



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Marion Harris - First 40-hour Workweek Employee -
10-hour Per Diem Rule

File: B-232157

Date: May 4, 1989

DIGEST

An airplane pilot who works a first 40-hour workweek is not entitled to per diem because of an exception to the "10-hour rule" in the Federal Travel Regulations, para. 1-7.5b(1), which prohibits the payment of per diem to employees who qualify solely on the basis of the fact that they work a non-standard workday.

DECISION

This decision is in response to a request from the Associate Regional Director, Administration, National Park Service, Southeast Regional Office, Atlanta, Georgia. It concerns the entitlement of a pilot to per diem on 1-day trips where travel is less than 24 hours with no overnight stay. We conclude that he may not be reimbursed for the following reasons.

BACKGROUND

Mr. Marion Harris is an airplane pilot whose permanent duty station is in Atlanta, Georgia. His primary duties are to ferry passengers between Atlanta and various other points within the jurisdiction of the National Park Service. Mr. Harris is paid on the basis of a "first 40-hour workweek" and receives overtime pay for all hours over 40. Thus, Mr. Harris may work a 12-hour day on Monday and such time is considered as regular time until he exceeds 40 hours in the workweek.

The regulations governing per diem for travel of 24 hours or less prohibit the payment of per diem for travel of 10 hours or less but authorize per diem for travel of more than

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10 hours.^{1/} The agency has been paying Mr. Harris per diem when he is away from his duty station 10 hours or more. However, there is an exception to the "10-hour rule" in the FTR, para. 1-7.5b(1)(b), which prohibits the payment of per diem to employees who qualify solely on the basis of the fact that they work a non-standard workday. In such instances per diem is not allowed for travel periods less than or equal to the employee's workday hours plus 2 hours. Thus, the agency asks if this exception would apply in Mr. Harris's case since it appears that they have been paying him per diem for his normal days' work.

OPINION

Our Office has held that the exception to the 10-hour rule applies to first 40-hour workweek employees. Department of Labor, B-229473, Oct. 7, 1988. We held in that decision that mine inspectors who work a first 40-hour workweek and a non-standard workday were not entitled to per diem for travel unless the travel period was at least 2 hours longer than the employee's workday. In reaching this conclusion, we requested and received comments from the General Services Administration (GSA) since that agency has been delegated the authority for prescribing the Federal Travel Regulations. 5 U.S.C. § 5707(a)(1) (Supp. IV 1986). The GSA stated that inherent in the 10-hour rule and its exception is the assumption that, as long as the employee's travel period consumes no more than the normal workday plus 2 hours, no additional expenses will be incurred because of the travel status.

Accordingly, Mr. Harris would not be entitled to per diem under the circumstances presented.

for Milton J. Forster
Comptroller General
of the United States

^{1/} Federal Travel Regulations (FTR), para. 1-7.5(b)(1)(a), (c) (Supp. 24, July 15, 1987), incorp. by ref., 41 C.F.R. § 101-7.003 (1987) (FTR).