12470 PLM-1

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

FILE: B-194372 DATE: January 8, 1980 DLG draft out

MATTER OF: Ard T. Johnson - POV Use Advantageous to Government

DIGEST: Employee, not covered by agreement, who traveled to FAA Academy may have his travel order amended to show that travel by privately owned vehicle (POV) was advantageous to Government if FAA determines it would be advantageous under criteria in collective-bargaining agreement. Agreement reflects determination that travel to FAA Academy under conditions stated therein is advantageous under Federal Travel Regulations. Unless there are valid reasons to find otherwise in a particular case, it would be arbitrary and capricious for FAA to treat employees not covered by agreement differently than those covered. AGC00030

This decision is issued at the request of Mr. William B. Peer, Counsel for the Professional Airways Systems Specialists (PASS). The question presented is whether the Federal Aviation Administration (FAA) may decide that certain travel by privately owned vehicle (POV) to the FAA Academy in Oklahoma City, Oklahoma, by electronic technicians and other personnel similarly situated, is not advantageous to the Government unless the individuals are covered by a collective-bargaining agreement. The question arises because the FAA has entered into an agreement with a union which states that the type of travel involved is advantageous to the Government when it is performed by employees who are covered by the agreement. The FAA declined to supply written comments on the matter. R DLG00887

The documents submitted by Mr. Peer show that Mr. Ard T. Johnson, an FAA employee, requested the amendment of his travel order to show that his travel by POV to the FAA Academy was advantageous to the Government since Article 19 of FAA's collective-bargaining agreement with the Federal Aviation Science and Technological Association, National Association of Government Employees (FASTA/NAGE) provides that certain travel to the FAA Acadamy by POV is advantageous to the Government. Mr. Johnson's request was denied on the basis that the Federal Labor Relations Council's (FLRC) decision 78A-26, October 16, 1978 (which is attached to Federal Personnel Manual (FPM) Bulletin 711-61, March 28, 1979) from which Article 19 was DLG 035-84 AGC00324

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derived, did not require the FAA to find POV travel to the FAA Academy as advantageous to the Government but stated only that the question of advantage to the Government was a negotiable matter. Although employees covered by FAA's agreement with FASTA/NAGE would have their travel by POV to the FAA Academy deemed to be advantageous to the Government, the FAA did not feel bound to treat Mr. Johnson's travel by POV as advantageous to the Government since he was not covered by the agreement.

For the reasons stated below we find that the travel involved should be treated as advantageous to the Government if it meets the criteria in the agreement.

BACKGROUND

The FLRC decision quoted our decision B-192258, September 25, 1978, which was rendered pursuant to its request for a ruling whether the then-proposed provision conflicted with the Federal Travel Regulations (FTR) (FPMR 101-7) and applicable Comptroller General decisions. Our decision held that a determination of advantage to the Government may be made only after consideration of the criteria set forth in para. 1-2.2c of the FTR (Temporary Regulation A-11, Supplement 4, April 29, 1977) that provides in pertinent part:

> "c. Presumptions as to most advantageous method of transportation.
>
> "(1) Common carrier. Since travel by common carrier (air, rail, or bus) will generally result in the most efficient use of energy resources and in the least costly and most expeditious performance of travel, this method shall be used whenever it is reasonably available. Other methods of transportation may be authorized as advantageous only when the use of common carrier transportation would seriously interfere with the performance of official business or impose an undue hardship upon the traveler, or when the total cost by common carrier would exceed the cost by some other method of transportation. The determination that another method of transportation would be more advantageous

to the Government than common carrier transportation shall not be made on the basis of personal preference or minor inconvenience to the traveler resulting from common carrier scheduling.

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"(3) Privately owned conveyance. Except as provided in 1-2.2d, the use of a privately owned conveyance shall be authorized only when such use is advantageous to the Government. A determination that the use of a privately owned conveyance would be advantageous to the Government shall be preceded by a determination that common carrier transportation or Government-furnished vehicle transportation is not available or would not be advantageous to the Government. To the maximum extent possible, these determinations and the authorization to use a privately owned conveyance shall be made before the performance of travel."

