

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

June 24, 2004

GSBCA 16356-TRAV

In the Matter of ARJUMAND WOHRAN KHAN

Arjumand Wohra Khan, Dhaka, Bangladesh, Claimant.

Ralph A. Hamilton, Financial Management Officer, United States Embassy, Dhaka, Bangladesh, appearing for Department of State.

NEILL, Board Judge.

A Government employee on temporary duty (TDY) who lodges at the same hotel for more than one night is entitled to reimbursement of the cost of an upgraded accommodation obtained after the first night, provided the cost of the room is still within the applicable maximum per diem for lodging.

Background

Claimant, Mr. Arjumand Wohra Khan, is a Foreign Service national who works as a protocol assistant at the American embassy in Dhaka, Bangladesh. In October 2003, he was sent on TDY to New Delhi, India. His travel authorization provided for a per diem rate of \$190 for lodging and \$70 for meals and incidental expenses (M&IE). This was Mr. Khan's first travel outside Bangladesh on official business. Upon arrival in New Delhi, Mr. Khan secured a room at one of the city's hotels for \$100 a night. The amount charged was the hotel's rate for government employees.

Apparently dissatisfied with the room provided to him, Mr. Khan, on the following day, looked into the possibility of upgrading his accommodation. He thought that this would be permissible because his orders provided a maximum per diem of \$190 for lodging. Before proceeding further, however, he sought to confirm his understanding by speaking with another Foreign Service national on the staff at the American embassy in New Delhi. This individual, whose responsibilities included lodging reservations, assured Mr. Khan that there would be no problem with the proposed upgrade. With the assistance of this same individual, Mr. Khan then arranged for an upgraded accommodation for the two remaining nights of his stay, at the price of \$190 per night.

The agency is prepared to reimburse Mr. Khan for the \$100 paid for his first night at the hotel in New Delhi. For the remaining two nights, however, the agency refuses to pay

any lodging cost in excess of what was charged for the first night. The agency believes that Mr. Khan, in upgrading his accommodation, incurred expenses which were not necessary for the performance of official business and not acceptable under the agency's regulatory standard to exercise the due care which a prudent person would exercise if traveling at his or her own expense.

Discussion

As a Foreign Service employee, Mr. Khan is subject to travel regulations set forth in chapter six of the State Department's Foreign Affairs Manual (FAM). 6 FAM 111.2-1a. The FAM is promulgated under the authority of the Foreign Service Act. 22 U.S.C. § 4081 (2000). The regulatory provision of the FAM on which the agency relies in denying Mr. Khan's claim reads:

An employee traveling on official business is expected to exercise the same care in incurring expenses that a prudent person would exercise if traveling on personal business and expending personal funds. Excess costs, circuitous routes, delays, or luxury accommodations and services unnecessary or unjustified in the performance of official business are not acceptable under this standard. Employees will be responsible for excess costs and any additional expenses incurred for personal preference or convenience.

6 FAM 141.1-3.

The first sentence of this regulation is a restatement of the "prudent person rule" which also appears in the Federal Travel Regulation (FTR). See 41 CFR 301-2.3 (2003) (FTR 301-2.3). This rule or principle is an important one which we have affirmed on numerous occasions. E.g., Michael L. Rivera, GSBCA 16350-RELO (Mar. 23, 2004). The corollaries which follow the articulation of the "prudent person rule" in this provision of the FAM likewise appear in the FTR. See FTR 301-2.4.

The travel regulations found in chapter six of the FAM establish a "uniform worldwide lodgings-plus per diem computation system for all official travel, based on travel inside and outside the continental United States." 6 FAM 151.1; see Panfilo Marquez, GSBCA 15890-TRAV, 03-2 BCA ¶ 32,394. Among the various provisions relating to the per diem system is one regarding maximum rates. These rates are daily rates which include a maximum for lodging expense and an amount for M&IE. 6 FAM 152.2. The same provision refers the reader to appropriate sections of the FTR for information regarding lodging locations, receipt requirements, and allowance expenses. Another section, 6 FAM 153.1, provides that these maximums can be reduced, when appropriate. Again, for particulars, the FAM refers the reader to a provision in the FTR. The FTR provision cited in the FAM reads:

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

Answer: 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.

FTR 301-11.200.

We have recently explained that in reimbursing the cost of lodging, each night is separate and the reimbursement for lodging costs on each night must be assessed separately. Frank A. Condino, GSBCA 16365-TRAV (May 18, 2004). The fact that claimant incurred a cost of \$100 for the first night of his stay in New Delhi does not necessarily limit the amount of his reimbursement of lodging expenses incurred on either of the remaining two nights. Thus, if Mr. Khan's orders authorized a maximum per diem of \$190 for lodging, it was within his discretion to choose lodging within that limit even if the cost of that lodging was in excess of the cost he incurred on the first night of his stay in New Delhi.

The agency, invoking the "prudent person rule" and its corollaries, believes that if Mr. Khan could secure a room in New Delhi at the government rate of \$100 per night, then a prudent person, traveling at his own expense, would have been satisfied with such an arrangement and would not have sought anything more. Hence any additional cost -- even if within the authorized maximum per diem for lodging -- should be deemed excessive and unnecessary or unjustified in the performance of official business.

We question at the outset whether the "prudent person rule" is even applicable to the circumstances of this case. The agency apparently is of the opinion that a prudent person traveling on personal business at his own expense would have sought nothing more than what the hotel offered for a discounted rate of \$100. We are not convinced that this would have occurred. There is a notable difference between the authorized maximum per diem for lodging in New Delhi and the discounted price of a room offered to government employees at the hotel where Mr. Khan initially chose to lodge. This in itself is somewhat unusual. More often, the rate offered to government employees is the amount of the authorized per diem for lodging. Given the wide disparity in this case between the authorized maximum of \$190 and the government rate of \$100, it could well be that the room given to Mr. Khan on the first night of his stay left much to be desired and would have proven as unsatisfactory to a private party traveling on personal business as it proved to be to Mr. Khan.

Given the facts of this case, we find the agency's reliance on the "prudent person rule" to deny full reimbursement for lodging costs particularly inappropriate. Only in egregious cases should an agency substitute its judgment for that of an employee when the regulatory scheme under which the employee is operating leaves matters to the employee's own judgment. This is not such a case. Mr. Khan has acted reasonably and in compliance with the applicable provisions of FAM's uniform worldwide lodgings-plus per diem computation system. He was authorized a maximum per diem for lodging and, in accordance with his own judgment and after consulting with a knowledgeable official, incurred costs within that assigned limit. Only lodging costs in excess of that authorized maximum, therefore, should be denied to him.

Finally, we object to the agency's refusal to reimburse Mr. Khan for lodging costs within the allowable maximum per diem for lodging because this, in effect, constitutes an unauthorized reduction of the prescribed maximum for the lodging per diem. As already noted, under FTR 301-11.200, which is incorporated by reference into the FAM, an agency may reduce a per diem rate below the prescribed maximum. However, the reduced rate must be stated in the travel authorization in advance of travel. The agency is not authorized to impose such a limitation after the completion of claimant's travel.

Decision

For the reasons stated, the agency should reimburse Mr. Khan for the cost of his lodging for the nights in question, provided that the documented actual costs are within the maximum per diem set out in his travel authorization.

EDWIN B. NEILL

Board Judge