



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

May 17, 2011

CBCA 2165-TRAV

In the Matter of ROBERT W. CARLSON

Robert W. Carlson, Dulles, VA, Claimant.

Frank Ledahawsky, Management Minister Counselor, Embassy of the United States of America, Rome, Italy, appearing for Department of State.

DANIELS, Board Judge (Chairman).

Foreign Service Officer Robert W. Carlson traveled on official business several times between October 2007 and August 2009, while he was stationed in Naples, Italy. During that period, he and other State Department employees in Italy were subject to a limitation on reimbursement for meals and incidental expenses (M&IE) which had been promulgated by the embassy's management officer. The limitation was removed, effective October 1, 2009.

Mr. Carlson maintains that the limitation was impermissible under governing regulations and that he should be reimbursed for the difference between the prescribed M&IE rate and the limited amount he actually received for each of the days he was in travel status during his stay in Italy. American Embassy Rome maintains that "it acted correctly and in accordance with regulations incorporated within the Foreign Affairs Manual [FAM] at the time its policy to reduce M&IE was enacted."

A memorandum issued by the Secretary of State makes abundantly clear that Mr. Carlson's position is correct and the embassy's is not.

Background

The limitation in question read:

In order to provide additional funding from strapped Program and ICASS [International Cooperative Administrative Support Services] budgets, the following cost savings travel initiative must be adopted: **all In-Country Meals & Incidental (M/IE) expenses will now be restricted to 60% of the established M/IE rate for locations within Italy with the first and last days of travel subject to three quarter's [sic] of the daily M/IE rate; the lodging aspect of per diem remains the same.**

....

On those occasions where the traveler knows before he/she travels that he/she will need the full amount of M/IE to cover expected costs, 100% of the M/IE may be authorized in lieu of the reduced rate.

....

Under this latter scenario, the traveler is responsible for preparing a daily itemization of funds spent on M/IE in order to receive any amount above the 60% flat M/IE rate. . . . Additionally, a separate receipt is needed for all itemized expenses.

By statute, the Secretary of State is empowered to pay the travel and related expenses of Foreign Service Officers, and to prescribe regulations regarding such expenses. 22 U.S.C. §§ 3926, 4081 (2006). The Secretary has prescribed such regulations in title 14, chapter 500, of the Foreign Affairs Manual.

On September 18, 2009, the Secretary issued to all diplomatic and consular posts a memorandum entitled "2008-09 Authorities to Limit Travel Per Diem and Other Allowances and Differentials." This memorandum explains the Secretary's understanding of the portion of the FAM dealing with per diem expenses for Foreign Service travelers, which are covered in 14 FAM 570. The memorandum states, in pertinent part:

Posts have only very limited legal and regulatory authority to reduce travel per diem allowances

Various offices within the Department have received queries from posts – in efforts to maintain mission objectives and activities – seeking to reduce employees’ travel per diem or other allowance and differential rates as a cost-management measure. Though the Department is attuned and sensitive to the impact of static or declining budgetary resources, posts’ authority to reduce travel per diem allowances is very limited Moreover, Federal employees have the right to appeal to the Civilian Board of Contract Appeals . . . claims for reimbursement of expenses incurred while on TDY [temporary duty] travel that have not been fully and properly reimbursed by their employing agencies.

The U.S. General Services Administration’s Federal Travel Regulation (FTR) at 41 C.F.R. Chapter 301 provides that the Meals and Incidental Expenses (M&IE) portion of per diem reimbursement is to be reduced when any meal is provided by the Government to the traveler free of charge, or included in a registration, e.g., for a conference (FTR Sec. 301-11.18). . . . The 14 FAM [Foreign Affairs Manual] 572-3.3 refers to these M&IE reductions as well. These are the only permissible reductions in reimbursements – and are not reductions in the published M&IE rates themselves.

For per diem more broadly, including not just M&IE but lodging costs, FTR section 301-11.200 sets forth the conditions to be satisfied for an agency to prescribe a per diem rate less than the prescribed maximum: (a) when [the] agency can determine in advance that lodging and/or meal costs will be lower than the per diem rate, this would also include USG [United States Government] provided quarters; and (b) the lower authorized per diem rate must be stated in [the] authorization in advance of travel. These conditions appear verbatim in 14 FAM 572.3-1, Reduced Rate Per Diem. These are the only circumstances under which a reduced per diem rate for a location (stating both lodging and M&IE portions) may be authorized Posts do not have the authority to impose an across-the-board percentage or other fractional constraint on M&IE or on the lodging portion of a per diem rate. A reduced rate per diem should be based upon a meaningful analysis of the cost to the traveler of obtaining lodging and/or meals, not the budgetary constraints of the bureau, office or post.

If posts feel that published per diem rates for a given location exceed a reasonable level, please submit updated Hotel and Restaurant pricing reports to the Office of Allowance via the eAllowances application for analysis.

Discussion

As this memorandum says, the FAM permits reduction of per diem rates to cover M&IE only under very narrowly defined circumstances. Saving an office's money, while a commendable objective, is not one of those circumstances. The Secretary's memorandum clearly interprets the FAM, rather than stating a new policy; it refers back to a previous year and does not use words indicating prospective application, such as "henceforth." At all times while Mr. Carlson was traveling within Italy on official business, the FAM provisions cited by the Secretary were in effect, so the Secretary's interpretation of her own regulations applied at those times as well as on and after the date of the memorandum. American Embassy Rome did not limit Mr. Carlson's per diem allowance for M&IE for any of the narrowly-defined reasons permitted by the FAM. Consequently, as the memorandum advises should happen, if a post does not provide a foreign service officer the per diem allowance dictated by the FAM and the officer asks the Board to review that determination, we will do so.

Decision

The claim is granted. We direct the Department of State to provide to Mr. Carlson what the Secretary's memorandum describes as "reimbursement of expenses incurred while on TDY [temporary duty] travel that have not been fully and properly reimbursed."

STEPHEN M. DANIELS
Board Judge