



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

January 5, 2017

CBCA 5547-TRAV

In the Matter of MARK R. JENSEN

Mark R. Jensen, Davis, CA, Claimant.

Anne M. Schmitt-Shoemaker, Deputy Director, Finance Center, United States Army Corps of Engineers, Millington, TN, appearing for Department of the Army.

LESTER, Board Judge.

Claimant, Mark R. Jensen, challenges a demand by the Finance Center of the United States Army Corps of Engineers (USACE) for reimbursement of some of the monies that the USACE previously paid him for official temporary duty (TDY) travel from his official duty station in West Sacramento, California, to Colombo, Sri Lanka. Originally, the USACE demanded repayment of \$812.82, and Mr. Jensen has informed us that he does not contest \$499.34 of that amount. After reviewing Mr. Jensen's submission to the Board, the USACE has reduced its demand to \$596.34. Accordingly, the only dispute now before us is a \$97 claim for one day's per diem for meals and incidental expenses (M&IE). We grant Mr. Jensen's claim for the requested \$97 M&IE per diem.

Background

Mr. Jensen, whose official duty station as an employee of the USACE is in Sacramento, California, was issued official travel orders to attend the Eighth Annual International Perspective on Water and Environmental Conference in Colombo, Sri Lanka.

It is unclear from the record before us exactly when Mr. Jensen departed from his official duty station for the conference. A travel voucher worksheet that Mr. Jensen

submitted to the Board with his claim indicates that Mr. Jensen began his travel by departing from his home in Davis, California, at 4 a.m. Pacific Standard Time (PST) on December 31, 2015, to catch a flight scheduled to depart from the San Francisco International Airport (SFO) at 8:45 a.m. PST. That Mr. Jensen was to depart on that SFO flight is supported by an American Airlines reservation form, a record locator form, and Mr. Jensen's actual travel orders (signed by an agency official on December 22, 2015), all of which identify the 8:45 a.m. SFO departure.¹

Despite that evidence of record, on the travel voucher that Mr. Jensen apparently submitted to his agency seeking reimbursement² and upon which the agency has relied in responding to Mr. Jensen's claim, Mr. Jensen indicated that he began his official travel by departing on a flight from West Sacramento/Yolo, California, at 8:45 a.m. PST on December 31, 2015. There is nothing else in the record suggesting that Mr. Jensen departed from an airport in West Sacramento rather than from SFO, and there is no indication of when, prior to arriving at the West Sacramento airport, Mr. Jensen departed his home or office to begin his official travel. Nevertheless, the agency has relied on the information on that travel voucher in responding to Mr. Jensen's claim.³

Although the exact time of Mr. Jensen's departure on official travel is unclear, there is no dispute in the record that Mr. Jensen's flight from California connected to another flight that took him to Colombo, Sri Lanka. The flight was scheduled to arrive in Colombo at 8 p.m. Sri Lanka Standard Time (SLST) on January 1, 2016. For reasons not identified in the record, Mr. Jensen's flight did not actually arrive in Colombo until 5:15 a.m. SLST on January 2, 2016. The Board takes judicial notice that, during the period of Mr. Jensen's travel, the time in Sri Lanka was thirteen-and-a-half hours ahead of the time in California.

¹ Although the city of Davis is approximately eighty-five miles from SFO, there is nothing in the record indicating how Mr. Jensen traveled to SFO. In his travel reimbursement voucher, he does not appear to have claimed any mileage associated with automobile travel to and from the airport or any taxi or airport shuttle transportation fees.

² The only copy of the travel voucher that we have in the record before us was electronically signed by Mr. Jensen's supervisor on March 14, 2016, but it is not signed by Mr. Jensen.

³ The Board initially scheduled a telephonic status conference with the parties, to be held on December 21, 2016, to attempt to clarify the seemingly conflicting documentary evidence in the record, but Mr. Jensen was unavailable when the conference was set to begin. The Board subsequently canceled the conference, and we are able to resolve Mr. Jensen's claim without resolving the factual discrepancy.

See <https://www.timeanddate.com/worldclock/difference.html?p1=389>; see also *Corngold v. United States*, 367 F.2d 1, 10 (9th Cir. 1966) (tribunal “can take judicial notice of differences in time zones”); Fed. R. Evid. 201(b). Depending on whether Mr. Jensen’s official travel began at 4 a.m. PST or at 8:45 a.m. PST, his total travel time from his departure site in California to the airport in Sri Lanka – for travel that required him to cross the International Date Line (IDL) – was either thirty-five hours and forty-five minutes or, alternatively, thirty-one hours.

