

DECISION



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

FILE: B-198930

DATE: April 6, 1981

MATTER OF: Frederick A. Kalhammer - ^[Claim for] Temporary Duty
Travel Expenses] - Overseas Duty Post

DIGEST: Civilian employee of AID performed temporary duty travel in Kinshasa, Zaire, from January 24 to February 10, 1979, and was authorized reimbursement of actual subsistence expenses. Effective February 1, 1979, based upon information from American Embassy of currency devaluation in Zaire, Secretary of State reduced actual expense rate from \$106 to \$75 in Kinshasa. However, upon delayed receipt in February 1979 of information that prices had increased simultaneously with devaluation, Secretary increased rate in Kinshasa to \$111, effective March 1, 1979. Rate decrease in February was caused by administrative error on part of Embassy in failing to furnish State Department with timely information of concomitant price increases. Accordingly, prior rate is deemed to continue in effect through period of travel and employee is entitled to reimbursement of additional subsistence expenses.

Mr. Frederick A. Kalhammer, [an employee of the Agency for International Development] (AID), Department of State, [has appealed the Settlement Certificate] (Z-2814747) dated March 4, 1980, [issued by our Claims Group, which denied Mr. Kalhammer's claim for additional actual expense reimbursement incident to his temporary duty in Zaire] from January 24 to February 10, 1979.

Mr. Kalhammer's claim arises from the action of the [State Department in reducing the reimbursement rate in Zaire] effective February 1, 1979. [He does not challenge

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the authority of the Secretary of State to set maximum rates of actual expense reimbursement and per diem allowances for civilian employees in travel status at localities in foreign areas. His contention is that since the State Department, through error, reduced the rate while he was on temporary duty assignment, the General Accounting Office should direct the Department of State to rectify the error and restore his reimbursement rate to its correct level during the period of travel under consideration.]

The facts, briefly stated, are as follows: Mr. Kalhammer was on temporary duty travel in Zaire from January 24 to February 10, 1979, in connection with an audit of AID activities in that country. Prior to his departure to Kinshasa, Zaire, he obtained approval for reimbursement of actual expenses in lieu of per diem while performing temporary duty in Kinshasa. At the time of departure, the per diem rate was \$85 for Kinshasa and was \$56 for other locations in Zaire. The maximum daily actual expense reimbursement rate was the applicable per diem rate plus \$21. See 5 U.S.C. § 5702(d).

On January 10, 1979, the American Embassy in Kinshasa advised the State Department that effective January 2, 1979, the exchange rate for the local currency in Zaire had been subject to a devaluation of over 50 per cent. In reliance on this information, the Department reduced the rate of per diem in Kinshasa by 36 per cent, from \$85 to \$54, effective February 1, 1979. The per diem rates in other localities in Zaire were also reduced from \$56 to \$39. The actual subsistence expense rates were correspondingly reduced.

[The reduction in rates resulted from deficient information provided to the State Department Allowances Staff by the American Embassy in Kinshasa. In fact, local price increases in Zaire occurred simultaneously with the currency devaluation which nullified the effect of the devaluation. The information concerning the price increases was not received by the State Department until

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after February 1, 1979. Upon receipt of the information in February 1979, the Department of State increased the rate of per diem in Kinshasa to \$90 and in other localities in Zaire to \$63 effective March 1, 1979. The State Department acknowledges that no reduction in the per diem rate would have been made during February if it had been notified of the price increases by the Embassy.]

The statutory authority vested in the President by section 3 of the Travel Expense Act of 1949, 63 Stat. 166, as amended, and codified at 5 U.S.C. § 5702(a), to establish maximum rates of per diem for civilian officers and employees of the Government in travel status at localities in foreign areas has been delegated, by Executive Orders 10970 (superseded), October 27, 1961, and Executive Order 11294, August 4, 1966, to the Secretary of State. The regulations issued pursuant thereto and published in the Standardized Regulations (Government Civilians, Foreign Areas), have the full force and effect of law. [This Office has held that a new per diem rate issued by the Secretary of State operates prospectively rather than retroactively.] B-173927, October 27, 1971.

[In the instant case, the Secretary of State, through his duly authorized representatives, reduced the rate of per diem in Kinshasa, Zaire, effective February 1, 1979, from \$85 to \$54, based upon information received from the American Embassy in Kinshasa of the devaluation of the currency in Zaire. [However, the reduction in the per diem rate by the Secretary of State was improperly predicated solely upon the currency devaluation and not upon both the currency devaluation and concomitant price increases. In this regard, the Department of State is required to review all civilian price schedules received.] Section 074.3, Standardized Regulations (Government Civilians, Foreign Areas).

[The Embassy has stated that the reduction in per diem should be reconsidered in view of the concomitant price increases which took place simultaneously with the announcement of the currency devaluation. Further,

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the State Department is sympathetic to the views expressed by the Embassy and states that no reduction in per diem rates would have been made had the Department been notified of the simultaneous increase in prices in Zaire. However, the State Department denied Mr. Kalhammer's claim for additional reimbursement on the ground that a decision by the Comptroller General prohibits retroactive increases in allowances.]

Section 072.1 of the Standardized Regulations states that agencies are responsible for the preparation and submission of allowance and differential reports for established foreign posts of duty. Submission of Form DSP-23, Retail Price Schedule, to the State Department is required in January of each year for Zaire. The form provides the basic data needed to determine the temporary lodging and post allowance classifications for posts in foreign areas as well as the rates of travel per diem for civilian employees traveling outside the United States. Standardized Regulations, section 073.2. Major changes affecting living costs, including significant interim changes in prices, major changes in the currency exchange rate, and substantial changes in hotel costs are to be reported promptly to the State Department by the agencies. Sections 074.3, 074.31 and 074.32, Standardized Regulations. The importance of prompt submission of the prescribed allowance reports is stated in section 072.31 of the Standardized Regulations which provides as follows:

"Importance of Reports to Agencies and Personnel at Post

It is important to every agency having staff in foreign areas and to every member of such staff that the prescribed allowance reports be carefully prepared and submitted in strict conformity with the reporting schedules in sections 072.11 (new posts) and 072.12 (established posts).

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Otherwise employees may not receive the allowances or differential to which they are entitled."

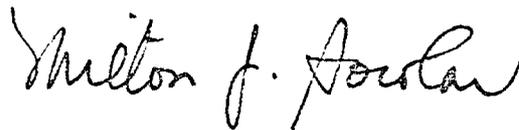
[The downward adjustment of the per diem rate in the instant case occurred through administrative error on the part of the American Embassy in failing to furnish the Department of State with information as to an increase in prices in Zaire which took place simultaneously with the devaluation of the local currency in Zaire.]

[It is true as stated by the Department of State that this Office has held that travel allowances may not be retroactively increased.] B-173927, supra.

[While this is the long-standing general rule, we believe that an exception must be made in cases such as the present one where clear administrative error has caused the applicable rates to be improperly reduced to the actual detriment of employees in travel status. In this case the administrative error is obvious and has been conceded by the State Department. It was corrected by the State Department as soon as the information about the simultaneous price increases was received.] See 56 Comp. Gen. 1015 (1977).

Under these circumstances, [we conclude that the administrative error in reducing the per diem rate and actual expense rate in Zaire for February 1979 may be disregarded and the prior applicable rates may be considered as continuing in effect during February 1979.

Accordingly, Mr. Kalhammer's supplemental travel voucher for reimbursement of additional actual subsistence expenses may be certified for payment on the basis of the previously applicable reimbursement rates in Zaire.]



Acting Comptroller General
of the United States