

DOCUMENT RESUME

03177 - [A2233358]

[Administrative Leave for Excess Travel Time]. B-189439. August 8, 1977. 7 pp.

Decision re: Federal Aviation Administration; 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).

Authority: 5 U.S.C. 6322. F.T.R. (FPMR 101-7), para. 1-2.2, as amended. F.T.R. (FPMR 101-7), para. 1-4.3. Executive Order 10529. FPM Supplement 990-2, Book 630, subch. S11. 54 Comp. Gen. 706. 44 Comp. Gen. 643. 53 Comp. Gen. 582. 55 Comp. Gen. 510. 55 Comp. Gen. 779. B-775627 (1972). B-162720 (1968). B-155948 (1965). B-144215 (1960). B-156287 (1974). B-138942 (1977) -

The Department of Transportation requested advice concerning its authority to grant administrative leave to employees incident to travel by privately owned vehicles as a matter of personal preference. The Federal Aviation Administration authorized travel by common carrier to training courses based on its determination that travel by privately owned vehicles was not advantageous to the Government; it was not an appropriate exercise of administrative discretion to excuse employees from duty without charge to leave for excess traveltime because of the employees' election to travel by privately owned vehicle. (Author/SC)

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DECISION



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

FILE: B-189439

DATE: August 8, 1977

MATTER OF: Federal Aviation Administration - Administrative
Leave for Excess Traveltime

DIGEST: Where Federal Aviation Administration has authorized travel by common carrier to training course based on its determination that travel by privately owned vehicle is not advantageous to the Government, it is not an appropriate exercise of administrative discretion to excuse employees from duty without charge to leave for the excess traveltime occasioned by the employees' election as a matter of personal preference to travel by privately owned vehicle.

The Department of Transportation has requested our opinion concerning its authority to grant administrative leave to employees incident to travel by privately owned vehicle as a matter of personal preference. This matter has become a significant issue in its negotiations with the National Association of Government Employees.

We are told that many Federal Aviation Administration (FAA) employees are required to attend training courses at the FAA Academy in Oklahoma City, Oklahoma. The courses, which may involve as many as 25 consecutive weeks of training, are scheduled to begin on Wednesdays so that travel may be performed during the employees' regularly scheduled workweeks. The FAA explains that in most cases the use of a privately owned vehicle cannot be authorized as advantageous to the Government under the Federal Travel Regulations (FTR) (FMPR 101-7) para. 1-2.2c (May 1973), as amended by FPMR Temporary Regulation A-11, Supp. 3. However, the agency permits its employees to travel by privately owned vehicle as a matter of personal preference. Employees who so elect are reimbursed for their travel expenses on the basis of the constructive cost of travel by common carrier and are charged leave for the traveltime which exceeds the traveltime that would have been involved if they had traveled by common carrier. Employees who live a considerable distance from the Academy must begin travel on Friday or on one of their regular days off in order to begin training on Wednesday. Those who live in close proximity to the Academy, however, are authorized travel by privately owned vehicle as advantageous to the Government and, because their travel involves shorter periods of time, do not have to take leave for purposes of travel to the Academy.

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Those employees who elect to drive their privately owned vehicles rather than travel by common carrier feel they should not be required to use their annual leave for the excess traveltime involved. Recognizing its authority to excuse employees from duty without charge to leave in appropriate situations, the Department of Transportation asks whether the FAA may, as a matter of policy, excuse these employees from duty without charge to leave for up to 2 days each way, depending on the distance between the employee's official duty station and the Academy. We understand that FAA proposes to limit the granting of administrative leave for travel by privately owned vehicle to those instances in which employees are required to attend training for more than 4 consecutive weeks and when travel by privately owned vehicle is authorized only as a matter of personal preference under FTR para. 1-2.2d.

The FAA's refusal to authorize travel by privately owned vehicle as advantageous to the Government is predicated on the following provisions of FTR paras. 1-2.2b and c (Temporary Regulation A-11, May 19, 1975):

"b. Selecting method of transportation to be used. Travel on official business shall be by the method of transportation which will result in the greatest advantage to the Government, cost and other factors considered. In selecting a particular method of transportation to be used, consideration shall be given to energy conservation and to the total cost to the Government, including costs of per diem, overtime, lost work time, and actual transportation costs. Additional factors to be considered are the total distance of travel, the number of points visited, and the number of travelers. 5 U.S.C. 5733 requires that, 'The travel of an employee shall be by the most expeditious means of transportation practicable and shall be commensurate with the nature and purpose of the duties of the employee requiring such travel.'

