

(WZNAH)
PLM)

DECISION



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

FILE: B-221760

DATE: August 11, 1986

MATTER OF: Irwin M. Lieberman - Indirect Travel -
Constructive Cost

DIGEST:

Independent contractor of National Mediation Board (NMB) was authorized round-trip transportation from his residence in Stamford, Connecticut, to St. Paul, Minnesota. On December 3, 1984, he traveled by airplane from New York City to Chicago on personal business and later the same day traveled to St. Paul. He returned to New York City after participating in several hearings the following day. Under FTR para. 1-2.5b, travelers are entitled to reimbursement for travel by indirect route, in an amount not to exceed the cost by the usually traveled route or the actual cost, whichever is lower. Thus, claimant may be reimbursed the cost of round-trip travel, by air coach, between New York City and St. Paul, Minnesota.

This decision is in response to a request by an Authorized Certifying Officer of the National Mediation Board (NMB) for a decision on whether Mr. Irwin M. Lieberman, who was serving as a neutral member for the NMB, may be reimbursed for the full constructive cost of his travel when he traveled by an indirect route. For the reasons set forth below, we hold that Mr. Lieberman may be reimbursed for the normal round-trip coach fare between New York and St. Paul.

The certifying officer explains that under the Railway Labor Act, 45 U.S.C. § 153 (1982), the NMB compensates neutral members of the various arbitration institutions functioning in the railroad industry. The neutrals perform their duties as independent contractors rather than as employees of the Federal Government. The NMB pays their

036346

salaries (at a daily rate) and associated travel expenses upon submission of the same standard travel vouchers used by Federal employees. In this case, Mr. Lieberman had been selected by the parties and appointed by the NMB to serve as a neutral member of Public Law Board No. 3460 to hear and decide a series of disputes. The letter which authorized Mr. Lieberman to serve as a neutral member of Public Law Board No. 3460 stated that travel expenses would be reimbursed in accordance with Government travel regulations.

The certifying officer reports that it has been the experience of the NMB that the neutral members typically include professional arbitrators, attorneys, university professors and other professional individuals who have travel requirements relative to their own professions, independent of the functions they perform and are compensated therefor by the Government. In order to preclude subsidization of the travel expenses of the neutral members associated with their private interests, the Board issued NMB Release No. 84/47 on October 9, 1984, approximately 2 months prior to the time the travel in question was performed. The Release stated:

"Questions have arisen concerning travel which involves a mixture of official government travel and private/business travel. The following constitutes broad policy.

"When a neutral serving in the capacity of government contractor travels to one city for the federal government and then proceeds to another city for non-government business, he/she will be compensated for an amount not to exceed the cost of a coach fare from his/her residence to the meeting place and return to the next meeting place or residence, whichever is less. Purchase of a super saver fare for one portion of the trip to or from the meeting place, will not justify an allowance of more than the coach fare cost for the other portion, each trip segment will be considered separately.

"When a neutral performs both government and non-government business, the traveler will bill the Board only for the expenses, including air fares, which involve official government business.

"Neutrals are reminded that government travel regulations require the traveler to purchase the lowest available fare when purchasing public transportation for official business."

Here, Mr. Lieberman had a hearing with Public Law Board No. 3460 scheduled for December 4, 1984, in St. Paul, Minnesota. On his travel voucher, Mr. Lieberman showed constructive travel consisting of a 3 p.m. departure from his residence in Stamford, Connecticut, on December 3, 1984, with arrival in St. Paul at 6:30 p.m. He claimed round-trip airfare, by coach, from New York to St. Paul in the amount of \$278. However, the airline ticket receipt showed an actual departure from New York City (LaGuardia Airport) to Chicago at 7:20 a.m. on December 3, subsequent departure from Chicago at 5:35 p.m. the same day, and arrival in St. Paul that evening. Mr. Lieberman departed from St Paul on the following day, December 4, for New York City at 1:35 p.m. The cost breakdown on the ticket receipt showed charges of \$149 for the New York to Chicago segment, \$50 for travel from Chicago to St. Paul, and \$79 for travel from St. Paul to New York City. Mr. Lieberman says that he traveled to Chicago on personal business.

