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Plm-1
Mr. Schwimer

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-196145

DATE: January 14, 1980

MATTER OF: Edmundo Rede, Jr. - [Voluntary Payment to Employee
for Vacating Seat on Overbooked Airplane]

DIGEST: Employee received \$200 and free flight from airline for vacating his seat on overbooked flight while on official business. The Government receives the value of the free flight but the employee may retain the payment under certain circumstances. This case is distinguishable from denied boarding compensation which is due the Government.

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Mr. Oliver Kennedy, Assistant Comptroller of the Army, has forwarded a letter to our Office concerning the claim of Edmundo Rede, Jr., Director, U.S. Army TRADOC Systems Analysis, White Sands Missile Range, New Mexico, for compensation which was paid to Mr. Rede incident to travel on official business when he vacated his seat on an overbooked flight.

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The record indicates that Mr. Rede was sent on temporary duty (TDY) from El Paso, Texas, to Fort Sill, Oklahoma, on May 29, 1979. While he was sitting on the plane, a representative of American Airlines boarded the plane and announced that the plane was overbooked. The airline offered volunteers \$200 in cash and free transportation if they left the plane and took another flight which was departing one and one-half hours later. Mr. Rede accepted this offer and received a check for \$200 and a redemption certificate which was issued to the United States Government.

The Finance Officer at White Sands Missile Range determined that Mr. Rede was not entitled to the \$200 and deducted that amount from his next paycheck. Mr. Rede states that he saved the Government the cost of the ticket by leaving the plane and that by leaving he incurred a personal hardship and was compensated by the airlines for it. Mr. Rede argues that it is unreasonable to penalize a person for voluntarily incurring a hardship that results in substantial savings to the Government. For the following reasons, Mr. Rede's claim is upheld.

Federal Travel Regulations (FTR) state that penalty payments made by air carriers for failure to furnish accommodations for

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confirmed, reserved space are due the Government, and not the traveler, when the payments result from travel on official business. FTR (FPMR 101-7) para. 1-3.5b. Our Office has applied this provision to circumstances where the traveler is denied boarding on a scheduled airline flight since it is the Government that stands to be damaged by the airline's default in overbooking the flight. See 41 Comp. Gen. 806 (1962); B-148879, July 20 and August 28, 1970; Tyrone Brown, B-192841, February 5, 1979. We have not allowed exceptions to this rule even if the Government incurs no additional subsistence expense or the employee reports for duty at the same time as originally intended.

The Federal Travel Regulations do not cover the situations where employees receive voluntary payments for vacating their reserved airline seats, and we believe that these voluntary payments are distinguishable from the denied boarding cases for the following reasons.

Regulations promulgated by the Civil Aeronautics Board (CAB) governing payments resulting from oversales of seats by an air carrier are codified in 14 C.F.R. Part 250 (1979). The policy regarding denied boarding compensation is that the air carrier should ensure that the smallest practicable number of people holding confirmed, reserved space on that flight are denied boarding involuntarily. 14 C.F.R. § 250.2a (1979). To effectuate this policy the CAB increased the amount of denied boarding compensation and required the airlines to ask for volunteers to give up their reserved seats before the airline denied boarding to any passenger with a reservation. See 14 C.F.R. §§ 250.2b and 250.5. The CAB has made no determination whether the employer or the employee should retain the payment.

The purpose of the CAB regulations would be partly frustrated if we refused to allow a Government employee to keep payments made because the employee voluntarily left an airplane. It is obvious that a Government employee would not leave his seat if he knew that he could not keep the payment made by the airlines even if leaving the plane would not affect the performance of his duties for the Government.

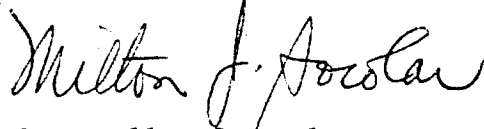
We believe that voluntary payments are distinguishable from denied boarding compensation. When an airliner denies boarding to

a Government employee traveling on official business, the employee has no choice but to wait for the next available flight even if this interferes with the performance of his duties. However, where the air carrier asks for volunteers, a Government employee does not have to volunteer if it would result in an unreasonable delay or if it affects the performance of his official duty.

Our decisions denying boarding compensation to the employee are also based on the principle that Federal employees may not be directly reimbursed for expenses incurred incident to the performance of official duty and that any payments tendered to the individual shall be viewed as having been received on behalf of the Government. 46 Comp. Gen. 689 (1967); 41 *id.* 806, *supra*; and Tyrone Brown, supra. The two purposes for this prohibition are to prevent double reimbursement to the employee for the same travel and to avoid a conflict of interest. We do not believe that the acceptance of voluntary payments for leaving a seat would involve double reimbursement or a conflict of interest. The fact is that it is the Government who receives the value of the flight and also saves money.

The employees may retain these voluntary payments subject to these conditions. If the employee incurs additional travel expenses by voluntarily relinquishing his seat, these expenses must be offset against the payment received by the employee. Also, employees should not voluntarily give up their seats if it will interfere with the performance of their official duties. Finally, to the extent the employee's travel is delayed during official duty hours, the employee would be charged annual leave for the additional hours. See also our decision of today, Charles E. Armer, B-194252.

Accordingly, we conclude that Mr. Rede should be allowed to retain the \$200 payment subject to the above-mentioned conditions in consideration for vacating his reserved seat.



For The Comptroller General
of the United States