"c. Presumption as to most advantageous method of transportation.

"(1) Common carrier. Since travel by common carrier (air, rail, or bus) will generally

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result in the most efficient use of energy resources and in the least costly and most expeditious performance of travel, this method shall be used whenever it is reasonably available. Other methods of transportation may be authorized as advantageous only when the use of common carrier transportation would seriously interfere with the performance of official business or impose an undue hardship upon the traveler, or when the total cost by common carrier would exceed the cost by some other method of transportation. The determination that another method of transportation would be more advantageous to the Government than common carrier transportation shall not be made on the basis of personal preference or minor inconvenience to the traveler resulting from common carrier scheduling.

* * * * *

"(3) Privately owned conveyance. Except as provided in 1-2.2d, the use of a privately owned conveyance shall be authorized only when such use is advantageous to the Government. A determination that the use of a privately owned conveyance would be advantageous to the Government shall be preceded by a determination that common carrier transportation or Government-furnished vehicle transportation is not available or would not be advantageous to the Government. To the maximum extent possible, these determinations and the authorization to use a privately owned conveyance shall be made before the performance of travel."

An agency's determination under the above-quoted provision that an employee's use of his privately owned vehicle for travel is or is not advantageous to the Government will not generally be questioned by this Office. 26 Comp. Gen. 463 (1947); B-161266, March 24, 1970; B-160449, February 8, 1967. The particular determination that privately owned vehicle travel of FAA employees to the FAA Academy in Oklahoma from distant locations is not advantageous to the Government is not questioned here. If the FAA found such method of transportation to be to the Government's advantage, then traveltime during regular duty hours of work,

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would be allowed, and per diem and mileage expenses would be payable, without regard to the constructive cost of travel by common carrier.

While FAA recognizes that its determination-- that travel by privately owned vehicle is not advantageous to the Government-- precludes its paying the additional mileage and per diem occasioned by the employees' use of their privately owned vehicles under FTR para. 1-4.3, its proposal would permit employees who travel by privately owned vehicle as a matter of personal preference to use official time to perform travel to and from the Academy.

There is no general statutory authority under which Federal employees may be excused from their official duties without loss of pay or charge to leave. However, excused absences have been authorized in specific situations both by law, as in section 6322 of title 5, United States Code, which authorizes an absence of up to 4 hours in any one day for a veteran to participate in funeral services under certain circumstances, and by Executive order, such as Executive Order 10529, April 22, 1954, which provides that employees may be excused for a reasonable amount of time up to a maximum of 40 hours in a calendar year to participate in Federally recognized civil defense programs. In addition, over the years it has been recognized that in the absence of a statute controlling the matter, the head of an agency may in certain situations excuse an employee for brief periods of time without charge to leave or loss of pay. Some of the more common situations in which agencies generally excuse absence without charge to leave are discussed in Federal Personnel Manual (FPM) Supplement 990-2, Book 630, subchapter S11. These include (1) registration and voting, (2) blood donations, (3) tardiness and brief absences, (4) taking examinations, (5) attending conferences or conventions, and (6) representing employee organizations.

The last five situations in which employees may be excused from duty without charge to leave are set forth at subchapter S11-5 as some of the more common situations in which employees may be excused from duty without charge to leave. That subchapter contains the following language permitting agencies to administratively determine appropriate situations in which to grant administrative leave:

"a. General. With few exceptions, agencies determine administratively situations in which they

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will excuse employees from duty without charge to leave and may by administrative regulation place any limitations or restrictions they feel are needed. * * *

Decisions by the General Accounting Office addressing the scope of agency authority to grant administrative leave have generally drawn a distinction between absences connected with activities which further the functions of the agency and those which, though for worthy cause, are not in furtherance of an agency function. Based on this we have upheld the denial of administrative leave for time spent in fighting a local fire outside the Government installation, 54 Comp. Gen. 706 (1975); we have held that Government attorneys voluntarily assigned to represent indigents in State or Federal Courts may not have such service regarded as in furtherance of a Federal function and may not be granted administrative leave therefor, 44 Comp. Gen. 643 (1965); and we have held that an employee may not be granted administrative leave for voluntary service to Africare notwithstanding the Government's support of the relief program by grant funds, B-156287, June 26, 1974. That distinction aside, we have approved the granting of administrative leave in situations relating to emergencies. 53 Comp. Gen. 582 (1974).

