



The Comptroller General  
of the United States

Washington, D.C. 20548

*Ratanberg*

## Decision

Matter of: Theodore E. Dorman - Temporary Duty Travel  
Overseas  
File: B-224131  
Date: July 8, 1987

---

### DIGEST

1. Employee who traveled during working hours on Friday to report for temporary duty overseas the following Tuesday, the day after a Monday holiday, may not be paid per diem and may be assessed annual leave for Friday, where the agency determines that Friday departure was not warranted and Saturday was the constructive day of travel.
2. When return travel from temporary duty overseas is interrupted by annual leave, employee may not claim as a recoupment day under Volume 2 of the Joint Travel Regulations, para. C1058-3, the day immediately following a constructive travel day. The employee did not actually cross four time zones on the constructive travel day, and the agency was correct in charging annual leave for the next day. The fact that the employee may have been given erroneous advice does not create a right to restoration of annual leave where it was properly charged.

---

### DECISION

#### ISSUES

The issues in this decision are whether an employee is entitled to receive per diem and traveltime for travel overseas on the Friday of a 3-day, Monday-holiday weekend and whether the employee may use a "recoupment day" when his return travel is delayed by his use of annual leave at the overseas temporary duty post. We hold that the employee is not entitled to per diem and may be charged annual leave where he left on Friday for travel overseas on a 3-day, Monday-holiday weekend. We also hold that the employee is not entitled to a constructive recoupment day when his return travel from overseas is delayed by his use of annual leave.

039400

## BACKGROUND

Mr. Peter H. Tovar, Chief, Accounting and Finance Division, Office of the Comptroller, Defense Logistics Agency (DLA), has requested our decision concerning the claim of Mr. Theodore E. Dorman for additional per diem allowance and restoration of annual leave charged for travel in connection with temporary duty (TDY) overseas. This request has been assigned control number 86-16 by the Per Diem, Travel and Transportation Allowance Committee, which forwarded it for our decision.

Mr. Dorman, an employee of the Defense Reutilization and Marketing Service (DRMS), DLA, traveled from Kalamazoo, Michigan, to Weisbaden, West Germany, for temporary duty. He departed Kalamazoo at 12:45 p.m. on Friday, October 11, 1985, by commercial airline, and he arrived in Weisbaden, West Germany, at 11:15 a.m. on Saturday, October 12, 1985. Monday, October 14, was a holiday, so Mr. Dorman did not report for duty until Tuesday, October 15.

Mr. Dorman completed his temporary duty in West Germany on Wednesday, October 30, and he took annual leave in West Germany following his temporary duty starting on Thursday, October 31. He then departed West Germany on Friday, November 8, the last day he was on annual leave, and he arrived in Kalamazoo, Michigan, at 9:30 p.m. on Friday, November 8. He returned to duty in Battle Creek, Michigan, on Tuesday, November 12.

Mr. Dorman submitted a voucher claiming per diem and traveltime for Friday, October 11, and showing only 5 days of annual leave taken between October 31 and November 8. He believes that his recoupment day for his return travel, under the provisions of the Joint Travel Regulations, 2 JTR para. C1058-3, should have been granted on November 1, the first day after constructively completing his TDY return travel.

The Accounting and Finance Officer, DRMS, determined that it was not prudent for Mr. Dorman to depart for West Germany on Friday, October 11, since it was well known in advance that Monday, October 14, was a holiday. Further, the agency determined that there was no reason for departure to West Germany any sooner than Saturday, October 12, 1985. Since Mr. Dorman's travel request was dated August 5, 1985, and since he was heavily involved in planning the trip and making his own travel arrangements, the agency determined that he had ample time to make sure he could get a flight scheduled for Saturday, October 12. In view of these

reasons, the agency constructed Mr. Dorman's departure to be on Saturday, October 12, reduced his per diem accordingly, and assessed him 8 hours of annual leave for Friday, October 11.

Regarding Mr. Dorman's claim of a constructive recoupment day, the Accounting and Finance Officer determined that a traveler is not entitled to a recoupment day until he has physically crossed four or more time zones, under the provisions of 2 JTR para. C1058-3. It is his opinion that, since a recoupment day is intended to physically restore an individual so that he can better perform his duties, it should not be granted constructively. Since Mr. Dorman actually returned home on Friday, November 8, his recoupment day was Saturday, November 9, not November 1 when he was still in West Germany. Hence, the agency charged Mr. Dorman 6 days annual leave for the period November 1 through November 8.

Mr. Dorman disputes the agency's determinations concerning per diem and annual leave for Friday, October 11, arguing mitigating circumstances. In his claim submissions, he indicates that when he was notified of the October 14th holiday, of which he was unaware until several days before the trip, he attempted to reschedule the flight for October 12 or 13, but was unable to do so for the three people involved (himself and two coworkers). The next available flight was on Monday, October 14, to arrive in West Germany on Tuesday, October 15. With Wednesday, October 16, as a recoupment day, Mr. Dorman claims this would have lost 2 working days for three people, in addition to requiring other people in Europe to rearrange their schedules. Mr. Dorman further points out that reservations, meetings, and appointments were already in place, and he did not believe there was sufficient time to adjust those arrangements. He decided it was prudent to leave on Friday rather than waiting until Monday.

