

27805

DECISION



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

FILE: B-212837

DATE: March 26, 1984

MATTER OF: Oscar Hall - Per Diem During Permanent
Change-of-Station Transfer

DIGEST:

Employee who performed travel incident to transfer of duty station was delayed by breakdown of automobile. Employee may be allowed per diem and traveltime for period of delay since, during the entire trip, he averaged more than the daily minimum driving distance specified in paragraph 2-2.3d(2) of the Federal Travel Regulations, FPMR 101-7 (May 1973) as amended. However, per diem entitlement is subject to reduction since employee resided with relatives during period of delay, unless he can show that his relatives incurred additional expenses as a result of his stay.

Mr. John R. Nienaber, an authorized certifying officer of the United States Department of Agriculture, questions whether Mr. Oscar Hall may be paid per diem expenses and afforded traveltime for the period he was delayed en route to his new duty station by the breakdown of his privately owned vehicle (POV). We hold that Mr. Hall is entitled to per diem and traveltime for the period of the delay since, during the entire trip, he averaged more than the daily minimum driving distance specified in paragraph 2-2.3d(2) of the Federal Travel Regulations, FPMR 101-7 (May 1973) as amended by FPMR Temporary Regulation A-11, Supplement 4, April 29, 1977 (FTR).

Mr. Hall, an employee of the Forest Service, U.S. Department of Agriculture, was transferred from Carson, Washington, to Macon, Georgia, in February 1981. His travel orders authorized travel by POV, and specified that mileage of not less than 300 miles per calendar day would be considered to be a reasonable daily driving distance. The orders further authorized per diem for the employee, his spouse, and two children.

Mr. Hall and his family left Carson at 9:30 p.m. on February 20, 1981. On February 24, 1981, the employee's POV

028396

broke down in Montgomery, Alabama. The employee and his family remained in Montgomery for the next 3 days, apparently residing at the home of relatives. Mr. Hall left Montgomery on the morning of February 28, 1981, and arrived in Macon at 7:45 p.m. on the same day.

Despite the 3-day delay, Mr. Hall and his family averaged more than 300 miles per day for the entire trip to Macon. The employee's claim for 8-1/4 days per diem initially was allowed by the agency, on the basis that the total miles claimed (2,970 miles) divided by the minimum daily mileage of 300 miles required by FTR para. 2-2.3d(2) yielded an allowable traveltime exceeding the 8-1/4 days claimed. Later, however, the Forest Service determined that the reason for Mr. Hall's 3-day delay in Montgomery was unacceptable. Consequently, Mr. Hall was notified that he had erroneously been paid per diem for 3 days, for a total overpayment of \$450.

Mr. Hall disputes the agency's determination, arguing that it should pay him a per diem allowance for the period of his delay pursuant to certain provisions of FTR para. 2-2.3d(2). The provisions cited by Mr. Hall allow an agency to make an exception to the minimum daily mileage requirement when an employee is delayed en route to his new duty station for reasons which are beyond his control and acceptable to the agency.

Against this background, the Department of Agriculture poses the following questions:

- "1. Would the fact that Mr. Hall actually averaged over 300 miles a day allow per diem for the delay in Montgomery, or were we correct in only allowing per diem for actual travel time?
- "2. Would the breakdown of an employees [sic] car be an acceptable reason for delaying travel, or would this be personal to the traveler, nullifying a claim for additional per diem?

- "3. If the claim is denied, should Mr. Hall's leave record be adjusted to reflect time in a leave status for the time involved, or would the agency have the discretion to allow him to remain in a duty status?"