Mr. Jensen checked into a hotel in Colombo on January 2, 2016. Nevertheless, because Mr. Jensen checked in and was able to access his room before the day’s regular check-in time, the hotel at which Mr. Jensen stayed charged him an additional fee totaling the cost of one night’s room, in addition to charging him a lodging fee for his overnight stay on January 2, 2016.

Mr. Jensen’s official travel orders provided that his TDY in Sri Lanka was to conclude on January 6, 2016, but Mr. Jensen elected to remain in Sri Lanka for an additional period of time and did not begin his return travel until early in the morning on January 10, 2016.

Upon his return to California, Mr. Jensen submitted a travel voucher for reimbursement of his expenses for the trip, including a request for payment of M&IE per diem at a daily rate of \$97, which was the M&IE per diem rate for Colombo at the time of Mr. Jensen’s travel. For relevant purposes here, the agency paid a proportional M&IE per diem – \$72.75 rather than \$97 – for December 31, 2015, the day of Mr. Jensen’s departure on official travel, and a full \$97 M&IE per diem and a lodging per diem for January 2, 2016. It did not provide him any per diem for January 1, 2016. In addition, the agency paid lodging and M&IE per diem for the remainder of his TDY (through January 6, 2016), and it also paid him a lodging and M&IE per diem for the three days of post-TDY personal time that he spent in Sri Lanka from January 6 through 9, 2016. The total amount of per diem that Mr. Jensen was reimbursed (in addition to other travel costs) was \$2050.08.

On November 7, 2016, the Finance Center notified Mr. Jensen that, following a review of his travel voucher, it realized that the agency had overpaid the per diem portion of his travel by \$812.82, as it should not have paid lodging and M&IE per diem for his three personal days in Sri Lanka. The Finance Center recalculated the total permissible per diem amount as \$1234.26, rather than the previously paid \$2050.08. The agency requested that Mr. Jensen repay the \$812.82 overpayment no later than December 7, 2016.

Mr. Jensen challenged the agency’s demand and filed his claim with the Board on November 17, 2016. Mr. Jensen acknowledged that he should not have been reimbursed for the days that he voluntarily stayed in Sri Lanka after the conference ended on January 6,

2016, but he contends that the amount of overpayment was only \$499.34. Among several allegations of error in the agency's calculation, Mr. Jensen contends that he should have been paid both a lodging and M&IE per diem for January 1, 2016 (the lodging per diem being for the one-night fee that he had been required to pay for early check-in on January 2, 2016) and that the agency erred in not crediting him for that day's per diem.

The agency responded on December 5, 2016. After reviewing Mr. Jensen's submission to the Board, the agency no longer challenges Mr. Jensen's entitlement to recover the early check-in fee amounting to one night's lodging that he was charged when he checked into his hotel in Sri Lanka early on the morning of January 2, 2016, although it believes that he should have categorized that fee as a miscellaneous expense rather than as a request for a lodging per diem for January 1, 2016. After accepting some other adjustments to the dollar amounts that Mr. Jensen had originally claimed in his travel voucher, the agency has reduced its reimbursement request from \$812.82 to \$596.34.

The \$97 difference between the \$499.34 figure that Mr. Jensen believes he should have to repay and the agency's \$596.34 figure represents one day's M&IE per diem for January 1, 2016. That is now the only remaining issue for us to decide.

Discussion

Section 11.101(a) of the Federal Travel Regulation (FTR) establishes that, for official TDY travel that lasts more than twenty-four hours, the traveler will receive "75 percent of the applicable M&IE rate" on "[t]he day of departure," "100 percent of the applicable M&IE rate" for "[f]ull days of travel," and "75 percent of the applicable M&IE rate" for "[t]he last day of travel." 41 CFR 301-11.101(a) (2015). In accordance with this provision, the USACE provided Mr. Jensen with seventy-five percent of the applicable Colombo M&IE per diem for December 31, 2015 (his day of departure), and then began full M&IE on January 2, 2016, when he arrived at his destination.⁴ Mr. Jensen seeks M&IE per diem for the in-between day, January 1, 2016.

The agency contends that, because Mr. Jensen crossed the IDL during his travel, the M&IE per diem reimbursement that it has provided – one that provides no M&IE for

⁴ The agency also properly accounted for the seventy-five-percent M&IE per diem on the "last day of travel" under 41 CFR 301-11.101(a), which refers to the traveler's return travel from the TDY site. The agency reconstructed Mr. Jensen's return travel, which would have exceeded twenty-four hours, to provide him with full M&IE per diem for January 6 and seventy-five percent of the applicable M&IE per diem for the extra day of continuing travel.

