

12545 PLM-I

**DECISION**



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

FILE: B-194792

DATE: January 16, 1980

MATTER OF: Lawrence C. Williams

DIGEST: Although two rates of per diem are shown on travel authorization, employee of U.S. Information Agency who served as Deputy Director of "USA-200 Years" Exhibit in Moscow is not entitled to additional per diem based on full country rate rather than on lower rate prescribed by "Exhibit Code" established by Agency to set rates for personnel involved with exhibits. Travel authorization cannot reasonably be interpreted to allow employee's choice of rates as he claims, Agency has documented its intent to authorize lower rate paid, and retroactive amendment would be permitted to bring travel authorization into accord with "Exhibit Code."

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This action is in response to an appeal by Mr. Lawrence C. Williams from our Claims Division's Settlement Certificate dated April 28, 1978, by which his [claim for additional per diem] was denied.

Mr. Williams, an employee of the U.S. Information Agency, is claiming additional per diem for the period of October 11, 1976 to December 18, 1976, incident to his assignment as the Deputy Director for the "USA-200 Years" Exhibit, in Moscow. While he was in Moscow, Mr. Williams occupied lodgings furnished by the Government, and therefore, his per diem rate was reduced by 50 percent in accordance with paragraph 154.2-2b, Volume 6 of the Foreign Affairs Manual.

Although Mr. Williams does not dispute that his per diem should have been reduced by 50 percent, he claims that his reimbursement should be based on the full country rate of \$53 rather than on the \$37 rate which the Agency states was dictated by an "Exhibit Code," established to set per diem rates for personnel serving at exhibits. Mr. Williams supports his claim by pointing out that his travel authorization did not indicate that he would receive a maximum of \$37 but, instead, led him to believe that he could choose between rates.

Authorization of Official Travel No. 6285186, issued September 21, 1976, provides for per diem to Mr. Williams as follows: "If necessary, you are authorized the hire of a room for official use. If room is one and the same as lodging, a deduction of 50 percent of the per diem

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rate will be made for each night's lodging furnished by the Agency, 6 FAM 157.2b; total not to exceed country per diem plus \$21 per each day." It also provides that, "While in the USSR, lodging will be furnished and paid by the U.S. Government. The per diem rate is reduced 50 percent or \$18.50 per diem shall be allowed for each day."

Paragraph 151 of Volume 6 of the Foreign Affairs Manual provides that, "Unless the travel authorization specifies a lower per diem rate, the maximum rate permitted by law or regulation for the locality and method of travel involved applies." Although the language in Mr. Williams' travel authorization could be read literally to provide a choice between \$18.50 and 50 percent of the higher rate, it would make little sense to allow a traveler a choice between a higher and lower rate. We believe that the language in question must be read to authorize a per diem payment of \$18.50 per day to Mr. Williams based on a rate of \$37.

The Agency has stated that the language in Mr. Williams' travel authorization concerning the hiring of a room for official business was erroneously added and that the travel authorization was intended to read as follows: "While in the USSR, and when lodging is furnished by the U.S. Government per diem will be reduced 50 percent to \$18.50 per day. Otherwise, the maximum per diem applicable while in the USSR will be \$37 per day." It is well established that legal rights and liabilities in regard to travel allowances vest once travel is performed under competent orders. While it is a general rule that travel orders may not be revoked or modified retroactively so as to increase or decrease an employee's allowances, we have recognized exceptions to that rule when an error is apparent on the face of the original orders, or the facts and circumstances clearly demonstrate that some provision previously determined and definitely intended has been omitted through error or inadvertence in preparing the orders. 44 Comp. Gen. 405 (1965); 48 Comp. Gen. 119 (1968); and 55 Comp. Gen. 1241 (1976). We have also allowed retroactive amendment of a travel order whose provisions are clearly in conflict with a law, agency regulation, or instruction. B-151457, May 23, 1963; B-161732, October 5, 1967; and B-171315, November 20, 1970.

The Agency states that its intention was to limit Mr. Williams' per diem to \$18.50 when he was in Moscow. In support of that statement it has submitted a Request for Travel clearly showing that per diem rate and its approval by several officials. Also, the higher per diem rate is not in accord with the "Exhibit Code." In view of the clear intent expressed in the Request for Travel, we hold that the \$18.50 rate was the intended rate and not the higher of the two


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rates shown on the travel authorization. Moreover, while the Agency could amend Mr. Williams' travel authorization to specifically establish the \$37 per diem rate, we do not believe an amendment is necessary. This is so since the showing of two rates merely created an ambiguity which has been resolved by the evidence showing the Agency's intent.

In his letter appealing the determination of our Claims Division Mr. Williams contends that an "Exhibit Code" was never established. The Agency states that the rates for personnel serving at exhibits were established at less than the maximum authorized per diem rate but only after a cost analysis was made, indicating that the amounts were sufficient to cover living costs. Also, Mr. Williams contends that the rates were set arbitrarily, with no cost analysis. In order to show the inadequacy of the \$37 per diem rate he submitted a voucher from 1972, showing an authorized per diem rate of \$40 for the time he spent in the USSR, and he pointed out that the hotel rooms were more costly in 1976 than they had been in 1972.

Paragraph 31.7, Volume 4 of the Code of Federal Regulations, which governs settlement of claims by the General Accounting Office, provides that the burden is on the claimant to establish the liability of the United States, and his right to payment. In light of the claimant's burden of proof, Mr. Williams' contentions, without supporting evidence, that the Exhibit Code did not exist and that the per diem rates were not set on the basis of a cost analysis, are not sufficient to establish his entitlement.

In view of the above the disallowance of Mr. Williams' claim by our Claims Division is hereby sustained.



For the Comptroller General  
of the United States