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SUBSISTENCE - PER DIEM - MILITARY PERSONNEL - MANEUVERS, ETC. - UNIT MOVEMENT STATUS THE OFFICERS AND AIRMEN WHO INCIDENT TO THE PARTIAL CLOSING OF AN AIR FORCE BASE FOR REPAIRS ARE SENT AS A UNIT, WITHIN THE CONTEMPLATION OF PARAGRAPH M4201-14 OF THE JOINT TRAVEL REGULATIONS, TO ANOTHER BASE ON TEMPORARY DUTY FOR VARYING PERIODS ON AN "AS NEEDED" BASIS TO MAINTAIN A BOMBER ALERT, AND ARE FURNISHED GOVERNMENT QUARTERS AND MESSING FACILITIES WITHOUT CHARGE ARE NOT ENTITLED TO PER DIEM, EVEN THOUGH A SMALL PORTION OF THE OFFICERS OF THE UNIT ARE FORCED TO USE COMMERCIAL FACILITIES AND ARE PAID A PER DIEM ALLOWANCE, AND THE TEMPORARY DUTY HAVING BEEN PERFORMED AS A GROUP ASSIGNMENT, THE FACT THAT ORDERS ARE ISSUED TO INDIVIDUALS, OMITTING THE NAME OF THE UNIT OR DETACHMENT, DOES NOT DEFEAT THE RESTRICTION IN PARAGRAPH M4201-14 AGAINST THE PAYMENT OF A PER DIEM ALLOWANCE, NOR DOES THE PAYMENT OF PER DIEM TO THE SMALL NUMBER OF OFFICERS REQUIRED TO LIVE IN COMMERCIAL FACILITIES AFFORD A BASIS TO PAY A PER DIEM ALLOWANCE TO THOSE MEMBERS FURNISHED GOVERNMENT QUARTERS AND MESSING FACILITIES, AND THE ERRONEOUS PAYMENTS MADE TO THEM SHOULD BE RECOVERED.

TO THE SECRETARY OF THE AIR FORCE, MARCH 23, 1966:

REFERENCE IS MADE TO LETTER OF FEBRUARY 28, 1966, FROM THE ASSISTANT SECRETARY OF THE AIR FORCE (FINANCIAL MANAGEMENT) CONCERNING THE PROPRIETY OF PER DIEM PAYMENTS MADE TO APPROXIMATELY 600 OFFICERS AND AIRMEN OF THE 28TH BOMB WING, ELLSWORTH AIR FORCE BASE, SOUTH DAKOTA, FOR TEMPORARY DUTY PERFORMED AT FAIRCHILD AIR FORCE BASE, WASHINGTON, DURING THE PERIOD JULY TO OCTOBER 1962.

THE ASSISTANT SECRETARY STATES THAT FROM JULY 25 TO OCTOBER 6, 1962, THE RUNWAY AT ELLSWORTH AIR FORCE BASE WAS PARTIALLY CLOSED FOR REPAIRS, AND THAT THE STRATEGIC AIR COMMAND'S OBLIGATION TO MAINTAIN A BOMBER ALERT FORCE REQUIRED THAT A LARGE NUMBER OF OFFICERS AND AIRMEN BE SENT ON TEMPORARY DUTY FOR VARYING PERIODS TO FAIRCHILD AIR FORCE BASE, WASHINGTON.

IT IS SAID THAT DURING THE PERIOD INVOLVED, 604 MEMBERS PARTICIPATED IN THE TEMPORARY DUTY; THAT AIRCRAFT CREWS ROTATED EVERY 7 DAYS, SINCE THE RUNWAYS AT ELLSWORTH WERE USABLE FOR OTHER THAN SUPPORT DUTY, AND THAT SUPPORT PERSONNEL GENERALLY REMAINED AT FAIRCHILD THROUGHOUT THE ENTIRE PERIOD. ALSO, IT IS STATED THAT GOVERNMENT QUARTERS AND MESS WERE AVAILABLE TO AIRMEN WITHOUT CHARGE. QUARTERS ARE STATED TO HAVE BEEN AVAILABLE TO SOME OFFICERS AT THE VISITING OFFICERS' QUARTERS AND BACHELOR OFFICERS' QUARTERS AT A DAILY CHARGE. OTHER OFFICERS WERE FORCED TO RESIDE IN COMMERCIAL FACILITIES. FURTHER, IT IS STATED THAT NO GOVERNMENT MESS WAS AVAILABLE TO OFFICERS WITHOUT CHARGE (IN EXCESS OF THE PRORATED MONTHLY BASIC ALLOWANCE FOR SUBSISTENCE) EXCEPT FOR A LIMITED ALERT DINING FACILITY, AND THAT IN SOME CASES, FOR PART OR ALL OF THE PERIOD, NO

GOVERNMENT MESS WAS AVAILABLE FOR OFFICER USE.

