



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

April 9, 2010

CBCA 1937-TRAV, 1938-TRAV, 1939-TRAV, 1940-TRAV

In the Matters of HECTOR M. GALLARDO, JAMES E. RODGERS,
BERNARD A. KENNINGS, and PETER LUAT

Hector M. Gallardo, San Diego, CA, Claimant in CBCA 1937-TRAV

James E. Rodgers, San Diego, CA, Claimant in CBCA 1938-TRAV

Bernard A. Kennings, San Diego, CA, Claimant in CBCA 1939-TRAV

Peter Luat, San Diego, CA, Claimant in CBCA 1940-TRAV

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Department of the Navy, San Diego, CA, appearing for Department of the Navy.

DANIELS, Board Judge (Chairman).

The Department of the Navy sent four employees -- Hector M. Gallardo, James E. Rodgers, Bernard A. Kennings, and Peter Luat -- on official business to Japan in February 2010. The travelers were directed to perform temporary duty in Yokosuka. The Navy's civilian ticket office, SATO, was unable to find hotel rooms for them in Yokosuka, however; it made hotel reservations for them instead in nearby Yokohama. The officially-prescribed rates for lodging and per diem allowance for meals and incidental expenses are higher for Yokohama than they are for Yokosuka. The Navy paid for the hotel rooms in Yokohama at the lodging rate for that city. It paid the travelers an allowance for meals and incidental expenses appropriate for Yokosuka, however. The travelers ask the Board to require the Navy to pay them the difference in per diem allowance between the two locations.

The Navy relies on a provision of the Joint Travel Regulations (JTR), C4550-A, which provides, “*The per diem rate is determined based on the traveler’s TDY [temporary duty] location, not the lodging location. If neither GOV’T QTRS [government quarters] nor commercial lodging is available at the TDY location, see par. [paragraph] C4555-A.*” The agency’s reading of this provision is incomplete. It ignores the second sentence, which directs the reader to another paragraph of the JTR in situations like the one in which our travelers found themselves -- without available lodging at their TDY location. That other paragraph, C4555-A, explains:

1. Lodging at a TDY Location. Ordinarily an employee should lodge at the TDY location. If an employee obtains lodging outside the area covered by the TDY location per diem rate for personal preference or convenience, the allowable per diem is limited to the maximum per diem rate prescribed for the TDY location.
2. Lodging Not Available at a TDY Location. If lodgings are not available at a TDY location and must be obtained in an adjacent locality at which the prescribed per diem rate is higher, a DoD [Department of Defense] Component may, on an individual case basis, authorize/approve the higher maximum per diem rate.

The first of these subparagraphs is not relevant here, for our travelers spent their nights outside the area covered by the per diem rate for their temporary duty location not for personal preference or convenience, but because no hotel rooms were available at that location. The second subparagraph of C4555-A addresses our situation, and it is faithful to the corresponding provision of the Federal Travel Regulation (FTR): “If lodging is not available at your TDY location, your agency may authorize or approve the maximum per diem rate for the location where lodging is obtained.” 41 CFR 301-11.8 (2009).

The JTR and FTR provisions which the Navy ignored should be interpreted consistently with the intention of Congress in authorizing reimbursement of expenses employees incur when traveling on government business: “Federal employees should be protected against being required to pay out of their own pockets the necessary expenses incident to their official travel for the Government.” H.R. Rep. No. 84-604 (1955) (*reprinted in 2 U.S.C.A.N. 2547*). Congress reiterated this purpose when it enacted the lodgings-plus system under which lodging and per diem rates are set for various locations. *Patrick S. Twohy*, GSBICA 15491-TRAV, 01-1 BCA ¶ 31,408.

With Congressional intentions in mind, our predecessor General Services Board of Contract Appeals instructed that “[a]gencies should interpret federal travel regulations in a

common-sense way, taking into consideration the normal, human needs of the employees whom those agencies direct to conduct the Government's business away from permanent duty stations." *Raymond X. Blauvelt*, GSBCA 16033-TRAV, 03-1 BCA ¶ 32,182 (citing *Norman Lahr*, GSBCA 15123-RELO, 00-2 BCA ¶ 31,012). Generally, traveling employees eat two of the day's three meals -- breakfast and dinner -- at the locations where they rest their heads at night. Unless this situation does not occur, if an agency directs an employee to lodge at a relatively high-cost location away from his place of temporary duty, it is implicitly expecting the employee to eat at least two meals at that location. To require the employee to pay for those meals with a smaller allowance than the one which the Government prescribes for that location would be inconsistent with the purpose of the statutorily-authorized lodgings-plus system.

The Navy has provided no justification for its decision not to pay the travelers the per diem rate for Yokohama, the location at which the agency's travel agent determined it was necessary for them to stay while working at Yokosuka.¹ We consequently find that this decision was arbitrary and capricious. We direct the agency to pay each of the travelers the difference in per diem allowance between the two cities for each of the days they were in Japan on government business.

STEPHEN M. DANIELS
Board Judge

¹ As close as the Navy comes to explaining its rationale is a statement that it "declined to exercise discretion authorized by the regulation to pay . . . actual expenses." An agency is permitted to pay a traveling employee's actual expenses of lodging and meals in certain circumstances. 41 CFR 301-11.300 to .306; JTR C4600-4626. The employees who have brought these cases to us have not asked to be reimbursed for their actual expenses, so the Navy's explanation is not relevant to the cases.