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DECISION

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

FILE: B-211638 DATE: July 26, 1983

MATTER OF: Tour renewal agreement travel

DIGEST:

Special air fares should be used to compute constructive travel expenses to an employee's residence as the maximum entitlement to tour renewal travel to an alternate location, provided the agency can determine before the travel begins that the discount fare would be practical and economical. Applicability of special fares should be determined on the basis of constructive travel to the actual place of residence, using the scheduled dates of departure and return, even though the travel is to an alternate location.

When an employee and his family perform tour renewal agreement travel to a place other than their place of actual residence, allowable travel costs may not exceed the constructive cost of travel to the residence. The Administrator of the Panama Canal Commission asks whether a special or discount air fare, rather than the regular coach fare, should be used in computing that constructive cost. We hold that the computation should be based on the lower fare if it can be determined in advance of the travel that the employee would qualify for such fare to and from the place of actual residence based on the scheduled dates of departure from and return to post.

The tour renewal travel provisions originally enacted as Public Law 737, approved August 31, 1954, 68 Stat. 1008, are intended to provide expenses of round-trip travel and transportation for civilian Government employees and their families between tours of duty overseas for the purpose of taking leave. Matter of Hendricks, B-205137, May 18, 1982. Now codified at 5 U.S.C. § 5728, the law states that agencies, pursuant to regulations prescribed by the President, shall pay for such travel from the employee's "post of duty outside the continental United States to the place of his actual residence at the time of appointment or transfer to the post of duty * * *."

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The applicable regulations in paragraph 2-1.5h(2)(c) of the Federal Travel Regulations, FPMR 101-7 (September 1981) (FTR) provide for travel to an alternate location other than the actual residence at the time of assignment to a post of duty outside the conterminous (continental) United States. The alternate location must be in the same country as the residence. Under this paragraph the expenses paid by the Government to the alternate location:

> "* * * [s]hall not exceed the amount which would have been allowed for travel over a usually traveled route from the post of duty to the place of actual residence and for return to the same or a different post of duty outside the conterminous United States as the case may be."

Under this regulation the employee is entitled to the constructive cost of round-trip travel to and from the actual place of residence or the amount the employee spends for travel to the alternate location, whichever is less. Matter of Willis, B-192619, July 23, 1979.

The Administrator asks whether the constructive cost of round-trip travel to the employee's actual place of residence may be determined on the basis of the regular coach air fare or whether it must be determined on the basis of "special fares" that are the subject of FTR para. 1-3.4. Under that regulation "Through fares, special fares, commutation fares, excursion, and reduced-rate round trip fares" are to be used if it can be determined before the start of a trip that this type of service is practical and economical to the Government (FTR para. 1-3.4b(1)(a)). Generally the lowest-cost service is to be used when different fares are charged for the same type of accommodations between the same points, unless the higher cost is administratively determined to be more advantageous to the Government (FTR para. 1-3.4c).

In urging that an employee's reimbursement for renewal agreement travel to an alternate location should be based on the regular coach fare to the actual place of residence, the Administrator suggests that other provisions of the FTR authorize reimbursement on a constructive cost basis without regard to the availability of special fares. He refers to

FTR para. 1-3.3d(2)(c), which requires the traveler to pay the difference between first class and the "next lower class" when he upgrades his air accommodations to first class for his personal convenience. The other provision to which the Administrator refers is FTR para. 1-4.3a(1), which provides that an employee who travels by privately owned vehicle as a matter of personal preference may be paid mileage limited to the "constructive cost of coach accommodations (or tourist or economy accommodations if a carrier uses this term instead of coach accommodations)." It should be noted that these two regulations are addressed to the class of accommodations that will be used as a basis for comparison and not to the fare. Under FTR para. 1-4.3a(1) we have held that the mileage allowance payable to an employee who travels by privately owned vehicle as a matter of personal preference is limited to a special discount fare when the employee, in accordance with FTR Para. 1-3.4b, was instructed to use that reduced fare for the travel to be performed. Matter of Porcella, B-191586, February 25, 1981.

In fact, we recognized in 39 Comp. Gen. 676 (1960) that reduced fares for direct travel to and from the place of actual residence should be used in determining the constructive cost limitation applicable to reimbursement for renewal agreement travel to an alternate location. Under the regulations then in effect employees were authorized to use first class accommodations for air travel unless the travel orders specified air coach or air tourist accommodations. (Paragraph 3.6c of Bureau of the Budget Circular No. A-7, August 1, 1956). As they do today, the regulations then in effect required the use of special fares when it could be determined in advance that such service was practical and economical. (Circular No. A-7, paragraph 3.9). Consistent with these two regulations, we held that the constructive cost of travel to the place of actual residence should be based on the lowest first class rate, including a family plan rate if applicable, when travel is performed by mode of travel other than authorized and when travel is to a place other than the place of actual residence.

We are unpersuaded by the Administrator's argument that reimbursement should not be limited on the basis of special fares and that the above-cited decisions are inapplicable

because the Panama Canal Commission has not issued instructions requiring its employees to use discount fares and because its travel personnel "tend not to distinguish between types of fares and classes of accommodations." In a memorandum entitled Savings Available By Using Airline Discount Fares addressed to heads of departments and agencies (B-103315, August 25, 1977), we noted that the FTR directs the use of discount fares and stressed the need for agencies to increase the use of such fares. To comply with FTR para. 1-3.4 and that memorandum the Panama Canal Commission should determine in advance of renewal agreement travel whether discount air fares are available to and from the actual place of residence and make an appropriate notation to that effect on the employee's travel order. Where the availability of a specific discount fare depends on the dates of travel, its applicability should be determined on the basis of a constructive itinerary using the scheduled dates of departure from and return to post, even though travel is actually performed to an alternate location. See 39 Comp. Gen. 676, supra, and B-166552, June 27, 1969.

In so holding we have considered the Administrator's argument that the availability of a discount air fare to the employee's actual residence may limit his selection of an alternate destination. He points out that employees whose residences are about the same distance from Panama may have different dollar limitations on their tour renewal agreement travel depending on the availability of discounts to their respective cities. Paragraph 2-1.5h(2)(c) of the FTR necessarily gives rise to differing cost limitations as between employees and may require some to pay a portion of the cost to an alternate location while others may incur no cost for travel to the same destination. This differential is inherent in any arrangement basing the maximum expense payable on the constructive cost of travel to a given location, in this case the actual residence, but allowing the employee the choice of traveling elsewhere. Where travel to the actual place of residence can be performed within the constructive cost limitations it is immaterial whether the differences in costs incurred by employees for travel to

alternate locations result from differing distances between two locations or the airlines' discount fare structure.

for Milton J. Socolar
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of the United States