



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

October 8, 2015

CBCA 4641-TRAV, 4642-TRAV

In the Matters of JEREMY L. PARR
and COURTNEY A. STERN

Jeremy L. Parr, Mims, FL, Claimant in CBCA 4641-TRAV.

Courtney A. Stern, Rockledge, FL, Claimant in CBCA 4642-TRAV.

Kevin A. Buford, Director of Policy, Office of the Chief Financial Officer, Kennedy Space Center, National Aeronautics and Space Administration, Washington, DC, appearing for National Aeronautics and Space Administration.

ZISCHKAU, Board Judge.

Jeremy L. Parr and Courtney A. Stern, the claimants, challenge bills of collection issued by the National Aeronautics and Space Administration (NASA) based on NASA's determination that the claimants, and other employees who were on travel with the claimants, were overpaid the full per diem allowance for meals and incidental expenses (M&IE), which was authorized in their travel orders. After the travel was completed, the agency concluded that the per diem allowance for a portion of the trip – where the travelers were onboard a Navy ship – should have been at a rate matching the fixed price charged by the ship for meals it provided to the travelers. Because the agency has not shown that the travel order authorization of M&IE per diem was inconsistent with statute or the Federal Travel Regulation (FTR), and the travelers paid for the meals they received on the ship, the agency could not retroactively reduce the per diem set forth in the claimants' travel orders. Thus, the bills of collection are invalid and must be canceled.

Background

Ten travelers, including the claimants, were issued travel orders to participate in a NASA-related test activity in and around San Diego, California, from February 12-25, 2014,

which included approximately four days on a United States Navy ship. Except for the usual reduced per diem for the first and last days of the trip, the travel orders authorized the full M&IE per diem rate for San Diego (\$71 per day) for the rest of the trip, including the days spent onboard the ship. This was no accident. The amount of the per diem the travelers should receive while on the ship was the subject of discussion within the agency, and allowing full per diem was a decision made by agency management. The Navy notified the travelers prior to the trip that they would have to pay \$11.85 per day for the meals they would receive on the ship. The travelers paid the amounts. The claimants state that they were encouraged to bring with them food and snacks onto the ship at the time of boarding if they wanted something beyond the meals offered on the ship. Vending machines were also located on the ship for persons to buy additional food items.

After the trip was completed and travel vouchers were processed and paid, a NASA auditor questioned the payment of full per diem to the travelers during the period when they were onboard the ship. Ultimately, each traveler received a bill of collection for \$162.45, representing the amount of meal per diem in excess of the actual amounts paid by the travelers to the Navy for the Navy-provided meals on three days. NASA's policy office concluded that the reduced per diem was justified because the meals had been provided by the Navy and the travelers did not have receipts to justify amounts spent beyond the \$11.85 per day Navy meal charge. The claimants and most of the other travelers challenged the bills of collection, seeking a waiver of the collection amount.

Discussion

The agency argues that its prior authorization of full per diem for the days when the travelers were onboard the ship was "clearly erroneous" and that "the only meals available were those onboard the [Navy] ship at a substantially reduced cost" and the per diem should have been limited to this amount. There is support for the principle that the meal per diem should be adjusted for meals provided free of charge by the Government. Section 301-11.18(a) of the FTR provides that with an exception not relevant here, "your [-the employee's-] M&IE allowance must be adjusted for meals furnished to you by the Government . . . by deducting the appropriate amount [of the allocated meal cost shown in the chart in this section]." 41 CFR 301-11.18(a) (2013) (FTR 301-11.18(a)).

The claimants rely instead on FTR 301-11.200, which provides:

Under what circumstances may my agency prescribe a reduced per diem rate lower than the prescribed maximum?

Under the following circumstances:

- (a) When your agency can determine in advance that lodging and/or meal costs will be lower than the per diem rate; and
- (b) The lowest authorized per diem rate must be stated in your travel authorization in advance of your travel.

Both the agency determination stated in subpart (a) and the travel authorization referencing the reduced per diem rate cited in subpart (b) must be made in advance of the employee's travel in order for the agency to prescribe a reduced per diem rate lower than the prescribed maximum. Here, neither the subpart (a) nor the subpart (b) requirement was met in advance of the travel. The agency determination that there should have been a lower meal cost for the days while the travelers were onboard the Navy ship was made months after the travel was completed. Indeed, the only determination made before travel was the determination by the agency that the travelers would receive the full per diem rate for the days on the ship. The travelers' travel authorizations listed the M&IE per diem at \$71, which is the full per diem rate.

Contrary to the agency policy office's position that the full per diem for the days on the ship were "clearly erroneous," we find no prohibition in any statute or the FTR on the travelers receiving the full M&IE per diem during the onboard days as initially determined by the agency.¹ The travelers had to pay the Navy for the Navy-provided meals. Further, the travelers were able to bring their own food and snacks on board the ship, and buy items in vending machines on the ship, to augment what was provided by the Navy meals. Because the meals on board the Navy ship here were not provided free of charge by the Government, FTR 301-11.18(a) is inapplicable to the claims before us.

The claimants correctly cite to our decision in *Steven L. Meints*, CBCA 2921-TRAV, 13-1 BCA ¶ 35,249, where we rejected the agency's after-the-fact attempt to reduce a traveler's full per diem rate on the assumption that the traveler would be receiving free meals provided by the Government and that the traveler in fact spent less on meals than the full per diem allowance. We concluded in *Meints* that (1) the agency failed to properly set a reduced per diem in the travel authorization prior to the start of travel, (2) the claimant had to pay for

¹ We note that for Department of Defense (DoD) employees on travel status, "[p]er diem is not authorized for TDY [temporary duty] aboard a [Government] ship when [quarters] are provided without charge and meals are provided with/without charge." Joint Travel Regulations (JTR) C4110-B.1. Instead, "[w]hen an employee is required to pay for meals, the employee is reimbursed the meal cost." JTR C4110-B.7, B.8. Because the claimants in this case are employees of NASA, rather than DoD, and their assignment was not performed "for and at DoD's expense," the JTR does not apply to them. JTR C1000-A.3; FTR 301-1.1.

his own meals rather than having them provided free of charge by the government, and (3) there is no requirement for receipts to justify the money actually spent because the per diem allowance for temporary duty is set at a lump sum. These conclusions govern the claims presently before us.

Decision

The travelers were entitled to the full M&IE per diem rate as provided in their travel orders. The bills of collection are invalid.

JONATHAN D. ZISCHKAU
Board Judge