UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

March 3, 2016

CBCA 4879-RELO

In the Matter of TIFFANY M. WASHINGTON

Tiffany M. Washington, Mobile, AL, Claimant.

Gilbert E. Teal, II, Office of General Counsel, Defense Contract Management Agency, Fort Lee, VA, appearing for Department of Defense.

HYATT, Board Judge.

Claimant, Tiffany M. Washington, challenges the disallowance of relocation expenses she has claimed in connection with a permanent change of station (PCS) move directed by the Defense Contract Management Agency (DCMA). Because claimant is covered under a collective bargaining agreement that does not explicitly and clearly exclude the claim from the mandatory grievance procedures for resolving disputes between the employee and the agency, we lack the authority to resolve the employee's claim.

Background

In November 2012, DCMA notified claimant of an impending transfer of work under which the duties of her position in Mobile, Alabama, would be shifted to Atlanta, Georgia, effective October 21, 2013. She was offered the opportunity to transfer with the work to the new location. Ms. Washington accepted the offer to relocate to Atlanta. Following the transfer, Ms. Washington filed vouchers for relocation expenses, including requests for reimbursement of temporary quarters subsistence expenses, the cost of driving two personally owned conveyances to the new duty station, the cost to move household goods, and the expenses of settling an unexpired lease. The total amounts requested, and the lack of what the agency considered to be verifiable documentary support for the claimed costs (in particular a request for the amount of $35,847 for the termination of an unexpired lease), caused DCMA to question the validity of Ms. Washington's claim. After an investigation,

the agency informed claimant that it considered the vouchers to be fraudulent, and it categorically disallowed all of the amounts claimed.

After reviewing the claim filed by Ms. Washington, and the information provided in the agency's report, the Board noted that claimant appeared to be a bargaining unit employee covered under a collective bargaining agreement between DCMA and the American Federation of Government Employees Council 170 and asked the agency to submit a copy of the applicable agreement. The agency provided a copy of the collective bargaining agreement, but argues that this matter is not covered by the agreement. Claimant agrees with the agency's analysis as to the application of the collective bargaining agreement.

Discussion

By statute, the grievance procedures in a collective bargaining agreement applicable to a claim of a covered federal employee shall be "the exclusive administrative procedures for resolving grievances which fall within its coverage." 5 U.S.C. § 7121(a)(1) (2012). The United States Court of Appeals for the Federal Circuit consistently has held that if a matter is arguably entrusted to a collective bargaining agreement's grievance procedures, no review outside those procedures may take place, unless the parties to the agreement have explicitly and unambiguously excluded that matter from the procedures. *Dunklebarger v. Merit Systems Protection Board*, 130 F.3d 1476 (Fed. Cir. 1997); *Muniz v. United States*, 972 F.2d 1304 (Fed. Cir. 1992); *Carter v. Gibbs*, 909 F.2d 1452 (Fed. Cir. 1990) (en banc); *see also, e.g.*, *Walter S. Hammermeister*, CBCA 4891-RELO, 16-1 BCA ¶ 36,194 (2015); *Daniel L. Kieffer*, CBCA 4705-TRAV, 15-1 BCA ¶ 36,050.

An example of a provision authorizing the Board to settle claims of an employee who is a member of a bargaining unit is set forth in *Todd Chandler*, CBCA 3593-TRAV, 14-1 BCA ¶ 35,536. In that case, the Board found that a clause to the effect that, if, after pursuing reconsideration by the agency, an employee's travel claim has been disallowed, "the employee may submit the claim for adjudication to the U.S. [Civilian] Board of Contract Appeals," sufficed to permit the Board to review the matter. *Id.* at 174,137; *see also Charles A. Houser*, CBCA 2149-RELO, 11-1 BCA ¶ 34,769 (provision explicitly exempting from the grievance procedures "[a]ny matter in which the affected employee has elected to appeal through a statutory or regulatory process, e.g., the EEOC [Equal Employment Opportunity Commission] (by filing a formal complaint), MSPB [Merit Systems Protection Board] (by filing an appeal to MSPB), FLRA [Federal Labor Relations Authority] (by filing a FLRA charge) or OSC [United States Office of Special Counsel] (by filing a complaint with OSC")).

