

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

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**FILE:** B-197381**DATE:** September 27, 1983**MATTER OF:** Jack R. Stickradt - Temporary Duty - Claim  
for Additional Actual Expenses**DIGEST:**

Employee was authorized to travel to Washington, D.C., to participate in hearings before Federal Service Impasses Panel as a union representative. Travel order provided departure date of July 25, 1981, for hearings to be conducted July 27 to August 1, 1981, and employee was paid actual subsistence expenses for those days. However, employee departed on July 22, 1981, and took annual leave for July 22-24, 1981, in order to spend more time preparing for hearings. Employee seeks expenses for these 3 additional days based upon advice he received upon completion of his travel from an agency employee in the travel section. Additional reimbursement is denied since it was neither authorized in advance nor approved later by proper agency official.

This is in response to a request from the American Federation of Government Employees (AFGE), for a decision concerning the claim of Mr. Jack R. Stickradt, an employee of the Department of the Air Force, Air Force Logistics Command, Newark Air Force Station, Ohio. This case was submitted under our procedures for consideration of Labor-Management issues involving appropriated funds, 4 C.F.R. Part 22 (1982). The Air Force Logistics Command and the Headquarters, Aerospace Guidance and Metrology Center, were served with copies of the submission, but neither office has provided us with their views.

Mr. Stickradt's claim is for additional reimbursement for travel expenses incurred while on approved annual leave in Washington, D.C., on July 22-24, 1981, during which time he prepared for hearings before the Federal Service Impasses Panel (Panel). The AFGE contends that the Air Force properly approved and paid "per diem" for the period in question and should not be allowed to retroactively reverse its decision and collect back the payments in question. For the reasons stated below, we sustain the denial of the claim.

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BACKGROUND

The hearings which Mr. Stickradt attended were convened by the Panel for the purpose of factfinding in a dispute submitted to the Panel by the AFGE and the Air Force Logistics Command. The Panel scheduled a prehearing conference for July 27, 1981, in Washington, D.C. On June 29, 1981, the AFGE requested that the Panel direct the Air Force to make available several union representative negotiators, including Mr. Stickradt, to prepare for and testify at the impasse hearing and that such employees be granted official time, including travel and per diem beginning July 22, 1981, through the duration of the hearing. The Panel responded by stating that the Air Force should authorize official time for the attendance of the AFGE's representatives at the proceedings in accordance with 5 U.S.C. § 7131(a) (Supp. IV 1980). That section provides that certain employee representatives shall be authorized official time to attend impasse proceedings, during which time the employee otherwise would be in a duty status.

The Air Force Aerospace Guidance and Metrology Center issued travel order number T-730, dated July 7, 1981, for Mr. Stickradt to travel to Washington, D.C., on or about Saturday, July 25, 1981, for the purpose of participating in labor contract negotiations which had taken the form of hearings before the Impasses Panel. The travel order provided for estimated "per diem" of \$675 which would cover 9 days or until August 3, 1981, at the \$75 high geographic area rate for Washington, D.C. When the Air Force discovered that the travel order did not show the dates of the hearings, an amendment was issued on May 13, 1982, for the sole purpose of adding that information to the "Purpose of TDY" section of the order so that it would read "MSN - Labor Contract Negotiations from 26 Jul - 1 Aug 81," rather than simply "MSN - Labor Contract Negotiations." The amendment made no other changes or corrections nor were any other amendments issued.

Mr. Stickradt departed for Washington, D.C., on July 22, 1981, after having requested and been granted annual leave for July 22-24, 1981, in order to spend time preparing for the hearings. Upon returning from the hearings, Mr. Stickradt received advice from an Air Force

employee, who apparently worked in the travel voucher office, that he should submit his voucher for the full period he was in Washington, D.C., including those days for which he requested and received annual leave. Although Mr. Stickradt advised this employee that he did not believe payment of per diem for the period of July 22-24, 1981, was authorized, he nevertheless agreed to submit his voucher for the full period including the annual leave period of July 22-24, 1981. The voucher was processed and approved on August 6, 1981.

All orders for labor contract negotiations were subsequently forwarded to higher headquarters for review. During this review, the Air Force determined that the payment of actual expenses for the annual leave period of July 22-24, 1981, was in error and the Aerospace Guidance and Metrology Center (Center) was so notified in early September 1981. The Center reports that from September 1981 until May 1982 the matter was under study. In May 1982, the travel office computed the necessary repayment at \$225. Mr. Stickradt was advised of the need for repayment by letter dated July 12, 1982. Repayment was effectuated by 5 payroll deductions of \$45 each and completed on September 24, 1982.

