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B-168717 February 18, 1970

Number: B-168717

Date: 1970-02-18

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The Honorable John G. Tower United States Senate

Dear Senator Tower:

Your letter of December 16, 1969, requests review of our settlement disallowing the claim of Mr. James W. Carter, an employee of the Department of State, for an additional allowance for the transportation of his privately owned automobile from Washington, D. C. to San Ysidro, California.

The record indicates that Mr. Carter was transferred from Washington, D. C., to Tijuana, Mexico. Because of a medical problem which prevented him from driving, transportation of Mr. Carter's automobile was authorized by Travel Authorization No. 9-62239-A, December 18, 1968, and was affected by the drive-away method. Mr. Carter contends the Government borrowed his automobile for the purpose of using it as a means of transportation instead of shipping it by rail as required by the Uniform State/AID/UBIA Foreign Service Travel Regulations. Therefore, he claims $339 (12 cents per mile for a distance of 2,825 miles) to reimburse him for the depreciation resulting from the use of his automobile as a carrier.

Section 165.1 of Volume 6, Foreign Affairs Manual (FAM), provides as follows:

"A travel authorization which includes authority for the transportation of effects constitutes authority for the transportation of one motor vehicle owned by the employee or by a member of his family when such transportation has been determined to be necessary or expedient, unless prohibited by regulation or administrative action. Not more than one motor vehicle may be transported to a post of assignment, except as provided by sections 165.3 and 165.4.

"a. It is hereby determined that transportation of a privately owned motor vehicle by water, rail, or air is necessary or expedient when:

"(1) Neither the authorized nor the actual points of origin and destination are connected by a hard-surfaced, all-weather highway or by vehicular ferry, or both; or

"(2) An employee is absent from his post under orders (including combined home leave and transfer orders) and is therefore unable to drive the vehicle from the old post to the new post.

"b. In cases other than those specified under paragraph a of this section, an authorizing officer may determine that transportation of a privately owned

vehicle is necessary or expedient. Such cases frequently occur when danger of undue hardship would be involved if the employee or a member of his family drove the vehicle between the authorized points of origin and destination. A copoy of this determination should be furnished the traveler for submission with his travel voucher."

Inasmuch as the actual points of origin are connected by a hard-surfaced, all-weather road, the amendment to Mr. Carter's travel authorization was made in accordance with the permissive provisions of 6 FAM 165.1b.

The wording in 6 FAM 165.1a "transportation * * * by water, rail, or air" is unusual. See, for instance, section 10 of Bureau of the Budget Circular No. A-56, which states that an employee's automobile may be "transported" or "shipped" at Government expense without citing any specific means of transportation. The wording in 6 FAM 165.1a is derived from section 913 of the Foreign Service Act of 1946, 60 Stat. 1027, 22 U.S.C. 1138, as amended. The legislative history of the Foreign Service Act does not disclose why the wording was used. However, we note that prior to the enactment of the Foreign Service Act of 1946, only ocean transportation of employees' automobiles was authorized. See the act of April 30, 1940, 54 Stat. 174, 5 U.S.C. 823a (1940 ed.). We believe it is reasonable to assume that the wording was used to permit authorization of land and air transportation as well as ocean transportation. It, therefore, appears that the word "rail" was used to indicate the prevalent form of land transportation rather than to exclude other recognized forms of land transportation. We consider that carriers engaged in the transportation of automobiles by the driveaway method operate a recognized form of transportation since they regulated by the Interstate Commerce Commission. See 49 CFR 1040.2(1)(2).

Section 231.6-3, Volume 6, Foreign Affairs Manual, provides the followings:

"The acceptance for use by the Government of the loan of private property is not specifically prohibited by law, but it is generally contrary to the public policy. However, when it is administratively determined by the post to be clearly is the interest of the Government, the loan should be formalized, setting forth the responsibility of the Government and the lender. The Government's responsibility does not include insurance and may not go further than ordinary protection and upkeep. (See 22 Comp. Gen. 153.)"

Our decision 22 Comp. Gen. 153 (1942) was rendered in connection with the offer of an employee to lend his agency a trailer for a lengthy period of time to transport Government property during war-time. We printed out that such an agreement, although it is primarily for the benefit of the Government, is against public policy since it is open to charges of favoritism and might land to claims for damage to the property. We held that such an agreement should not be entered into except for the most cogant of reasons. In the instant case there was no intent of the Government to use the automobile. Rather, it merely was delivered to a carrier for transportation, an act primarily benefiting the employee.

In view of the above there is no basis for the allowance of Mr. Carter's claim. We regret that we cannot give you a more favorable answer concerning the claim.

Our Transportation Division has reviewed the payment documents covering the shipment of Mr. Carter's automobile. A charge of $20 is applicable when a driver

is despatched from New York, New York, to Baltimore, Maryland. However, based on the information furnished by Mr. Carter, the despatch service was apparently not performed by the carrier. Accordingly, a Notice of Overcharge is being issued to Insured Driveaway System to recover the erroneous payment of $20.

Sincerely yours,

Comptroller General of the United States