The collective bargaining agreement under which Ms. Washington is a covered employee sets forth, in article 30, a detailed grievance procedure which "shall be the exclusive procedure available to the parties and employees to resolve grievances." A grievance is defined to be

> any complaint by any employee concerning any matter relating to the employment of the employee; by any labor organization concerning any matter relating to the employment of any employee, labor organization or Agency concerning the effect or interpretation, or a claim of breach of a collective bargaining agreement; or any claimed violation, misinterpretation of any law, rule, or regulation affecting conditions of employment.

Section 2 of article 30 enumerates twelve employment matters that are excluded from the negotiated grievance procedure. None of the itemized exclusions relate to claims arising out of an employee's relocation by the agency. The Board has held that language making the grievance procedures applicable to a disagreement involving the interpretation of any law, rule, or regulation affecting "conditions of employment" subsumes travel and relocation expenses unless the collective bargaining agreement specifically provides otherwise. *See, e.g.*, *John A. Fabrizio*, CBCA 2917-TRAV, 13 BCA ¶ 35,199 (2012); *Kelly A. Williams*, CBCA 2840-RELO, 12-2 BCA ¶ 35,116; *Robert Gamble*, CBCA 1854-TRAV, et al., 11-1 BCA ¶ 34,655; *Thomas F. Cadwallader*, CBCA 1442-RELO, 09-1 BCA ¶ 34,077; *Roy Burrell*, GSBCA 15717-RELO, 02-2 BCA ¶ 31,860. In contrast to the agreement in *Chandler*, this collective bargaining agreement contains no express authorization to pursue redress using the Board's process for settling claims for reimbursement of relocation or travel expenses, nor is there an express exclusion from the grievance procedures applicable to claims involving the expenses of a relocation.

Notwithstanding the lack of any language in article 30 serving to exclude travel and relocation claims from the province of the grievance procedures, the agency maintains that this matter is excluded from the grievance procedures and thus susceptible to resolution by the Board. DCMA directs our attention to a provision in article 33, which is denominated "Official Travel." Section 1 (General) of this article adverts specifically to the contingency that covered employees may be required to perform temporary travel from the permanent duty station to conduct official government business. Subsequent paragraphs set forth provisions relevant to the scheduling of an employee's travel, training in the use of the Department of Defense automated travel system, availability of travel advances, the use of Government credit cards, modes of transportation, and the like. Section 5 of article 30 addresses reimbursement for official travel expenses. This section addresses temporary duty (TDY) travel and the submission of vouchers upon completion of such travel. In this context, it also provides that:

> The resolution of financial computations shall be a matter solely between the employee and the Defense Finance and Accounting Service (DFAS). The employee shall be permitted to resolve this matter during . . . regularly scheduled work hours without loss of pay or charge to leave.

We note that there is no specific mention of relocation expenses in article 33. Although some of the travel expenses that may be paid in connection with a relocation, such as lodging and per diem while traveling to the new duty station, as well as the cost of transportation to the new duty station, are similar to those covered under official travel for a temporary duty assignment, most are not. DCMA contends, nonetheless, that this language effectively exempts the claim in issue from resolution under the grievance procedures in article 30.

Under the applicable law, for the Board to possess authority to settle relocation expenses of an employee covered under a collective bargaining agreement, that agreement must explicitly and unambiguously exclude the matter from the grievance procedures or, the matter must involve recovery of an expense that is controlled by statute and not subject to bargaining. The provision relied upon by DCMA at best supports an argument that disagreements over the calculation of the amount of reimbursements for official travel undertaken by a covered employee will be resolved outside of the constraints of the grievance procedures. Ms. Washington's claim, concerning relocation, not TDY travel, expenses, is not unambiguously covered by this provision. Moreover, at issue here is not the calculation of benefits, but rather the overarching question of whether the agency is entitled to refuse to reimburse Ms. Washington for any or all of her claimed expenses on the ground that her claims are tainted by fraud. It is not entirely clear what the drafters of article 33, section five, had in mind, but this section does not reflect the explicit, unequivocal statement of intent required to find that disputes concerning reimbursement of expenses of official travel and relocation are excluded from the agreement's grievance procedures, nor does it convey an intent to have the employee pursue an administrative remedy at the Board. Accordingly, we lack the authority to consider the merits of this claim.

Decision

The claim is dismissed.

CATHERINE B. HYATT
Board Judge