The NMB states that its Release contemplates that the Board will be financially responsible only for those portions of travel actually associated with official Government business and that each trip segment will be considered separately. Accordingly, in compliance with NMB policy and Release No. 84/47, the position of the Board is that Mr. Lieberman was properly reimbursed solely for the travel from Chicago to St. Paul (\$50) and from St. Paul to New York (\$79) for a total of \$129. In its letter to Mr. Liberman denying further reimbursement, the NMB specifically cites to the third paragraph of the above-quoted release in support of the denial.

On the other hand, Mr. Lieberman contends that under Government travel regulations and policy, he is entitled to reimbursement of the most economical round-trip airfare from New York to St. Paul and return. He also contends that, under the NMB's policy, if a neutral traveling on NMB business made stops for personal business before and after doing NMB business, the neutral would receive no reimbursement for travel expenses.

The regulations governing travel by civilian employees, which have been adopted by the NMB for travel by neutrals on NMB business, are in the Federal Travel Regulations, FPMR 101-7 (Supp. 5, June 19, 1983), incorp. by ref., 41 C.F.R. § 101-7.003 (1985) (FTR). Paragraph 1-2.5b, which governs travel by an indirect route, provides, in pertinent part, as follows:

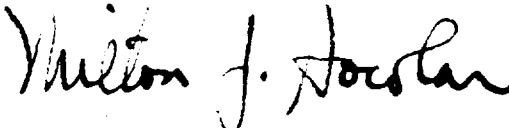
"Indirect-route or interrupted travel. When a person for his/her own convenience travels by an indirect route or interrupts travel by direct route, the extra expense shall be borne by him/her. Reimbursement for expenses shall be based only on such charges as would have been incurred by a usually traveled route. * * *"

Inasmuch as Mr. Lieberman was required to travel from New York to St. Paul for the purpose of sitting as a neutral member of Public Law Board No. 3460, his travel by way of Chicago is regarded as travel by an indirect route within the meaning of FTR para. 1-2.5b, quoted above. The regulation clearly limits allowable travel expenses to an amount equal to or less than costs which would have been incurred by the employee traveling the usually traveled route. This Office has established the principle that when an employee travels by an indirect route, he is entitled to reimbursement by indirect route in an amount not to exceed the cost by the direct route or the actual cost, whichever is lower. John P. Butt, 65 Comp. Gen. 47 (1985); B-178535, June 21, 1973.

Through the use of the above-quoted Release, the NMB is attempting to restrict reimbursement of indirect travel by neutrals beyond the restriction in FTR para. 1-2.5b. We do not believe that this further restriction is proper. Inherent in the use by NMB of individuals who are not full-time employees will be overlap of Government and personal business. While it is appropriate to limit reimbursement in these situations to avoid subsidizing the individual's personal business, it is not appropriate to require that the individual's personal business subsidize the travel on Government business. A balance must be struck here, and we believe that FTR para. 1-2.5b strikes the proper balance. Under that paragraph, the Government is not liable for any greater expense than it would be if the individual had traveled directly on Government business rather than indirectly to include personal business.

In reaching our decision here, we recognize that, on occasion, individuals such as Mr. Lieberman may receive reimbursement from sources other than the Government for travel expenses when their trips involve both Government and personal business. Therefore, we would not object to the imposition of a requirement that travelers be required to certify that they have received no other reimbursement or specify the amount of reimbursement received for those portions of a trip that involved both Government and personal business. This requirement would eliminate the element of excess reimbursement sought to be curbed by NMB Release No. 84/47.

Accordingly, Mr. Lieberman is entitled to full reimbursement of the round trip airfare, by coach, from New York City, New York, to St. Paul, Minnesota, unless he has received reimbursement for this travel from another source.


for Comptroller General
of the United States