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DECISION

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

FILE: B-209109 DATE: December 15, 1982

MATTER OF: Andres Tohar - Temporary Duty - Noncommercial Lodging

DIGEST: Employee on temporary duty who lodged at the apartment of a private party is not entitled to reimbursement of the amount paid for lodgings in the absence of evidence that the rental agreement was the result of an arm's-length business transaction between the parties, or that the expenses were otherwise reasonable and within the standards set forth in 52 Comp. Gen. 78 (1972).

Mr. John A. Murphy, an authorized certifying officer of the United States Department of Education, requests a decision concerning the claim of an employee, Mr. Andres Tohar, for the expenses of lodging in noncommercial quarters during a period of temporary duty. For the reasons stated below, the employee's claim may not be paid.

Mr. Tohar was authorized to travel from Washington, D.C., to New York, New York, and return to Washington, D.C., from February 1 to February 7, 1981. During the period of his temporary duty, Mr. Tohar stayed at the apartment of a private individual, paying $40 per day for a total of $240. In support of his claim for lodging expenses, Mr. Tohar provided the agency with a signed receipt from the apartment owner showing that he received $240 for the employee's lodgings, together with the owner's signed statement that Mr. Tohar had the exclusive use of the apartment for the period February 1 to February 7, 1981, and that the "reasonable utility cost during Mr. Tohar's stay was $15 per day for a total of ninety dollars."

The Department of Education denied payment as claimed because the agency had not authorized a specific per diem rate in advance under the provisions of paras. 1-8.1h and 1-7.3c of the Federal Travel Regulations, FPMR 101-7 (September 1981) (FTR). Under the rules stated in our decision Clarence R. Foltz, 55 Comp. Gen. 856 (1976), the agency determined that the lodging expenses claimed by Mr. Tohar were not supported by information indicating that the charges were the result of extra expenses incurred by

the apartment owner on account of the employee's occupancy. Instead, it appeared that the charge of $40 per day was based on commercial rates in the area.

The agency requests that we review its action denying Mr. Tobar's claim. With its request, the agency has forwarded a memorandum prepared by Mr. Tobar, in which the employee explains that he resided in noncommercial quarters because he was unable to find hotel accommodations which were "decent" as well as reasonably priced. In this regard, the employee states that he had stayed in "substandard" hotels on previous trips to New York City and that the rates for these hotels ranged from $39 to $43 per day.

At the outset, we note that FTR para. 1-8.1b authorizes agencies to establish a specific per diem rate under FTR para. 1-7.3 when it is known in advance that employees traveling to high rate geographical areas will not use commercial facilities, but will stay with friends or relatives. As pointed out by the agency, Mr. Tobar did not obtain prior agency approval of a specific per diem rate and, therefore, his claim is governed by the rules applicable to computing reimbursement on an actual expense basis. See Barry A. Smith, B-184946, March 10, 1976.

Where an employee lodges at the home of a friend or relative, we have consistently held that payable claims for such lodging expenses must be considerably less than charges for commercial accommodations and correlated with additional costs actually incurred by the host. In 52 Comp. Gen. 78, 82 (1972), we stated:

> "* * * It does not seem reasonable or necessary to us for employees to agree to pay relatives the same amounts they would have to pay for lodging in motels or meals in restaurants or to base such payments to relatives upon maximum amounts which are reimbursable under the regulations. Of course, what is reasonable depends on the circumstances of each case. The number of individuals involved, whether the relative had to hire extra help to provide lodging and meals, the extra work performed by the relative and possibly other factors would be for consideration. * * *"

In line with the above decision we have consistently held that claims involving noncommercial lodgings should be supported by information indicating that the lodging charges are the result of expenses incurred by the party providing the lodging. Clarence R. Foltz, 55 Comp. Gen. 856, cited above.

In this case, it is not clear whether the apartment in which Mr. Tobar resided was owned by a close friend or relative. Mr. Tobar states that he "rented" the apartment from "an individual," and that he had exclusive use of the apartment during the period of his temporary duty. If Mr. Tobar entered into a business agreement to rent the apartment from a private party to whom he was only referred by a friend, and the lodgings were not provided as an accommodation to him but as a business arrangement, then the above-cited cases would not be applicable. Constance A. Hackathorn, B-205579, June 21, 1982. However, Mr. Tobar has not furnished evidence that the apartment owner customarily rents out his apartment at an established price, nor has he otherwise proved that he was engaged in a purely business arrangement. Therefore, the rules stated in 55 Comp. Gen. 856 and 52 Comp. Gen. 78, above, apply to the employee's claim. See Constance A. Hackathorn, above.

Although Mr. Tobar has furnished evidence of the amount paid for his lodgings, together with the apartment owner's statement that utility costs attributable to the employee's stay amounted to $15 per day for a total of $90, there is no evidence showing how the rate of $40 per day was established. As pointed out by the agency, it appears that the rate paid to the apartment owner was comparable to that which the employee would have paid for commercial lodgings. Under these circumstances, we cannot conclude that the rate claimed bears a relationship to the expenses incurred by the apartment owner as a result of Mr. Tobar's stay.

Mr. Tobar's contention that he was unable to find suitable hotel accommodations for the amount he paid to the apartment owner has no bearing on his entitlement to the lodging expenses claimed, since we have specifically held that reference to commercial rates and accommodations does not provide a measure of the reasonableness of amounts paid

to friends or relatives for lodgings. Allen W Rotz, B-190508, May 8, 1978; Barry A. Smith, above.

Accordingly, the lodging expenses as presented by Mr. Tobar may not be allowed.

for Milton J. Socolar
Comptroller General
of the United States