Mr. Dorman also disputes the agency's determination that he is not entitled to a constructive recoupment day following a constructive travel day. Mr. Dorman states that his original plan was to return on Thursday, November 7, in which event Friday, November 8, would have been a recoupment day. However, when he consulted Ms. Rhonda Madden, Chief of the DRMS Travel Section, she told him that since his travel would be computed constructively due to his annual leave, Thursday, October 31, would be constructed as his travel day and Friday, November 1, would be considered a recoupment day. Mr. Dorman interpreted this to mean that if he returned on Thursday, November 7, he would be expected to report for duty on Friday, November 8. Based on this

information, he changed his return date to Friday, November 8.

#### OPINION

Section 5702 of title 5, United States Code, provides that under regulations prescribed by the General Services Administration, an employee may be reimbursed for the necessary expenses of official travel. The regulations adopted by the General Services Administration are contained in the Federal Travel Regulations, incorp. by ref., 41 C.F.R. § 101-7.003 (1985). Further directives issued through the Department of Defense which apply to civilian employees of the military are contained in Volume 2 of the Joint Travel Regulations. These latter regulations provide generally that an employee is expected to exercise the same care in incurring expenses that a prudent person would exercise if traveling on personal business. Joint Travel Regulations, Vol. 2, para. C1058-1 (Change No. 228, October 1, 1984).

#### Early Departure

Regarding the scheduling of temporary duty travel, 2 JTR para. C1058-2c states:

"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)."

In Two-day Per Diem Rule, 56 Comp. Gen. 847 (1977), we provided further explanation of our prior decisions concerning this so-called "2-day per diem" rule. While recognizing that, insofar as permitted by work requirements, arrival or departure may be delayed to permit an employee to travel during his regular duty hours, we nevertheless concluded that it was not reasonable to pay per diem expenses for 2 days or more for the purpose of facilitating an employee's travel during regular duty hours.

In our decision, Kenneth D. Thomas, 55 Comp. Gen. 590 (1975), we considered the travel circumstances of a Department of Interior employee who reported to his duty station 3 days in advance of his scheduled assignment, traveling during regular working hours on Friday to report for duty on the subsequent Tuesday following a Monday holiday. In denying his claim for 3 days' per diem for the intervening 3-day weekend, we cited the rule that payment of additional per diem costs for 2 days or more to permit an

employee to travel during regular duty hours for personal convenience is considered unreasonable. 55 Comp. Gen. 590, cited above.

In considering whether an employee may be paid additional per diem in connection with his early departure, the per diem costs associated with Friday departure should be compared with the per diem payable based on the constructive day's departure. See, 56 Comp. Gen. 847, 850, cited above. In this case according to his voucher, Mr. Dorman left on Friday, October 11, at 12:45 p.m. for Germany and was allowed 70 percent of the applicable per diem for Friday and 3 days' per diem for Saturday, Sunday and Monday (the holiday). If Saturday is considered a recoupment day allowed by the agency under 2 JTR para. C1058-3 (see further discussion of this provision below), travel on Friday resulted in nearly 3 days of per diem. If we assume that Mr. Dorman would have departed at the same time on Saturday, which DRMS considered his constructive travel day, this would have resulted in less than 2 days of per diem (with Sunday being Mr. Dorman's recoupment day). Given this analysis, the agency was correct in disallowing Mr. Dorman's claim for additional per diem for his Friday departure.

Nevertheless, Mr. Dorman argues that his per diem should be allowed and his leave restored since he made what he considers to be a good faith effort to reschedule the trip to depart on Saturday or Sunday when he learned of the Monday holiday, but was unable to do so. Moreover, he asserts that his decision to depart on Friday was based on his belief that a Monday departure would seriously interfere with the scheduling of the work he was to do on temporary duty.

In Krom and Bosch, 63 Comp. Gen. 268 (1984), we held that under certain circumstances, where an employee's traveltime is extended for the calculated pecuniary advantage of the government rather than for the employee's personal convenience, the "2-day per diem" rule of 56 Comp. Gen. 847 (1977) and 55 Comp. Gen. 590 (1975) limiting per diem does not apply. However, the facts of that case differ significantly from Mr. Dorman's circumstances. Both Mr. Krom and Mr. Bosch were nonexempt employees under the overtime provisions of the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201, and were ordered by their supervisors to travel as they did and stay over weekends on per diem. These orders were based upon management decisions that it would be more cost effective to pay the employees per diem for the weekend than to pay FLSA-required overtime for working on the weekend. In addition, it was administratively determined to be advantageous to the government for

Mr. Krom to leave on Friday, instead of waiting until the following week, to expedite the work of a drilling crew. Thus, Mr. Krom and Mr. Bosch had specific prior authorization to travel as they did. 63 Comp. Gen. 268, cited above.

