

12540 Mr. Volpe PLM-1

**DECISION**



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

FILE: B-194252

DATE: January 14, 1980

MATTER OF: Charles E. Armer - [Payment to Employee for  
Voluntarily Vacating Seat on Overbooked Airplane]

DIGEST: Employee, while traveling on official business, received \$150 from airline for voluntarily vacating his seat on overbooked flight and taking next scheduled flight. Airline payments to volunteers are distinguishable from denied boarding compensation which is due the Government. Employee may retain payment received as volunteer reduced by any additional expense incurred by Government.

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This decision is in response to a request from the National Association of Government Employees (union) concerning the entitlement of Mr. Charles E. Armer, an employee of the Department of the Army, to retain a \$150 payment he received from an airline in consideration of his vacating his seat on an overbooked flight and taking a later flight. The issue presented for our decision is whether this payment may be distinguished from denied boarding compensation which, when paid by the airline to a Federal employee traveling on official business, must be turned over to the Government.

Mr. Armer performed temporary duty in Chicago, Illinois, and was scheduled to return to his official duty station in Watervliet, New York, on the evening of September 14, 1978. Mr. Armer was seated on board American Airlines Flight 402 on that date when the airline asked for volunteers who would vacate their seats in return for meals, overnight lodgings, and guaranteed reservations the next morning. The airline first offered \$87.50, then \$100, and finally \$150 as an incentive to such volunteers, and Mr. Armer accepted the airline's offer of \$150. Mr. Armer returned to his duty station the following morning at the same time he had originally planned, and he did not claim any additional per diem incident to the delay in his return travel. The Army ordered the employee to pay the \$150 to the Government on the basis of provisions in the Federal Travel Regulations and decisions of our Office holding that denied boarding compensation must be paid to the Government. See FTR para. 1-3.5b; 41 Comp. Gen. 806 (1962); John B. Currier, B-195946, November 26, 1979, 59 Comp. Gen. \_\_\_\_; and Tyrone Brown, B-192841, February 5, 1979.

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The union contends that this type of payment differs from denied boarding compensation and should be retained by the employee. The union argues that the Government suffered no harm in this situation, that the employee entered into a bilateral contract with the airline which was outside the scope of his relationship to the Government, and that the Government would receive a financial windfall by claiming this payment from the airline. In addition, the union argues that turning over this payment to the Government would frustrate the intent of the Civil Aeronautics Board (CAB) regulation governing such payments.

We requested comments from the CAB on this matter, and we received a report from Mr. Gary J. Edles, Deputy General Counsel of the CAB, stating that, in an effort to minimize the involuntary bumping of passengers on overbooking flights, the CAB had 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. Part 250 (1979). The airlines are free to determine the amount to be paid to the volunteers, but the CAB made no determination whether the employer or the employee should retain this payment. Mr. Edles' letter also states: "If the government employee is not permitted to keep the voluntary payment, though, the incentive to volunteer would plainly be decreased. If a sufficient number of volunteers is not available, the carrier must use alternate means to minimize involuntary denied boarding, or resort to involuntary bumping. Purely from the perspective of the Board's regulatory program, therefore, allowing the employee to accept the denied boarding payment would seem to further the overall goal of reducing the number of travelers involuntarily denied boarding."

We also requested comments from the General Services Administration (GSA), the agency vested with the authority to issue regulations governing the travel of Federal employees (5 U.S.C. § 5707), and GSA responded that they would not distinguish this payment from denied boarding compensation which, under the Federal Travel Regulations (FTR) (FPMR 101-7), para. 1-3.5b, is due the Government. GSA argues that the employee would receive a "windfall" in accepting this payment due to circumstances within his control. In addition, GSA points out that official travel is to be performed by the most expeditious means of transportation practicable. See 5 U.S.C. § 5733. The only exception to this policy which GSA would

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recognize would be instances where the employee is on leave and traveling at personal expense.

Our Office has long held that where a Federal employee travels on official business and is denied boarding on a scheduled airline flight, it is the Government that stands to be damaged by the airline's default in overbooking the flight and this payment must be turned over to the Government. See 41 Comp. Gen. 806, supra; John B. Currier, supra; Tyrone Brown, supra; B-148879, August 28 and July 20, 1970; and B-151525, June 18, 1963. See also FTR para. 1-3.5b. No distinctions have been made under the FTR provision or our decisions where the employee has been denied boarding during official duty hours, on a nonworkday, or during a period of leave. Likewise, no exceptions have been permitted where the Government incurs no additional subsistence expense or the employee reports for duty at the same time as originally intended.

The Federal Travel Regulations, however, are silent on the question of employees receiving payments in consideration for voluntarily vacating their reserved airline seats. Although GSA believes such payments should be treated the same as denied boarding compensation, we believe these payments to volunteers are distinguishable from denied boarding compensation and, therefore, may be retained by the employee under the following circumstances.

As noted by the letter from CAB, the purpose of seeking volunteers to give up their seats is to reduce to the smallest number possible those who would be denied boarding on an oversold airline flight. It is obvious that if Government employees are not permitted to retain voluntary payments, there will be no incentive for them to give up their seats under circumstances where to do so would not unduly inconvenience the employee or the Government. Thus, the purpose of the CAB regulation would be partly frustrated by denying this voluntary payment to Government employees.

We believe voluntary payments are distinguishable from denied boarding compensation, the latter being liquidated damages for the airline's failure to furnish accommodations for confirmed reserved space due the Government. Where an airline denies accommodations to an employee traveling on official business, the employee has no

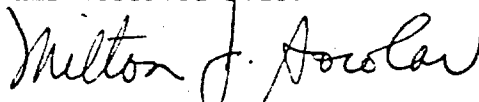
choice but to wait for the next available flight. However, where the airline asks for volunteers to give up their reserved seats, a Government employee need not volunteer if to do so would impinge upon the performance of official business or cause the employee to suffer an unreasonable delay in his travel.

Our decisions holding that denied boarding compensation must be remitted to the Government are also based upon the principle that Federal employees may not be reimbursed from private sources for expenses incident to the performance of official duty, and any payments tendered to the employee are viewed as having been received on behalf of the Government. See 46 Comp. Gen. 689 (1967); 41 id. 806, supra; 36 id. 268 (1956); Currier, supra; and Brown, supra. This prohibition is intended to prevent double reimbursement to the employee for the same travel as well to avoid any conflict of interest. We do not believe the acceptance of voluntary payments under the circumstances set forth below would involve double reimbursement or a conflict of interest.

Payments to volunteers are also distinguishable from half-fare coupons or other gifts distributed by the airlines as incentives to the public. These bonuses or gifts are issued incident to the Government's purchase of the ticket and are not dependent upon the traveler taking any action for the benefit of the airlines. Therefore, such bonuses or gifts are properly considered to be due the Government and may not be retained by the employee.

Employees who voluntarily give up their seats may retain these payments only under the following conditions. If the employee voluntarily gives up his seat and thereby incurs additional travel expenses beyond that which he would have normally incurred, these additional expenses must be offset against the payment received by the employee. Also, Government employees are not expected to voluntarily give up their reserved seats if it would impinge upon the performance of 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, Edmundo Rede, Jr., B-196145.

Accordingly, we conclude that under the circumstances present Mr. Armer may retain the \$150 payment he received from the airline in consideration for his vacating his reserved seat.



For The Comptroller General  
of the United States