

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548****FILE:** B-207284**DATE:** October 29, 1982**MATTER OF:** Nicholas A. Yeager

DIGEST: Although employee delayed travel over weekend in order to travel on Monday, delay resulted in only 1-1/2 days' additional per diem costs over prompt departure schedule constructed by the Army. Since delay resulted in less than 2 days' additional per diem costs and, thus, did not violate 2-day per diem rule discussed in 56 Comp. Gen. 847 (1977) and reflected in para. C4464-2b, employee was not under obligation to accelerate departure. He is entitled to 1-1/2 days' additional per diem claimed even though his temporary duty was completed Friday afternoon.

The question in this case is whether an employee of the Army, after completing temporary duty at 5 o'clock, Friday afternoon, may properly delay his departure for his permanent duty station until Monday, consistent with the travel arrangements that had been made by the Army a month before, when that delay results in 1-1/2 days' additional per diem. Since the delay over a weekend enabled the employee to travel on a regularly scheduled workday and involved less than 2 additional days' per diem, we find that the employee was not under an obligation to reschedule his return travel on a nonworkday and the additional 1-1/2 days' per diem may be paid.

The Finance and Accounting Officer, Headquarters, U.S. Army Troop Support and Aviation Materiel Readiness Command, Department of the Army, presented the question through the office of the Comptroller of the Army. The matter was assigned Control Number 82-10 by the Per Diem, Travel and Transportation Allowance Committee.

The Army authorized Mr. Nicholas A. Yeager to perform temporary duty for approximately 30 days in Gossport, England, beginning March 1, 1981, and, based on the employee's itinerary, the Transportation Office reserved seats for departure and return on commercial aircraft at category Y rates--a reduced fare. Mr. Yeager completed his temporary duty in Gossport, less than 100 miles from London, at 5 p.m. on Friday, March 27, 1981. He traveled to London on Saturday morning and from there departed

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Monday, March 30, at 3 p.m., on the commercial flight which had been arranged nearly a month before. He arrived in St. Louis, his permanent duty station, at 10:50 p.m. that day.

The finance and accounting officer contends that Mr. Yeager had a duty to proceed expeditiously upon the completion of temporary duty and he computed Mr. Yeager's per diem entitlement on a constructive basis using a return schedule that would have been available had Mr. Yeager attempted to make different return arrangements. That schedule involved a Military Airlift Command flight which departed from Mildenhall Air Force Base at 4 p.m. on Saturday, March 28, arriving at McGuire Air Force Base, New Jersey, a little after 7 p.m. A commercial connecting flight departed from Philadelphia Sunday morning at 8:05 a.m., March 29, 1981, and arrived at St. Louis Airport at 10:18 that morning.

Although Mr. Yeager waited the entire weekend before departing from London on Monday, the return trip involved only an additional 1-1/2 days' per diem over the return schedule reconstructed by the Army. In support of his claim for additional per diem based on the actual travel performed, Mr. Yeager points out that he followed the schedule arranged by his transportation office and that that particular schedule complied with the requirement that to the maximum extent practicable his travel be arranged during his normal hours of duty.

Thus, a question is raised as to the relationship between the employee's duty as prescribed by the Joint Travel Regulations to proceed as expeditiously as he would if traveling on personal business, and the employer's duty under 5 U.S.C. § 6101(b)(2) to the maximum extent practicable, to schedule travel during the employee's regular duty hours. This issue has generated a number of decisions explaining how much delay, and resulting cost, is appropriate for allowing travel during duty hours in particular situations. These decisions have resulted in the so-called "2-day per diem rule," which authorizes payment of up to but not including 2 days' additional per diem for the purpose of enabling an employee to travel during regular duty hours. When the Per Diem, Travel and Transportation Allowance Committee asked us for further explanation of the rule as applied to travel on a per diem basis, we indicated that an additional 1-3/4 days' per diem could be allowed. Matter of Two-Day Per Diem Rule, 56 Comp. Gen. 847 (1977). In subsequent decisions the rule has been stated as follows:

"* * * insofar as permitted by work requirements, travel may be delayed to permit an employee to travel during his regular duty hours where the additional expenses incurred do not exceed 1-3/4 days' per diem costs. 56 Comp. Gen. 847 (1977)." Matter of Hjellum and Humphrey, B-192184, May 7, 1979, and Matter of Schepan et al., 60 Comp. Gen. 681, 682 (1981).

Volume 2 of the Joint Travel Regulations (2 JTR) has been amended to reflect the clarification provided in 56 Comp. Gen. 847. Currently, and as in effect at the time of Mr. Yeager's travel in March 1981, 2 JTR para. C4464-2b provides:

"Travel During Regular Hours of Duty.
Whenever possible, travel will be scheduled so that employees may travel during their regular hours of duty and not on their own time. However, no more than 1-3/4 days of per diem may be paid in connection with such travel (56 Comp. Gen. 847). * * *

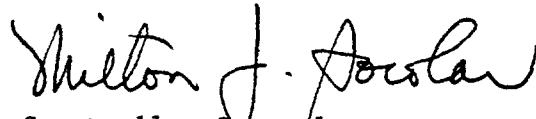
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"When an employee delays return travel from a Friday to Monday (e.g., following completion of temporary duty on Friday) in order to travel during regular duty hours on Monday, payment of per diem will be limited to that which would have been payable if he had begun his return travel following the completion of work on Friday and continued to destination without delay. * * *"

The general rule reflected by the first sentence of para. C4464-2b would appear to entitle Mr. Yeager to the additional per diem claimed in connection with his travel on Monday. However, the finance and accounting officer views the additional language of that regulation as precluding payment of 1-1/2 days' additional per diem where the employee's temporary duty assignment was completed on Friday. Although the regulation is somewhat ambiguous in this regard, the language of para. C4464-2b relied upon by the finance and accounting officer does not create an exception to the general rule stated in the first sentence of the paragraph. Rather, it is based on our holding at 56 Comp. Gen. 847, 849 in

response to the Per Diem, Travel and Transportation Allowance Committee's question concerning the manner in which per diem is to be computed when an employee unreasonably delays departure over a weekend. As reflected in the decision digest the rule limiting payment of per diem to that which would have been payable if the travel had been performed after completion of temporary duty on Friday was intended to address the situation in which the employee delays travel from Friday to Monday in disregard of the 2-day per diem rule.

Mr. Yeager's actual travel did not violate the 2-day per diem rule, but involved only 1-1/2 days' more per diem than the return schedule constructed by the finance and accounting officer. For this reason and because his actual itinerary enabled him to travel on a regularly scheduled workday, we find that Mr. Yeager was not under an obligation to accelerate his return and is entitled to the additional per diem claimed. See Matter of Hjellum and Humphrey.



Acting Comptroller General
of the United States