

Botsford
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DECISION

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

FILE: B-199621

DATE: September 11, 1981

MATTER OF: Byron L. Bartholf - Unauthorized mode of travel - private aircraft

DIGEST: Employee of Forest Service who traveled by privately owned airplane in lieu of common carrier as an exercise of personal preference is not entitled to reimbursement on a constructive cost basis. Reimbursement was denied by agency based on regional regulation prohibiting authorization of travel by private aircraft for safety reasons. The regulation is proper under FTR para. 1-2.2d and is not arbitrary or capricious.

This is in response to a request for an advance decision from Mr. H. Larry Jordan, an authorized certifying officer, National Finance Center, United States Department of Agriculture. The certifying officer has asked whether Mr. Byron L. Bartholf, an employee of the Forest Service, may be reimbursed for travel via a privately owned airplane.

In connection with his duties as a Forest Engineer in the Lassen National Forest, Region 5, Mr. Bartholf made several trips within California, traveling in his own plane. At issue are four vouchers relating to those trips. Use of Mr. Bartholf's private airplane was post approved on three of these vouchers, but they were never released by the Forest Service to the National Finance Center for payment. The fourth voucher was the subject of a claim submitted by Mr. Bartholf to our Claims Group. Our Claims Group returned the claim to the Forest Service which in turn forwarded it to the National Finance Center. On each of the four vouchers Mr. Bartholf has claimed the constructive cost of travel by privately owned automobile since it was less than the \$.24 per mile rate for the use of a privately owned aircraft.

The Forest Service disallowed Mr. Bartholf's claim on the basis of a Forest Service Region 5 regulation which provides as follows:

"5712-14 - Forest Service Employees Who Pilot Aircraft on Official Business. Authority for employees who are not hired as pilots to pilot

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an aircraft while on official business will not be approved, except where assigned duties require involvement in the Forest Service Air Program.

"Aviation is advancing and changing constantly. Regulations on flying call for increasing pilot proficiency and instrumentation of the aircraft. This trend is well advanced in California because of its airways' congestion. Maintaining a safe level of proficiency requires full time attention to aviation."

This regulation was promulgated in April 1970. In 1976, the Region's policy reflected in this regulation was reviewed and reaffirmed, according to a letter from the Regional Forester to the Forest Supervisor of the Lassen National Forest, in large part due to the high number of accidents in general aviation type flying.

The certifying officer has asked whether this regulation prevents reimbursement in light of paragraph 1-2.2d of the Federal Travel Regulations (FTR) (FPMR 101-7, May 1973), which provides:

"Permissive use of privately owned conveyance.
When an employee uses a privately owned conveyance as a matter of personal preference and such use is compatible with the performance of official business although not determined to be advantageous to the Government under 1-2.2c(3), such use may be authorized or approved provided that reimbursement is limited in accordance with the provisions of 1-4."

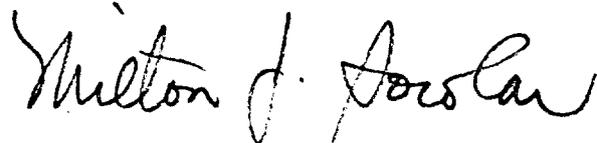
When an employee uses a privately owned conveyance as a matter of personal preference in lieu of common carrier transportation under paragraph 1-2.2d, FTR para. 1-4.3 provides that the total amount allowable for mileage and per diem shall be limited to the constructive cost of appropriate common carrier, including constructive per diem.

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On the basis of these provisions we have held that an employee is entitled to be reimbursed for travel expenses on a constructive cost basis when the employee uses a privately owned conveyance as a matter of personal preference in lieu of the mode of travel authorized, provided that the use of a privately owned conveyance is compatible with the performance of the employee's official business. See Lawrence B. Newell, B-181151, January 3, 1975, and Walter D. Felzke, B-191282, September 29, 1978. Those cases, however, did not deal with the effect of a proper agency regulation restricting the use of a particular mode of transportation.

Here, the Forest Service Region 5 regulation expressly provides that the use of private aircraft for official travel by employees who are not hired as pilots will not be approved. The restriction was imposed as a safety measure and as such is clearly a proper exercise of the agency's discretionary authority under para. 1-2.2d of the FTR. The regulation is not arbitrary, capricious, or contrary to the statute or the Federal Travel Regulations.

Accordingly, Mr. Bartholf may not be reimbursed for the travel costs he incurred in using his privately owned airplane.



Acting Comptroller General
of the United States