In the context of official travel we have recognized several situations in which administrative leave may appropriately be granted. In 55 Comp. Gen. 510 (1975) and in B-138942, May 19, 1977, we recognized that employees may be granted brief periods of rest following air travel necessarily performed during hours normally allocated to rest. Where a transferred employee delayed his travel an additional day through no choice of his own but awaiting the tardy arrival of a moving company we upheld the granting of 8 hours administrative leave. 55 Comp. Gen. 779 (1976). Similarly, in B-180893, May 23, 1974, we held that an employee could be granted administrative leave for the purpose of complying with agency cancellation of an imminent and previously authorized transfer. See also B-160278, December 13, 1966, and B-160838, March 10, 1967.

Travel situations in which we have consistently held that absence should be charged to leave are those in which the excess traveltime is attributable to the employee's delay or deviation from

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the direct route of travel for personal reasons or where the excess traveltime is otherwise a matter of personal convenience to the employee. Thus, we have held that where additional time away from his official duties was occasioned by the employee's election to travel by privately owned vehicle as a matter of personal preference, the excess absence from work should be charged to annual leave. B-175627, July 5, 1972; B-162720, February 16, 1968; B-155948, March 1, 1965; B-144215, October 31, 1960.

These holdings are consistent with the following language of FPM Supplement 990-2, chapter 530, subchapter S3-4:

"* * * Absences because of excess travel time resulting from the use of privately owned motor vehicles for personal reasons on official trips is generally chargeable to annual leave. * * *"

We previously considered and rejected a proposal similar to FAA's proposal to grant administrative leave for excess traveltime. In the 1960s the Veterans Administration (VA) adopted a policy whereby employees who elected to travel by privately owned vehicle, and who were authorized expenses limited to the constructive cost of travel by common carrier were authorized to use official time for such travel based on "reasonable driving time and not on common carrier time." The VA instruction was tantamount to a grant of administrative leave for the excess traveltime occasioned by the employee's determination to travel by privately owned vehicle in the absence of a determination that such use is advantageous to the Government. By our letter B-165693, January 11, 1965, we brought the matter to the attention of the Administrator of Veterans Affairs, expressing the following concerns with that policy:

"Although the determination to charge an employee leave because he travels by privately owned vehicle when he could have accomplished the official business involved in a shorter time had he traveled by appropriate common carrier is a matter primarily within the sound discretion of the head of the agency concerned, we believe that in the interest of economy employees who use privately owned vehicles for official travel when

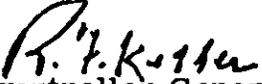
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such mode of travel is not to the advantage of the Government should be charged leave. Our opinion is that appropriate leave should be charged in the same manner and for the same reasons as leave is charged when an employee delays his travel or deviates from the direct route of travel for personal reasons.

"We believe that agency regulations should require the charge of leave for excess travel time in all cases where employees travel by privately owned vehicle for personal convenience except when a specific determination to the contrary is made. * * *"

An additional reason for not sanctioning the granting of administrative leave for absences for excess traveltime is that the determination not to authorize an employee to travel by privately owned vehicle, is made on the basis that the agency is unable to find such travel advantageous to the Government. To permit an agency to conclude that the employee's election as a matter of personal preference to travel by privately owned vehicle and the additional time away from his duties is in furtherance of the agency's function for purposes of administrative leave is fundamentally inconsistent with its failure to find that travel by privately owned vehicle is advantageous to the Government.

Thus, in the absence of a finding that travel by privately owned vehicle is advantageous to the Government, we do not believe it is appropriate to excuse absences without charge to leave for the additional traveltime occasioned by the employee's use of a privately owned vehicle for personal reasons.


Deputy Comptroller General
of the United States