AS REPRESENTATIVE OF THE SITUATION INVOLVED, SPECIAL ORDER NO. T 465, DATED JULY 11, 1962, ISSUED BY HEADQUARTERS, 821ST STRATEGIC AEROSPACE DIVISION, ELLSWORTH AIR FORCE BASE, DIRECTED LIEUTENANT BOCK AND 61 OTHER MEMBERS OF THE 77TH BOMBER SQUADRON TO TEMPORARY DUTY AT FAIRCHILD AIR FORCE BASE, STATING THAT THIS WAS A GROUP TRAVEL MOVEMENT AND UNIT MOVEMENT, IN ACCORDANCE WITH PARAGRAPHS M4100 AND M4201-14, JOINT TRAVEL REGULATIONS. SPECIAL ORDER NO. T-2151, DATED OCTOBER 2, 1962, SAME ISSUING AUTHORITY, AMENDED ALLEGED VERBAL ORDER OF THE COMMANDER TO DELETE FROM THE ORIGINAL ORDERS THE PROVISION THAT THIS WAS A GROUP TRAVEL AND UNIT MOVEMENT, IN ACCORDANCE WITH PARAGRAPHS M4100 AND M4201-14 OF THE JOINT TRAVEL REGULATIONS.

A RETROACTIVE EFFECT WAS GIVEN TO THE ORDERS OF OCTOBER 2, 1962, BY PAYMENT OF 19 DAYS' PER DIEM (AT THE RATE OF $3.50 PER DAY, WHICH IS APPLICABLE TO AN OFFICER ON TEMPORARY DUTY WHERE GOVERNMENT QUARTERS AND MESS ARE AVAILABLE, IN ACCORDANCE WITH THE PROVISIONS OF M4205-5C (4) (TO LIEUTENANT BOCK WHILE AT FAIRCHILD AIR FORCE BASE, BUT NO RETROACTIVE EFFECT WAS GIVEN TO THE DELETION OF A GROUP TRAVEL STATUS FOR TRAVEL TO AND FROM FAIRCHILD AIR FORCE BASE. ENLISTED MEMBERS APPARENTLY WERE PAID PER DIEM AT THE RATE OF $1 A DAY IN THESE CIRCUMSTANCES.

PAYMENTS OF THIS TYPE WERE QUESTIONED BY OUR DENVER REGIONAL OFFICE ON THE GROUNDS THAT THE ORIGINAL ORDERS DESIGNATING THE TEMPORARY DUTY AS A UNIT MOVE CORRECTLY STATED THE INTENT OF THE ORDER-ISSUING AUTHORITY; THAT THE ORIGINAL ORDERS WERE CONSISTENT WITH THE LANGUAGE AND INTENT OF PARAGRAPH M4201-14 OF THE JOINT TRAVEL REGULATIONS, AND THAT THE SUBSEQUENT AMENDING ORDERS WERE WITHOUT LEGAL EFFECT.

PARAGRAPH M4201-14 BECAME PART OF THE JOINT TRAVEL REGULATIONS BY CHANGE 116, JULY 1, 1962. IT WAS DELETED EFFECTIVE MARCH 29, 1963, BY CHANGE 126, JUNE 1, 1963. IT PROVIDED IN PERTINENT PART THAT PER DIEM ALLOWANCES ARE NOT PAYABLE FOR PERIODS OF TEMPORARY DUTY PERFORMED BY A MEMBER WITH HIS UNIT, OR A DETACHMENT THEREOF, WHEN THAT UNIT OR DETACHMENT IS TEMPORARILY ORDERED BY NAME (OR NUMBER) AWAY FROM ITS PERMANENT DUTY STATION AND WHEN GOVERNMENT QUARTERS ARE AVAILABLE WITHOUT CHARGE AND GOVERNMENT MESS IS AVAILABLE, WHETHER OR NOT SUCH FACILITIES ARE UTILIZED.