The maximum per diem allowable to an employee who performs change-of-station travel by POV is prescribed by FTR para. 2-2.3d(2), as amended by FPMR Temp. Reg. A-11, Supp. 4, April 29, 1977, as follows:

"(2) Maximum allowance based on total distance. Per diem allowances should be paid on the basis of actual time used to complete the trip, but the allowances may not exceed an amount computed on the basis of a minimum driving distance per day which is prescribed as reasonable by the authorizing official and is not less than an average of 300 miles per calendar day. An exception to the daily minimum driving distance may be made by the agency concerned when travel between the old and new official stations is delayed for reasons clearly beyond the control of the travelers such as acts of God, restrictions by Governmental authorities, or other reasons acceptable to the agency; e.g., a physically handicapped employee. In such cases, per diem may be allowed for the period of the delay or a shorter period as determined by the agency. * * *"

The above-quoted provision requires an employee to travel an average distance of 300 miles per day for the duration of the trip, or a higher average mileage rate prescribed by the authorizing official. We have recently held, however, that an employee who does not meet the minimum daily mileage requirement may nevertheless be authorized additional per diem if the agency determines that his delay in traveling between duty stations was for reasons beyond his control and acceptable to the agency. See Robert T. Bolton, B-210305, August 24, 1983, 62 Comp. Gen. _____.

In the pending case, the Forest Service has determined that the reason for Mr. Hall's delay en route to Macon was not acceptable. However, the employee's reason for delaying or interrupting change-of-station travel does not become an issue under FTR para. 2-2.3d(2) unless the employee fails to travel the daily minimum distance. Where, as here, the employee averages more than the required 300 miles per day in traveling between duty stations, he may be paid per diem and afforded traveltime on the basis of the actual number of days in a travel status. See Donald C. Schott, B-189808, April 28, 1978. The principle underlying FTR para. 2-2.3d(2)--that the employee is required to travel a specified distance each day--also means that he may not be required, absent prior notification, to travel more than that distance each day. See Schott, above. Of course, if an employee interrupts travel for a vacation or for personal reasons, the agency may place him on annual leave and terminate per diem for the period of the interruption. See FTR para. 1-7.5 (September 1981).

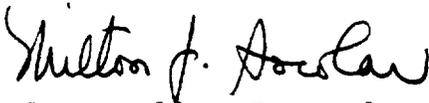
As part of our consideration of this case, we have reviewed our prior decisions in this area. During that review we examined Richard W. Coon, B-194880, January 9, 1980, and we have decided that a portion of that decision is inconsistent with both Schott and Bolton, above. The emphasis in Coon was placed on technical compliance with regulations governing the completion of travel vouchers, rather than on the substance of the employee's actions. It is clear from Schott and Bolton, that FTR para. 2-2.3d(2) should be interpreted to insure that the employee is reimbursed for his actual travel expenses if, during the course of his trip, the daily average distance traveled exceeds the minimum required distance. The emphasis should not be on an examination of each day's travel, but should be on the trip as a whole. Therefore, although it remains true that employees must meet regulatory and agency requirements for specificity and detail in the preparation of their vouchers as discussed in Coon, we will no longer follow Coon to the extent that it is inconsistent with this case, Schott, and Bolton.

On this basis, Mr. Hall is entitled to per diem and traveltime on the basis of travel between Carson and Macon at a distance of 300 miles per day. As indicated previously, the total miles claimed by Mr. Hall (2,970 miles)

divided by a driving distance of 300 miles per day yields an allowable traveltime exceeding 8-1/4 days. Therefore, Mr. Hall may be allowed per diem and traveltime for the 8-1/4 days claimed.

We note, however, that Mr. Hall's per diem entitlement is subject to reduction since it appears that he and his family resided with relatives during the 3-day delay in Montgomery. Where an employee lodges at the home of a friend or relative, we have held that he may not be reimbursed at the maximum per diem rate unless he can show that his lodging expenses correlated with additional costs actually incurred by the host. Clarence R. Foltz, 55 Comp. Gen. 856 (1976). It is the responsibility of the employing agency, in the first instance, to determine whether the claimed expenses are reasonable. Jesse A. Burks, 55 Comp. Gen. 1107 (1976); reconsidered and amplified, 56 Comp. Gen. 604 (1977). In making that determination, the agency should consider such factors as the number of individuals for whom lodging was provided, increases in the use of utilities, the hiring of extra help, and extra work performed by the host. See Foltz, above.

Accordingly, Mr. Hall may be paid per diem and afforded traveltime for the period of his delay en route to his new duty station. However, the agency should evaluate the reasonableness of lodging expenses claimed for the period of the delay and make any appropriate adjustment in accordance with the guidance set forth above.

for 
Comptroller General
of the United States