

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

March 31, 2004

GSBCA 16287-TRAV

In the Matter of PANFILO MARQUEZ

Panfilo Marquez, Paris, France, Claimant.

Wardell J. Wanza, Payments Division, Office of Fiscal Operations, Department of State, Arlington, VA, appearing for Department of State.

BORWICK, Board Judge.

Claimant, an officer in the United States Foreign Service, challenges the legality of the reduced per diem rates in the Foreign Affairs Manual (FAM) issued by the Department of State (agency). Claimant seeks reimbursement for his extended temporary duty (TDY) travel to Washington, D.C., based on a full per diem rate. We conclude that statute provides the agency with the authority to issue the FAM's per diem rates on which claimant's reimbursement is based.

Background

The agency sent claimant on a long-term TDY assignment from February 11, 2002, through September 13, 2002, from Paris, France, to Washington, D.C. Claimant submitted numerous reimbursement vouchers. After an audit the agency determined claimant was entitled to payment for meals and incidental expenses (MI&E) at the daily rate of \$46 for days 1-30, \$23 for days 61-120, and \$11.25 for days 121-214, for a total M&IE payment of \$5,186.25.

The agency also determined that claimant was entitled to maximum lodging payment at the daily rate of \$150 for days 1-60; \$75 for days 61-120; and \$37.50 for days 121-215. Based upon receipts that claimant had provided, the agency determined claimant to be entitled to a lodging payment of \$541.94 for days 1-30, \$1200 for days 31-60, \$2400 for days 61-120 and \$3,487.50 for days 121-215, for a total lodging payment of \$7,629.44.

To determine claimant's reimbursement for M&IE and lodging, the agency applied the rates prescribed in 6 FAM 153.3-3. That section establishes reduced M&IE and lodging per diem rates for extended travel.

The agency determined that claimant was due the following:

M&IE:	\$5186.25
Lodging	7629.44
Total Per Diem	12,815.69
Miscellaneous Expenses	1214.77
Hotel Tax	69.98
Total	\$14,100.44

According to an agency audit, the agency had already paid claimant \$14,575.51; the agency determined that it overpaid claimant \$475.07.¹

Claimant submitted a claim to the Board challenging that determination. Claimant seeks \$27,564.49, which is the difference between \$42,140 and the \$14,575.51 the agency has paid him. The former figure is the total amount to which claimant believes he is entitled through reimbursement at the "full per diem" rate of \$196 for each of 215 days he spent in travel.

Discussion

Claimant challenges the agency's authority to establish reduced per diem rates that form the basis of the agency's overcharge calculation. Claimant states:

The decision by my agency to deny this claim was grounded on an opinion offered by the GSBCA on a travel appeal I had previously filed (GSBCA 15890-TRAV).² In that opinion the Board declined to question [the agency's] discretion in establishing reduced per diem rates. While I accept the Board's decision in regards to the specific items claimed for reimbursement, I am requesting that the Board reconsider [its] decision to not question [the agency's] reduced per diem system as in fact the [agency] has established reduced rates that are completely inconsistent with Federal law and which continue to cause significant hardship to employees on [temporary duty] training assignments.

Claimant argues that 5 U.S.C. §§ 5702 and 5703 (2002) give the Administrator of General Services, not the agency, authority to set per diem rates for the continental United States. Claimant also argues that the agency's methodology for determining per diem rates is not permitted by the above sections.

Claimant is correct that we do not write on a clean slate. In Panfilo Marquez, GSBCA 15890-TRAV, 03-2 BCA ¶ 32,394, claimant sought the reimbursement of expenses

¹ We correct an agency typographical or mathematical error. The agency's voucher was off by one cent, since it stated an overpayment at \$475.06. Additionally, the agency audit states in one place that the "total paid" was \$14,575.35 while in another it states that "total voucher paid" was \$14,575.51. It is not necessary for us to resolve these discrepancies to decide this case.

² Panfilo Marquez, GSBCA 15890-TRAV, 03-2 BCA ¶ 32,394.

for furniture he had purchased for his own use during the TDY trip at issue here. Claimant raised the agency's authority to promulgate reduced per diem rates as a secondary argument. We briefly considered the argument and rejected it, concluding that Foreign Service officers are subject to the FAM regulations under the authority of the Foreign Service Act of 1980, 22 U.S.C. § 4081 (2000). We reject claimant's argument again.

The Foreign Service Act provides in pertinent part:

The Secretary [of State] may pay the travel and related expenses of members of the Service and their families, including the costs or expenses incurred for

- (1) proceeding to and returning from assigned posts of duty;
- (2) authorized or required home leave;
- (3) family members to accompany, precede, or follow a member of the Service to a place of temporary duty.

22 U.S.C. § 4081.

Legislative history makes clear that Congress authorized the Secretary of State to promulgate implementing regulations:

Section 901 brings together provisions relating to payment of travel and related expenses for members of the Foreign Service and their families. The authorities contained in this section will continue to be implemented by regulations, primarily the Foreign Service Travel Regulations.

S. Rep. No. 96-913, at 75 (1980), reprinted in 1980 U.S.C.C.A.N. 4419, 4492.

Clearly, the Foreign Service Act provides the agency with the complete authority to issue travel regulations applicable to members of the Foreign Service. The agency issued its current regulation, in Chapter 6 of the FAM, under the authority of the Foreign Service Act, as well as other statutes. 6 FAM 111.4. Consequently, the Foreign Service Act and the FAM provide the agency with the authority necessary to set the reduced per diem rates claimant challenges here. Claimant's reliance on the provisions of 5 U.S.C. §§ 5702 and 5703, and the Administrator of General Services' implementation of that statute in the FTR, for the alleged illegality of the reduced per diem rates is misplaced because, with respect to travel and transportation allowances of members of the Foreign Service, the agency is not subject to those provisions.³

Claimant also argues that the reduced rates are not in accord with the FTR. We have already explained that the FTR does not limit the agency's choice to set the reduced per diem rates at issue here.

³ The agency, however, may choose to adopt portions of the FTR in the FAM. See e.g. 6 FAM 154.2; Virginia B. Hotchner, GSBCA 16024-RELO, 03-2 BCA ¶ 32,334. This claim does not involve an application of an FTR provision that the agency has chosen to incorporate into the FAM.

Claimant argues that the reduced rates cause significant hardship to employees on temporary duty training assignments. While we understand claimant's strong convictions on this point, that policy argument must be addressed to either agency management or to the Congress.

The Board denies the claim.

ANTHONY S. BORWICK
Board Judge