

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

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**FILE:** B-210523**DATE:** October 4, 1983**MATTER OF:** Dominic D. D'Abate - Privately  
Owned Automobile**DIGEST:**

Travel orders of Navy civilian employee limited reimbursement for first duty station travel by privately owned automobile (POA) to the constructive cost of commercial air. Both the Federal Travel Regulations (FTR) and 2 Joint Travel Regulations (2 JTR), however, state that use of POA for such travel is advantageous to the Government. Where the applicable regulations prescribe payment the claim must be allowed, regardless of the wording of the travel orders. See FTR 2-2.3a; 2 JTR C2151(3).

The issue in this decision is whether reimbursement to a Navy civilian employee for first duty station travel by privately owned automobile (POA) is limited to the cost of travel by common carrier. We hold that, regardless of the wording of the travel orders, where the applicable regulations prescribe that this travel by POA is advantageous to the Government, the employee must be reimbursed on that basis.

This decision is in response to an appeal filed by Mr. Dominic D. D'Abate, of our Claims Group settlement disallowing his claim. Mr. D'Abate, an engineer, was recruited from the University of Puerto Rico, San Juan, Puerto Rico, to fill a manpower shortage position with the Naval Ship Weapon Systems Engineering Station (NSWSES), Port Hueneme, California. Apparently, the Navy recruiter told Mr. D'Abate that his moving expenses would be reimbursed in full. His travel orders, dated August 6, 1980, stated that he was authorized to take a commercial airline flight from San Juan to Jacksonville, Florida, and then to use his POA to travel from Jacksonville to Port Hueneme. The block in his travel orders which ordinarily signifies whether the use of a car is or is not advantageous to the Government was not checked. The travel order did, however, state as follows: "[Travel] cost NTE [not to exceed] airfare from San Juan to Port Hueneme."

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After performing the travel, Mr. D'Abate claimed reimbursement for the applicable mileage, per diem, and air travel costs since, in his view, he was entitled to "reimbursement in full." The certifying officer, however, denied his claim for full reimbursement. On June 30, 1981, the Commanding Officer, NSWSES, appealed the certifying officer's decision to the Navy Accounting and Finance Center (NAFC). Noting the legal issues, NAFC forwarded the appeal to our Claims Group. The Claims Group denied Mr. D'Abate's claim because they found that both his travel orders and the pertinent regulations expressly limited the amount of reimbursement to the common carrier cost. This case is an appeal of the Claims Group settlement instituted by Mr. D'Abate. He believes that, regardless of the wording of the travel orders, the agency regulations prescribe mandatory payment of his claim. We agree with Mr. D'Abate's contention.

The Federal Travel Regulations (FTR) were promulgated under the statutory authority of 5 U.S.C. § 5723 (1982) and have the full force and effect of law. Accordingly, we have held that the provisions of the FTR may not be waived or modified by either the employing agency or our Office. 49 Comp. Gen. 145 (1969); Johnnie M. Black, B-189775, September 22, 1975. The Joint Travel Regulations, Volume II (2 JTR), applicable here, are the internal regulations of the Department of Defense implementing the FTR.

The relevant provisions of the FTR and 2 JTR clearly establish that use of a POA for first duty station travel is the most advantageous method. FTR paragraph 2-2.3a. states that:

"When an employee, with or without an immediate family, who is eligible for travel allowances under 2-1.2 and 2-1.5, uses a privately owned automobile for permanent change of station travel, that use is deemed to be advantageous to the government. The provisions in 2-2.3 also apply to new appointees, including those covered in 2-1.5f [shortage category employees] \* \* \*."

This provision clearly establishes that first duty station travel by POA for employees in manpower shortage positions, who have signed service agreements, will be considered the

most advantageous method to the Government. The provision allows no discretionary authority for agency officials to conclude otherwise. Also, there is nothing in the language to suggest that application of the regulation is limited to transfers between duty stations in the continental United States. B-168883, April 15, 1970.

Consistent with the FTR, 2 JTR contains a similar provision. The relevant paragraph, C-2151(3) (later modified by ch. 200, June 1, 1982), states that:

\* \* \* Except for renewal agreement travel, the use of a privately owned automobile in connection with permanent duty travel will be considered as advantageous to the Government. Permanent duty travel by privately owned airplane or motorcycle and renewal agreement travel by privately owned automobile will be considered as advantageous to the Government when it is determined that the cost of such travel at the rate of \$0.185 per mile by privately owned automobile, \$0.24 per mile by airplane, and at \$0.11 per mile by privately owned motorcycle, including per diem for the actual travel period not in excess of the time required to complete the trip at a rate of 300 miles per calendar day, is less than the cost of travel by common carrier.

Although the above-cited provision limits the reimbursement for travel by privately owned airplane or motorcycle to the constructive cost of common carrier travel, the provision does not so limit the amount of reimbursement for the use of a privately owned automobile while on first duty station travel. See 2 JTR C-2151-3 (ch. 167, September 1, 1979).

Accordingly, Mr. D'Abate's method of travel must be considered as advantageous to the Government and the clause in his travel orders, purporting to limit his reimbursement is invalid. See B-168883, April 15, 1970, cited above.

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The Claims Group settlement is, therefore, overruled, and Mr. D'Abate's reimbursement should not be limited to the cost of airfare from San Juan to California.

*for* *Milton J. Fowler*  
Comptroller General  
of the United States