#### DISCUSSION

In appealing the determination of the Air Force that \$225 in travel payments were made erroneously to Mr. Stickradt, and, therefore, had to be recouped from him, the AFGE, in essence, contends that: (1) there is no prohibition in statute, rule, or regulation that would prohibit the Air Force from making the payments in question to Mr. Stickradt; (2) the labor agreement in effect between the parties allows such payment; and (3) travel orders may not be amended retroactively to decrease rights granted by the original clear terms of the travel order.

As indicated above, the Air Force, approximately 10 months after the travel took place, did issue an amendment to Mr. Stickradt's travel order. However, this amendment was for informational purposes only. It provided the dates of the hearings for which leave and travel expenses had been authorized. The amendment did not change Mr. Stickradt's authorized departure date, nor did it

purport to make any other potentially substantive changes. Therefore, the May 1982 amendment has no effect on rights Mr. Stickradt may have had to any additional payments and, therefore, for the purpose of this decision, is without effect.

Since the record does not reveal the issuance of any other amendments to Mr. Stickradt's travel orders, we assume that the May 1982 amendment is the amendment about which the AFGE complains. Since that amendment is without substantive effect, we look to the travel order itself to determine the rights and benefits which were intended. The travel order indicates that departure was authorized for Saturday, July 25, 1981, for an anticipated duration of 9 days as evidenced by the estimated "per diem" cost of \$675 (the actual expense rate in effect was \$75 per day). The pre-hearing conference was to begin Monday, July 27, 1981, so the travel orders effectively provided for a travel day, plus a preparation day, and follow-on days for the hearings themselves. The only days at issue are the dates of July 22-24, 1981 (Wednesday - Friday), for which Mr. Stickradt requested and received annual leave for the reported purpose of having additional preparation days in Washington, D.C., the site of the hearings. It is the Air Force position that it was never its intent to authorize any additional travel or preparation days prior to July 25, 1981, and it was only erroneous advice given by an Air Force employee after Mr. Stickradt had returned from the hearings in question which raised the possibility of additional reimbursement to Mr. Stickradt.

It is apparent that any advice which Mr. Stickradt may have received from Air Force personnel after he had already completed his travel could not have been relied upon by Mr. Stickradt in deciding when to commence his travel, and that such after the fact advice cannot be allowed to enlarge any benefits to which he may have been entitled before or during his travel. The travel order in question, issued July 7, 1981, cannot be read to in any way confer any travel benefits prior to the proposed departure date of July 25, 1981.

It is well established that legal rights and liabilities in regard to travel allowances vest as and

when the travel is performed under the orders and that such orders may not be revoked or modified retroactively so as to increase or decrease the rights which have become fixed under the applicable statutes or regulations. An exception may be made only when an error is apparent on the face of the orders and all facts and circumstances clearly demonstrate that some provision previously determined and definitely intended has been omitted through error or inadvertence in preparing the orders. 23 Comp. Gen. 713 (1944); 24 *id.* 439 (1944); 47 *id.* 127 (1967); B-175433, April 27, 1972; and Philip E. Schaeffer, B-186684, February 2, 1977. The record indicates that at the time the travel was undertaken by Mr. Stickradt it was with the understanding that during the period of July 22-24, 1981, he would be in an annual leave status with no travel cost to the Government.

The AFGE argues that the advice given to Mr. Stickradt that payment could be approved for the additional days and the actual approval and payment should not be allowed to be rescinded nearly 10 months after the fact. The AFGE overlooks the fact that the advice upon which it alleges Mr. Stickradt relied was itself given after the fact of his travel and, therefore, could not have influenced his decisions nor could it have caused him to believe before or during his travel that he was to receive expenses for the days in question. In fact, the record indicates that upon his return he disputed the alleged advice that payment could be authorized. Further, it is well established that the Government is not bound by the erroneous acts or advice of its employees even though committed in the course of their official duties. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380, 384 (1947); Utah Power & Light Co. v. United States, 243 U.S. 389, 409 (1917); Steven A. Knutson, B-204372, February 8, 1982.

The AFGE additionally sets forth the argument that there exists nothing in statute, rule, regulation, or the labor agreement in effect at the time in question which would have been violated by the Air Force in authorizing and paying the expenses in question. Although we need not reach this question for it is not determinative of the issue before us, we note that FTR para. 1-7.5a(1) prohibits payment of per diem while in a leave status. Further, any

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decision to pay the expenses in question would necessitate the exercise of the agency's discretion to authorize additional official time and the concomitant payment of expenses. However, the record is clear that the Air Force neither authorized nor intended to authorize the additional official time and payments.

Accordingly, the claim of Mr. Stickradt was properly disallowed.

*for* *Milton J. Acosta*  
Comptroller General  
of the United States