paying his host the amount in question and in submitting his claim he relied on the fact that he was paid per diem based on noncommercial lodging costs of \$17 per day in connection with a temporary duty assignment in December of 1976. Regarding payments of per diem prior to January 1, 1977, the finance and accounting officer explains:

"\* \* \* prior to 1 January, 1977 the travel regulation did not require the traveler to support his voucher with lodging receipts. The traveler was only required to provide information as to the total cost of quarters. Therefore, there was nothing to indicate whether the travelers had utilized commercial quarters or whether they had stayed in private quarters.

"This office did reimburse the claimant for one night's quarters in a private residence on the night of 8 December 1976 in the amount of \$17.00. A receipt was provided. Inasmuch as receipts were not then required the travel clerk was only concerned with the amount paid and disregarded the fact that the employee had stayed in a private residence; and although the amount claimed was paid, it did not establish that amount as being a reasonable amount to be paid by the traveler to private individuals for quarters for which reimbursement would subsequently be made."

The fact that similar claims may have been improperly reimbursed as a result of documentation requirements in effect prior to 1977 does not provide a basis for payment of Mr. Rotz' claim for additional per diem. Nor does the fact that he may have been inaccurately advised as to the conditions under which employees may recover amounts paid to friends and relatives for noncommercial lodgings warrant payment of the amount claimed. In this regard it is well established that erroneous advice given by its officers and employees cannot obligate the Government to pay amounts in excess of that permitted by applicable law and regulation.

Regarding Mr. Rotz' assertion that the \$17 amount paid his host represents reasonable reimbursement for the accommodations

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provided when compared with commercial rates, we specifically held in Matter of J. William Laude, B-189800, December 29, 1977, and in Barry A. Smith, supra, that reference to commercial rates and accommodations does not provide a measure of the reasonableness of amounts paid to friends or relatives for lodgings. In the Barry A. Smith case, we stated:

"Regardless of whether noncommercial lodgings with a friend or relative are secured in connection with a permanent change of station or a temporary duty assignment, we do not consider it necessary for an employee to pay the same amount for those lodgings that he would be required to pay for accommodations at a motel or other commercial establishment. In this regard, we are unable to agree with Mr. Smith's argument that the types of expenses incurred by one who provides lodgings in his private home to a friend or relative are the same as those incurred by a commercial establishment. In general, the expenses incurred by an individual in accommodating a friend or relative in his private home are similar to those he incurs in maintaining that home for his and his family's use. The presence of a guest would increase his use of utilities and household furnishings. However, the host would not incur certain expenses that a commercial establishment would incur, such as license fees, salaries of reservation personnel, advertising, etc. Therefore, while we recognize that a private host is put to some inconvenience in furnishing lodgings to a friend or relative and incurs some additional expenses, we are unable to agree with Mr. Smith's view that the cost of commercial lodgings reflects a fair standard of compensation."

For the foregoing reasons, Mr. Rotz may not be reimbursed additional per diem based on payment to his host of \$17 per day.

As suggested by the certifying officer, the documentation of additional costs to his host submitted by Mr. Rotz raises a

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question of the reasonableness of the \$7.95 amount used by NSA in reimbursing him per diem for the period from February 28 to April 13, 1977. We are advised that the \$7.95 figure was determined as follows:

"\* \* \* This amount was arrived at by this office endeavoring to estimate the value of extra work, cleaning, laundry, etc. performed by the host. Daily rates charged by cleaning and laundry maids in this area were used for cost data and commercial laundry rates in this area were checked to estimate laundry costs. We also endeavored to estimate increased utility costs and some allowance for depreciation.\* \* \*"

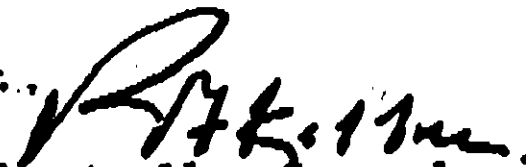
As a condition to reimbursement of amounts paid to friends or relatives for noncommercial lodgings, the decisions cited above require that a determination of the reasonableness of the amount paid be supported by a showing of actual costs incurred by the host. The independent determination by NSA of an amount which it deems to be reasonable reimbursement is not only inconsistent with that requirement but is tantamount to the determination of a minimum allowance for reimbursement for use of noncommercial lodgings. Paragraph 1-7.3c(2) of the Federal Travel Regulations (FTR) (FPMR 101-7) as amended by Temporary Regulation A-11, in effect at the date of Mr. Rotz' travel, specifically precludes the determination of a minimum allowance for lodgings under the lodgings-plus system since per diem costs reimbursable under that system are required to be based on actual lodging costs.

Given the fact that the meals and miscellaneous expenses portion of per diem reimbursement under the lodgings-plus system is a fixed dollar amount, NSA's determination of a specific amount for reimbursement in the absence of a cost breakdown furnished by the employees is essentially a determination of a specific per diem rate for application where noncommercial lodgings are used. Cf. Matter of Jack O. Padrick, B-189317, November 23, 1977. In the decisions cited above we have pointed out that the situation in which an employee lodges with friends or relatives may warrant the establishment of a specific per diem rate under the authority of FTR para. 1-7.3c(3). However, as a condition to prescription of a specific rate of per diem that

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paragraph requires a determination that the lodgings-plus method is not appropriate in the circumstances (authorization in writing of an exception to the lodgings-plus system), and the establishment of a specific per diem rate. In the case of travel by civilian employees of the Department of Defense, authority of individual activities to prescribe specific rates of per diem as an exception to the lodgings-plus system is further limited by 1 Joint Travel Regulations, para. C4552.

For these reasons, Mr. Rotz was improperly reimbursed per diem for the period from February 28 to April 13, 1977, based on hypothetical lodging costs of \$7.95 per night. His entitlement should be redetermined on the basis of the estimates which he has now provided insofar as they reflect actual costs to his host and are determined to be reasonable.

  
Deputy Comptroller General  
of the United States