

DOCUMENT RESUME

02889 - [A1932986]

[Request for Per Diem and Transportation Expenses]. B-186595.  
July 7, 1977. 4 pp.

Decision re: Modesto Canales; by Robert F. Keller, Deputy  
Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation  
(305).

Contact: Office of the General Counsel: Civilian Personnel.

Budget Function: General Government: Central Personnel  
Management (805).

Organization Concerned: United States Customs Service.

Authority: 31 Comp. Gen. 289. 32 Comp. Gen. 87. 33 Comp. Gen.  
98. 23 Comp. Gen. 341. 24 Comp. Gen. 593. B-157551 (1965).  
B-167022 (1976). F.T.R. (FPMR 101-7), para. 1-7.6a.

Cleburne Maier, Regional Commissioner, United States  
Customs Service, requested a decision on transportation and per  
diem expenses of transferred employee who performed temporary  
duty later made permanent. Per diem was payable from date of  
temporary duty to date position was made permanent, and return  
travel from temporary to former station was allowed. (DJM)

*Mr. Holbrook  
Commissioner*

*2486*

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**DECISION**



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

**FILE: B-180595**

**DATE: July 7, 1977**

**MATTER OF: Modesto Canales - Per Diem**

**DIGEST:** Customs Service employee stationed in New York applied and was accepted for a position in Houston, Texas. The position became subject to downgrade action so the employee then refused to accept position. He was later detailed to the position in Houston, he returned to New York at end of detail, and was subsequently transferred to the position. Administrative report shows that at time detail was initiated it was contemplated it would be temporary, not to be followed by permanent transfer. Therefore, per diem is allowable for temporary duty in Houston until day employee received notice of transfer.

Mr. Cleburne Maier, Regional Commissioner, United States Customs Service, has requested a decision as to whether Mr. Modesto Canales, an employee of the Customs Service, may receive per diem and transportation expenses for the period he was detailed to the position of Assistant Regional Commissioner (Administration), grade GS-15, for Customs Region VI, Houston, Texas.

Mr. Maier stated the facts in this case as follows:

"Mr. Modesto Canales was selected on December 9, 1975 for the position of Assistant Regional Commissioner (Administration), GS-15, in Customs Region VI, Houston, Texas. The selection was announced under the Customs Merit Promotion Plan. Prior to the announcement Mr. Canales was the Director of the Financial Management Division, GS-15, in Customs Region II, New York, N. Y.

"Approximately six weeks after the selection was issued Mr. Canales was detailed from his New York financial management position to Houston as the Assistant Regional Commissioner (Administration). The detail was effective January 16, 1976 and was not

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to exceed May 17, 1976. Transportation expenses and per diem were authorized under Travel Authorization Number FM-7 dated January 9, 1976.

"Thus far, Mr. Canales has submitted travel vouchers through May 3, 1976 for transportation and per diem expenses during the detail period.

"Mr. Canales contends that he has not accepted the position of Assistant Regional Commissioner (Administration) in Houston because of recent Civil Service Commission review which proposed that the position be downgraded to the GS-14 level. He advised that he would not accept the position if the Civil Service Commission proposal becomes effective."

In view of the above Mr. Maier requests a ruling on the propriety of the payments of transportation and per diem expenses while Mr. Canales was detailed to the position of Assistant Regional Commissioner (Administration) in Houston.

We requested a report from Mr. J. Murry Martin, Director, Personnel Management Division, Customs Service, concerning Mr. Canales' status while he was in Houston. Mr. Martin reported:

"Although Mr. Canales' selection for the position of Assistant Regional Commissioner (Administration), was approved by the Treasury Department on December 1, 1975, it was not until May 25, 1976, that the selectee officially accepted the position. This delay was created due to the potential downgrading of the Assistant Regional Commissioner (Administration) position to the GS-14 level as a result of a Civil Service Commission evaluation conducted in early 1975 in the Houston Region.

"During the intervening period between January 13, and May 14, 1976, Mr. Canales was detailed as the Acting Assistant Regional Commissioner (Administration) in Houston. Mr. Canales then returned to

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his official post of duty in New York and was subsequently permanently reassigned to the Assistant Regional Commissioner (Administration) position effective June 6, 1976."

It is a basic rule that per diem payments may not be made to an employee while he is at his permanent duty station. Federal Travel Regulations (FPMR 101-7) para. 1-7.6a. In this regard we have repeatedly held that an agency may not designate an employee's official duty station at some place other than the place at which he is expected to perform the preponderance of his duties in order to pay him per diem at such place. 31 Comp. Gen. 289 (1952), 32 id. 87 (1952). We have recognized that whether a particular duty station is in fact a permanent station or temporary is not merely a matter of administrative designation, but is a question of fact to be determined from the orders, and where necessary, from the character of the assignment, particularly as to the duration thereof and the nature of the duty, 33 Comp. Gen. 93 (1953). Accordingly, when a civilian employee is transferred to a place at which he is already on duty, the transfer is effective on the date he receives notice thereof. However, if an employee is transferred to a place where he is not on temporary duty, the transfer is effective on the date he actually arrives at the station. 23 Comp. Gen. 342 (1943).

Consistent with the above, we held at 24 Comp. Gen. 593 (1945), that per diem may not be allowed at a place where an employee is on temporary duty after he receives notice that such place is to become his permanent duty station, even though there may be an administrative delay in the processing and issuance of a formal transfer order. Accordingly, in the normal case where an employee has applied and has been accepted for a position at another duty station to which he is subsequently detailed and to which he is then permanently appointed after the detail, we would find that his transfer to such place began at the beginning of the period of detail so as to deny him per diem payments while there.

However, Mr. Canales neither accepted the position of Assistant Assistant Regional Commissioner in Houston, nor was he permanently appointed to such position when detailed there since the position was subject to downgrade action. The administrative record, upon which we rely heavily, shows that as far as the parties were concerned at the time the detail was initiated, the detail was

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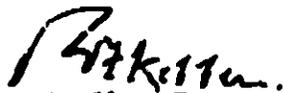
for a temporary period not to be followed by a permanent transfer. Only subsequently was it finally determined that Mr. Canales would in fact be permanently transferred to Houston. Therefore, the situation here is different from that in 24 Comp. v. n. 593, supra, where the employee knew he was being permanently appointed and the only delay was caused by administrative processing. In view of the circumstances of this case, we would not object to the payments of transportation and per diem expenses made to Mr. Canales while on temporary duty in Houston. B-157551, October 27, 1965.

Given the fact that Mr. Canales would have accepted the transfer to Houston but for the possible downgrade action, however, it becomes necessary to determine the date he learned he would be transferred there as his entitlement to per diem in Houston would of course end on the day he received knowledge of his ultimate transfer. 23 Comp. Gen. 341, supra. According to a report on this matter dated May 17, 1977, from Mr. John A. Hurley, Assistant Commissioner of Customs, Administration, Mr. Canales finally agreed on May 7, 1976, to transfer to Houston effective June 6, 1976. Therefore, since Mr. Canales knew on May 7, 1976, while on detail to Houston, that he would be transferred there, he would not be entitled to per diem while in Houston from May 7, 1976, onwards.

We note in this regard, however, that we no longer follow the decisions which hold that an employee may not be returned to his former station at Government expense when he is notified while at his temporary duty station that he is transferred thereto. B-167022, July 12, 1976. Therefore, Mr. Canales' return travel expenses to New York would be reimbursable in any event.

Action should be taken by the Customs Service consistent with the above.

Deputy

  
Comptroller General  
of the United States