In this case, Mr. Dorman had no such specific authorization to depart early. In fact, in its report on the claim, the agency stated that Mr. Dorman did not need to depart early for West Germany. Further, Mr. Dorman's supervisor was questioned, and he stated that he knew of no reason for Mr. Dorman's early departure.

In light of the fact that Mr. Dorman began planning this trip in August and was heavily involved in its scheduling, we agree with the agency that he had ample time to take into consideration the annual October holiday. His decision to leave on Friday, October 11, was a personal choice, for which he may not be allowed per diem and for which he may be assessed annual leave, due to his absence from regularly scheduled work.

#### Constructive Recoupment Day

Concerning Mr. Dorman's claim for a constructive recoupment day for his return travel from overseas TDY, we note that the effects of time zone dislocation are recognized in the Federal Travel Regulations, para. 1-7.5e (Supp. 1, September 28, 1981), as follows:

"e. Time changes during air travel. When an individual travels direct between duty points which are separated by several time zones and at least one of the duty points is outside the conterminous United States, per diem entitlement is not interrupted by reason of a rest period allowed the individual en route or at destination under appropriate agency rules."

Further, 2 JTR para. C1058-3a provides for excusal from duty for recuperation as well as per diem as follows:

"a. Temporary Duty Travel. When an employee performs temporary duty travel by air over a direct route, he may schedule his departure to arrive at the temporary duty station 24 hours prior to the beginning of a work status without interruption of entitlement to per diem. This authority will apply only when:

- "1. the permanent and temporary duty station are separated by four or more time zones,
- "2. at least one of the duty points is outside the continental United States,
- "3. the itinerary does not involve any scheduled stopovers or planned delays in excess of 8 hours en route.

"The time zones in which the point of origin and destination are located will not be included in the four time zones separating the points of travel. Authority for excusal from duty upon return to the permanent duty station will be administratively determined in accordance with the regulations of the service concerned." (Emphasis added.)

The agency, in DLSC/DRMS Supplement 1 to the Defense Logistics Agency Regulation (DLAR) 5000.1 (May 12, 1982), refers to this practice of granting a recoupment day as follows:

"5. The Transportation Office is responsible for the following:

"a. Arranging the time of departure from the Permanent Duty Station (PDS) to ensure the traveler arrives at the destination airport no later than 1700 and returns to PDS airport by 2200, whenever practicable. Overseas travelers, crossing more than four time zones, are exempt from those times as a recuperative period is normally authorized." (Emphasis added.)

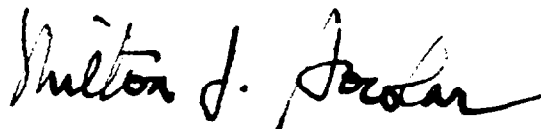
However, no further guidance is available in either DLAR 5000.1 or DLSC/DRMS Supplement 1 which would clarify the circumstances under which administrative leave for a recoupment day on a return trip would be authorized. As noted earlier, the Accounting and Finance Officer, DRMS, determined that, since a recoupment day is intended to physically restore an individual so that he can better perform his duties, it should not be granted in a case such as this where the day would follow a constructive travel day on which the employee did not actually travel and hence did not cross four time zones.

Since the granting of a recoupment day is within the administrative discretion of the agency, we see no reason to disagree with the Accounting and Finance Officer's

determination that it should only be granted on days following actual travel. Although this requirement is not specifically stated in either the Federal Travel Regulations or the Joint Travel Regulations, both provisions quoted above provide for recoupment following direct travel crossing four time zones with minimal interruptions, from which travel the employee would have to recover. The Government's concern in granting this leave is the health and welfare of the traveling employee. In Mr. Dorman's case, since he did not fly on October 31, he would have no reason to recuperate on November 1. Moreover, we do not believe Mr. Dorman should be entitled to something constructively which he would not actually have been granted. Since he actually returned from Germany on a Friday, his recoupment day would have been Saturday, so granting administrative leave would not have been necessary.

Although Mr. Dorman may have been misinformed by the Chief of the Travel Section concerning the approval of a constructive recoupment day, it is a well-established rule that, in the absence of specific statutory authority, the United States is not liable for the erroneous acts of its officers, agents or employees, even though committed in the performance of their official duties. The erroneous advice or authorization does not, in itself, create a right to the restoration of annual leave where the administrative leave claimed is not provided by law. See, Riva Fralick, et al., 64 Comp. Gen. 472 (1985).

Accordingly, Mr. Dorman may not be paid per diem or have 8 hours of annual leave restored for October 11, his early departure on Friday, and he may not have 8 hours of annual leave restored for a constructive recoupment day on Friday, November 1.

*for*   
Comptroller General  
of the United States