PRIOR TO THE EFFECTIVE DATE (JULY 1, 1962) OF CHANGE 116, JOINT TRAVEL REGULATIONS, IN WHICH PARAGRAPH M4201-14 WAS PROMULGATED, AIR FORCE POLICY WITH RESPECT TO THE PARAGRAPH WAS SET FORTH IN MESSAGE OF JUNE 20, 1962, IN WHICH IT WAS INDICATED THAT THE DETERMINATION WAS MADE THAT PARAGRAPH M4201-14 RELATING TO PERIODS OF TEMPORARY DUTY PERFORMED BY A MEMBER WITH HIS UNIT, OR A DETACHMENT THEREOF, WHEN THE UNIT OR DETACHMENT WAS TEMPORARILY ORDERED BY NAME OR NUMBER AWAY FROM ITS PERMANENT STATION WOULD APPLY ONLY TO OPERATIONAL OR TACTICAL DEPLOYMENTS WHILE THE MEMBER WAS PARTICIPATING IN MANEUVERS, FIELD EXERCISES AND SIMILAR ACTIVITIES WITHIN THE CONTEMPLATION OF PARAGRAPH M4201-6. THE ASSISTANT SECRETARY POINTS OUT THAT, AS AUTHORIZED BY PARAGRAPH M4201-6, AIR FORCE REGULATIONS HAD LIMITED THE SCOPE OF THAT PARAGRAPH TO OFF-BASE MANEUVERS, FIELD EXERCISES, ETC., WHILE THE ADMINISTRATIVE DETERMINATION WITH RESPECT TO THE APPLICATION OF PARAGRAPH M4201-14 WAS NOT SO LIMITED. BE THAT AS IT MAY, THERE WAS NOTHING IN THE LANGUAGE OF PARAGRAPH M4201-14 WHICH PERMITTED SUCH A RESTRICTED APPLICATION AND THE ADMINISTRATIVE DETERMINATION WAS WITHOUT LEGAL EFFECT TO SO LIMIT THE APPLICATION OF THAT PARAGRAPH.

THE ASSISTANT SECRETARY SAYS THERE IS NO QUESTION THAT ALL OF THE PERSONNEL ORDERED TO TEMPORARY DUTY AT FAIRCHILD AIR FORCE BASE PERFORMED DUTY WITH OTHER MEMBERS OF THEIR UNITS OR DETACHMENTS THEREOF. HE RAISES THE POINT, HOWEVER, THAT NO ENTIRE UNIT OR "ORGANIZED" DETACHMENT WAS PRESENT AT FAIRCHILD AT ANY ONE TIME; THAT MEMBERS WERE SENT ON AN "AS NEEDED" BASIS IN SUPPORT OF THE ALERT BOMBERS; THAT BOMBER CREWS WERE ROTATED FROM ELLSWORTH AIR FORCE BASE TO FAIRCHILD AIR FORCE BASE AND BACK PERIODICALLY, AND THAT AIRCRAFT NOT ON ALERT STATUS, TOGETHER WITH THE REMAINING SUPPORT PERSONNEL, WERE KEPT AT ELLSWORTH AIR FORCE BASE. THE ASSISTANT SECRETARY EXPRESSES THE OPINION THAT THE REQUIREMENTS OF PARAGRAPH M4201-14 WERE NOT MET IN THAT (1) THE MEMBERS WERE NOT WITH THEIR UNIT OR A DETACHMENT THEREOF; (2) THAT THE ORDERS WERE ISSUED PIECEMEAL FOR INDIVIDUALS OR GROUPS OF INDIVIDUALS BY NAME AND THAT THE UNIT OR DETACHMENT WAS NOT ORDERED TO THE TEMPORARY DUTY BY NAME OR NUMBER; (3) THAT QUARTERS WERE NOT AVAILABLE WITHOUT CHARGE FOR THE UNIT AS A WHOLE, AND (4) GOVERNMENT MEALS WERE NOT MADE AVAILABLE TO THE UNIT AS A WHOLE.