We stated, however, that the determination of advantage to the Government is primarily the responsibility of the agency concerned after considering the factors in para. 1-2.2c and we would not generally question such determinations. Accordingly, we held that if the FAA should determine that travel by FAA employees to the FAA Academy in a POV is advantageous to the Government the FAA may expend appropriated funds to pay for such travel. We cautioned, however, that the wording of the proposal before us was not restricted to training at the FAA Academy. Therefore, we limited our decision to the circumstances of that case involving training at the FAA Academy.

Subsequent to the rendition of our decision and FLRC decision 78A-26, the FASTA/NAGE-FAA agreement was amended to include the following:

"ARTICLE 19 - FAA ACADEMY TRAINING TRAVEL

"Section 1. The Parties recognize that the frequent assignment of airway facilities technicians to recurring training at the FAA Academy, leading to qualification

> and/or maintenance of qualification on certifiable systems and supporting sub-systems, creates an unusual situation not experienced by other travelers. It is further recognized that adequate Government-owned quarters and adequate off-hours local transportation are not provided. The Employer therefore agrees that, when such personnel (if employed in the contiguous 48 states) are issued a travel order to attend the FAA Academy for more than three consecutive weeks, such personnel shall be authorized the use of a privately owned vehicle. Such travel shall be deemed to be advantageous to the Government and per diem and mileage shall be paid at the rate applicable to such travel."

Article 19 became effective for travel from and to the FAA Academy for courses commencing on and after January 22, 1979.

OPINION

Nothing in either B-192258, September 25, 1978, or FLRC decision 78A-26, required the FAA to find POV use incident to training at the FAA Academy as being advantageous to the Government. Rather, those decisions hold that there is no legal bar to FAA making a determination of advantage to the Government under the facts in those cases.

However, notwithstanding the above, if an employee covered by the FASTA/NAGE-FAA agreement, who travels in a POV to the FAA Academy, is considered to be using the POV for the advantage of the Government, then an identically situated employee who is not covered by the agreement should also be considered to be using his POV for the advantage of the Government. The reason for this is that, although the FAA has the discretion to determine when POV use is advantageous to the Government, the FAA cannot exercise its discretion in an arbitrary or capricious manner. Employees who have identical travel situations should not be treated differently under FTR para. 1-2.2c merely because some are covered by a labor-management agreement and others are not. The only criteria for finding POV use advantageous to the Government are set out at para. 1-2.2c. Coverage under a collective-bargaining agreement is not one of the criteria. Once a determination is

made under para. 1-2.2c to find advantage to the Government in a given situation, an agency may not discriminate between classes of employees. Once the FAA decided certain factors created an advantage to the Government under the FTR, then the FAA is required to apply such a determination to other employees who meet those factors. The only exception to this would be if FAA could show that other circumstances militate against the finding of advantage in a particular case.

This is not to say that every employee must receive all of the benefits which an agency may confer on other employees through the labor-management bargaining process. We hold only that it would be arbitrary for the FAA to determine there is no advantage to the Government for POV use merely because Mr. Johnson is not covered by a collective-bargaining agreement when his travel would be found advantageous to the Government under FTR para. 1-2.2c were he covered by the agreement.

The record does not show exactly what Mr. Johnson's travel situation was. We do not know whether he was in training for 3 consecutive weeks at the FAA Academy or whether he was employed in the 48 contiguous states as is required by Article 19 for a finding of advantage to the Government. Assuming, however, that Mr. Johnson's travel met all of the criteria set out in Article 19 for finding POV use as advantageous to the Government, the FAA, having made a determination that travel in these circumstances is advantageous to the Government, should amend his travel orders unless there are particular facts which would justify a negative determination. See B-151457, May 23, 1963.

The matter is remanded to the FAA for a determination as to whether Mr. Johnson's POV use was advantageous to the Government.

Milton J. Socolar

For the Comptroller General
of the United States