January 1, 2016 – meets the requirements of the FTR. Section 301-11.19 of the FTR establishes that, when a traveler crosses the IDL during official travel, per diem reimbursement must be based upon actual elapsed travel time rather than calendar days:

How is my per diem calculated when I travel across the international dateline (IDL)?

When you cross the IDL, your actual elapsed travel time will be used to compute your per diem entitlement rather than calendar days.

41 CFR 301-11.19. When the regulations speak of “actual elapsed travel time,” they mean that, if an employee crosses the IDL during official travel, the agency must calculate the recoverable per diem by reference to the total number of hours that it took the employee to travel from his or her duty station to his or her TDY destination, rather than by reference to the specific calendar dates encompassed by that travel. *Karen Lynn*, CBCA 3437-TRAV, 13 BCA ¶ 35,458, at 173,883. Accordingly, an employee cannot obtain two days of per diem simply because, on a fourteen-hour trip, the traveler happened to cross the IDL and, as a result, technically ended up traveling during two different dates on the calendar. *See Karen L. Forshay*, CBCA 5310-TRAV, 16-1 BCA ¶ 36,434, at 177,592 (agency correctly “considered [fourteen-hour trip] one day for per diem allowance purposes, even though the flight began on one calendar day and (due to crossing the international date line) ended on the next calendar day”).

One difficulty in applying the “actual elapsed travel time” rule of FTR section 301-11.19 is that, in describing M&IE per diem reimbursement, FTR section 301-11.101(a) talks only in terms of “days of travel.” It does not mention hours of travel or total travel time. To resolve the discrepancy between these two sections, the Board in *Karen Lynn*, CBCA 3437-TRAV, 13 BCA ¶ 35,421, determined that, in applying section 301-11.19’s “actual elapsed travel time” rule to a “days of travel” rule, an agency should look to the traveler’s destination arrival time and, applying the time zone applicable to the destination, convert the traveler’s actual travel time into “days of travel” for M&IE per diem calculation purposes by counting hours backwards from the destination time:

Ms. Lynn’s flight left Washington on the afternoon of February 4, which was early in the morning of February 5 in Tokyo. The flight arrived fourteen hours later, on the afternoon of February 5. Ms. Lynn was actually on travel status for less than twenty-four hours on that day, and although the number of the day changed as she crossed the international date line, she was traveling on a single day by her destination’s time.

Id. at 173,770.

Here, the record before us leaves it somewhat unclear whether Mr. Jensen departed for official travel at 4 a.m. PST (from his residence in Davis, California, for a later flight from SFO) or at 8:45 a.m. PST (from an airport in West Sacramento, California).⁵ It is undisputed, though, that Mr. Jensen arrived in Colombo at 5:15 a.m. SLST. Applying the SLST time zone (which was thirteen-and-a-half hours ahead of PST) to Mr. Jensen's travel, Mr. Jensen departed California at either 5:30 p.m. SLST or 10:15 p.m. SLST on December 31, 2015. Under either scenario, he left California (applying SLST time) on December 31, 2015, and arrived on January 2, 2016. Applying the "days of travel" rule from section 301-11.101(a) to calculate the reimbursable M&IE, Mr. Jensen was entitled to recover seventy-five percent of the applicable M&IE rate for his first day of travel, December 31, 2015; 100 percent of the applicable M&IE rate for his second day of travel, January 1, 2016; and 100 percent of the applicable M&IE rate for January 2, 2016, the day that he arrived and then stayed for official duty purposes at his TDY destination. Pursuant to 41 CFR 301-11.11.102, the M&IE per diem rate for all of those days is the rate applicable to his ultimate travel destination, which was Colombo. The full-day M&IE rate for Colombo was \$97 at the time of Mr. Jensen's travel, and he is entitled to a per diem in that amount for January 1, 2016.

Decision

For the foregoing reasons, we grant Mr. Jensen's claim for the requested M&IE per diem. Accordingly, the agency may not require Mr. Jensen to repay more than \$499.34 of his prior reimbursement for his TDY travel to Sri Lanka.

HAROLD D. LESTER, JR.
Board Judge

⁵ "[T]ravel status 'normally begins . . . with the individual's departure from . . . his or her PDS [permanent duty station], home, or other authorized point.'" *Roger Chalonec*, CBCA 2249-TRAV, 11-1 BCA ¶ 34,701, at 170,893 (quoting *Daniel A. Crittenden*, GSBCA 16144-TRAV, 04-1 BCA ¶ 32,470, at 160,593 (2003)); see 41 CFR 301-11.9 ("per diem . . . entitlement starts on the day you depart your home, office, or other authorized point").