ON MARCH 14, 1963, THE COMMANDANT OF THE MARINE CORPS SUBMITTED VARIOUS QUESTIONS TO THE PER DIEM, TRAVEL AND TRANSPORTATION ALLOWANCE COMMITTEE WITH RESPECT TO THE APPLICATION OF PARAGRAPH M4201-14 AND RELATED PARAGRAPHS. THE COMMITTEE REPLIED ON MARCH 27, 1963. IN RESPONSE TO THE QUESTION WHETHER IT IS MATERIAL THAT THE TEMPORARY DUTY BE IN CONNECTION WITH FURTHERING THE MISSION OF THE PARENT COMMAND, THE COMMITTEE REPLIED IN THE NEGATIVE, STATING THAT THE PERFORMANCE OF TEMPORARY DUTY AS A UNIT, OR A DETACHMENT THEREOF, AND NOT THE NATURE OF THE TEMPORARY DUTY INVOLVED IS THE DETERMINING FEATURE. ALSO, THE COMMITTEE CONCLUDED THAT IT IS NOT MATERIAL WHETHER THE ORDERS CONTAIN THE NAME OR NUMBER OF THE GROUP BEING ORDERED ON TEMPORARY DUTY SO LONG AS THE MEMBERS OF THE GROUP ARE MEMBERS OF AN ORGANIZATION THAT HAS A NAME OR NUMBER. IT WAS SAID THAT THE DENIAL OF PER DIEM MAY NOT BE AVOIDED BY THE OMISSION OF THE NAME OR NUMBER OF THE PARENT UNIT AND THAT WHEN IT CAN BE DETERMINED FROM THE TERMS OF THE ORDERS THAT TEMPORARY DUTY OF A UNIT OR DETACHMENT IS INVOLVED, PER DIEM SHOULD BE DENIED NOTWITHSTANDING THE OMISSION OF THE NAME OR NUMBER OF THE UNIT. FURTHER, IT WAS CONCLUDED THAT IT IS NOT MATERIAL WHETHER ALL ELEMENTS OF A UNIT OR DETACHMENT LEAVE AND ARRIVE AT THE PRINCIPAL STATIONS AT DIFFERENT TIME INTERVALS SO LONG AS ALL ELEMENTS ARE ACCOMPLISHING THE SAME MISSION CONTEMPLATED IN THE ORDERS. WE ARE IN AGREEMENT WITH THESE VIEWS AND ARE OF THE OPINION THAT THEY ARE REQUIRED UNDER THE LANGUAGE OF THE PERTINENT PARAGRAPHS OF THE REGULATIONS. WHILE THE ASSISTANT SECRETARY POINTS OUT THAT THE COMMITTEE'S VIEWS OF PARAGRAPH M4201-14 WERE EXPRESSED 6 MONTHS AFTER THE TEMPORARY DUTY IN THIS CASE TERMINATED, SUCH INTERPRETATION APPARENTLY DID NOT MODIFY ANY PRIOR CONTRARY INTERPRETATION OF THE REGULATION BY THAT COMMITTEE. APPARENTLY CONSTITUTED AN ORIGINAL INTERPRETATION BY THAT COMMITTEE (WITH WHICH WE AGREE) OF THE EFFECT OF THE REGULATION FROM ITS EFFECTIVE DATE.

THEREFORE, IT IS OUR VIEW THAT WHILE PARAGRAPH M4201-14, CHANGE 116, JOINT TRAVEL REGULATIONS, SPECIFIED THAT PER DIEM WAS NOT PAYABLE FOR PERIODS OF TEMPORARY DUTY PERFORMED BY A MEMBER WITH HIS UNIT, OR A DETACHMENT THEREOF,"WHEN THAT UNIT OR DETACHMENT IS TEMPORARILY ORDERED BY NAME (OR NUMBER) AWAY FROM ITS PERMANENT DUTY STATION," AN ORDER ISSUED WITHIN THE CONTEMPLATION OF THAT PARAGRAPH BUT OMITTING THE NAME OF THE UNIT OR DETACHMENT AND, INSTEAD, SHOWING THE NAMES OF THE INDIVIDUAL MEMBERS OF THE UNIT OR DETACHMENT THEREOF MAY NOT SERVE TO DEFEAT THE RESTRICTION ON THE PAYMENT OF PER DIEM SET FORTH IN THAT PARAGRAPH. HENCE, THE FACT THAT NEITHER THE UNIT OR DETACHMENT THEREOF WAS ORDERED BY NAME OR NUMBER MAY NOT BE CONSIDERED AS ESTABLISHING A RIGHT IN THE MEMBERS CONCERNED TO PER DIEM IN THE CIRCUMSTANCES INVOLVED SINCE THE TEMPORARY DUTY SEEMS TO HAVE BEEN PERFORMED BY THE MEMBERS AS A DETACHMENT OF A UNIT. AT

THE TIME INVOLVED PARAGRAPH M1150-18, JOINT TRAVEL REGULATIONS, DEFINED A DETACHMENT AS INCLUDING A PART OF A UNIT SEPARATED FROM ITS MAIN ORGANIZATION FOR DUTY ELSEWHERE AND NOT AN "ORGANIZED" DETACHMENT. LIKEWISE THE FACT THAT THE CREWS AND SUPPORT PERSONNEL MOVED BETWEEN THE TWO BASES AS REQUIRED RATHER THAN IN A SINGLE GROUP SEEMS TO BE IMMATERIAL SINCE ALL OF THE TEMPORARY DUTY AT THE TEMPORARY DUTY STATION WAS PERFORMED AS PART OF THE GROUP ASSIGNMENT AT SUCH STATION.

WE BELIEVE THAT THE TRAVEL BY LIEUTENANT BOCK AND OTHER MEMBERS UNDER SIMILAR ORDERS FROM ELLSWORTH AIR FORCE BASE, SOUTH DAKOTA, TO FAIRCHILD AIR FORCE BASE, WASHINGTON, FOR TEMPORARY DUTY IN SUPPORT OF THE 28TH BOMBARDMENT WING, HEAVY (SAC), WAS PERFORMED UNDER GROUP TRAVEL AND UNIT MOVEMENT ORDERS ISSUED IN ACCORDANCE WITH PARAGRAPHS M4100 AND M4201-14, CHANGE 116, JOINT TRAVEL REGULATIONS, AND IN THOSE CASES WHERE GOVERNMENT QUARTERS AND MESSING FACILITIES WERE AVAILABLE TO SUCH MEMBERS, PAYMENT OF PER DIEM TO THEM FOR THE PERIODS OF THEIR TEMPORARY DUTY WAS SPECIFICALLY PRECLUDED BY PARAGRAPH M4201-14. IT IS REPORTED THAT SUCH FACILITIES WERE AVAILABLE TO ALL AIRMEN. WITH RESPECT TO THE OFFICERS, OUR AUDITORS HAVE REPORTED THAT CURSORY EXAMINATION OF THEIR TRAVEL VOUCHERS INDICATES THAT MORE THAN 80 PERCENT OF THEM OCCUPIED GOVERNMENT QUARTERS AND ATE IN GOVERNMENT MESSING FACILITIES DURING THE DUTY INVOLVED. THE FACT THAT A SMALL PORTION--- LESS THAN 20 PERCENT--- OF THE OFFICERS APPARENTLY WERE REQUIRED TO RESIDE OFF BASE IN COMMERCIAL FACILITIES AFFORDS NO BASIS FOR EXEMPTING THE OTHER MEMBERS OF THE GROUP INVOLVED FROM THE PROVISIONS OF PARAGRAPH M4201-14. ALSO, SINCE THOSE ORDERS APPEAR TO HAVE BEEN COMPLETE AND REGULAR ON THEIR FACE AND APPARENTLY WERE ISSUED WITHOUT ERROR OR AMBIGUITY IN REFLECTING THE ACTUAL INTENTION OF THE ISSUING AUTHORITY AT THE TIME OF THE ISSUANCE FOR GROUP TRAVEL AND UNIT MOVEMENT, NECESSITATED BY AIRFIELD RUNWAY REPAIRS OF A SHORT DURATION, THE AMENDATORY ORDERS WHICH DELETED THE TERMINOLOGY OF GROUP TRAVEL AND UNIT MOVEMENT FROM SUCH ORDERS WERE OF NO LEGAL EFFECT AND, HENCE, DID NOT CONFER ANY RIGHT IN THE MEMBERS AS A WHOLE TO PER DIEM PAYMENTS FOR THE PERIOD OF TEMPORARY DUTY (23 COMP. GEN. 713; 24 ID. 439; CF. 37 COMP. GEN. 683) NOTWITHSTANDING THAT A SMALL NUMBER OF OFFICERS WERE REQUIRED TO LIVE OFF THE BASE AND WERE ENTITLED TO THE PER DIEM AUTHORIZED IN SUCH CIRCUMSTANCES.

ACCORDINGLY, IT IS OUR VIEW, AS INDICATED ABOVE, THAT THE PER DIEM PAYMENTS WERE ERRONEOUS IN THOSE CASES WHERE GOVERNMENT QUARTERS AND MESS WERE AVAILABLE TO THE INDIVIDUAL MEMBERS AND THAT APPROPRIATE ACTION SHOULD BE TAKEN PROMPTLY TO RECOVER THE AMOUNTS THE MEMBERS WERE ERRONEOUSLY PAID.