UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 25, 2020

CBCA 6680-RELO

In the Matter of SCOTT A. WINTERROWD

Scott A. Winterrowd, Claimant.

Lisa L. Kennedy, Certifying Officer, Permanent Change of Station Section, Interior Business Center, Department of the Interior, Lakewood, CO, appearing for Department of the Interior.

O'ROURKE, Board Judge.

Employee and his spouse traveled an alternate route from his permanent duty station (PDS) in Alaska, to his new PDS in Arizona, which included travel by ferry service through much of Alaska. While onboard, the ferry workers went on strike, causing substantial travel delays. After the agency erroneously issued an amended travel order to cover the costs of alternative travel arrangements, an audit of the employee's travel claim resulted in the agency denying $8254.43 in claimed expenses. Because the costs at issue were incurred while traveling a circuitous route, inconsistent with authorized rates, or in contravention of governing regulations, we find that the agency properly denied them.

Background

Claimant and his spouse moved from Alaska to Arizona pursuant to official travel orders, which authorized transportation and per diem expenses for him and his spouse for eleven days. Since part of their journey required them to drive through Canada, his travel orders listed the per diem rates for both the continental United States (CONUS) and outside the continental United States (OCONUS). Rates were further divided into three sub-categories: lodging, meals and incidental expenses (M&IE), and reduced M&IE rates for departure and arrival days. Claimant's orders also distinguished between rates for employees

and spouses, the latter of which were three-fourths of the employee rate if they traveled together, which they did.

With regard to mileage, per diem, and lodging amounts, claimant's orders stated:

> Reimbursement of mileage for 1 [personally owned vehicle] allowed @ .20/.30 cents per mile. *Mileage reimbursement is by the most direct route from the old duty station to the new duty station*. En route per diem is based on total distance and computed travel time to new duty station at a minimum average driving distance of 350 miles per calendar day. (Emphasis added)
>
> Employee's per diem [not to exceed] 10 nights of lodging @ $94.00/day, and 10.5 days of M&IE @ $55.00/day (spouse allowed unaccompanied rate, if unaccompanied), allowing for 3/4 day on day of arrival and departure, if travel exceeds 12 hours. CONUS & OCONUS rates are authorized.

In addition to the above amounts, claimant's travel orders, dated May 30, 2019 and approved on June 4, 2019, authorized a number of other relocation allowances, including a house-hunting trip (comprised of airfare, taxi, rental car, and fuel), real estate expenses, shipment and storage of household goods, temporary quarters subsistence expense, and shipment of one personally owned vehicle (POV) "by Government Bill of Lading," for a total estimated value of $123,832.46. The agency provided claimant with a copy of the orders, along with detailed driving directions for his trip and a map illustrating the most *direct* route from his old duty station in Alaska, to his new duty station in Arizona. Claimant signed his travel orders on June 5, 2019.

On July 11, 2019, claimant emailed the details of his *intended* travel route to the agency, which included using the Alaska Marine Highway System (AMHS), a ferry service operated by the State that transports people and their vehicles to various stops between the Aleutian Islands and Bellingham, Washington, some of which are inaccessible by road.[1] Over the next few days, claimant discussed his travel plans with an agency relocation specialist. During one of those exchanges, claimant asked whether the travel orders should be updated. According to claimant, the agency specialist responded that "there was no need

---

[1] The AMHS is identified in the Department of the Interior Permanent Change of Station (PCS) Policy as an option for travel from Alaska. The precise wording of the policy is: "Per diem on the [AMHS] shall be the highest CONUS rate established by GSA. As of October 1, 2007, the rate is $64. Staterooms on the [AMHS] are considered part of the transportation costs, not lodging. . . . Lodging and common carrier (when authorized) receipts must be submitted with travel claim."

to update the orders since the cost would not be higher." There was no discussion about alternate or unauthorized routes.

Claimant and his spouse departed Anchorage, Alaska, by POV on July 18, 2020. They traveled to Haines, Alaska, where they picked up the AMHS and took the ferry to Juneau, where they spent three nights. On the way to Ketchikan, the ferry workers went on strike for the first time in forty-two years, delaying them in Ketchikan, an island town which had no road or bridge to the mainland. The agency issued an amendment to claimant's travel orders, authorizing him and his spouse to fly from Ketchikan to Seattle and "self ship" their POV to Seattle on a commercial barge "due to reason[s] beyond employee's control." Claimant shipped his POV the next morning. They remained in Ketchikan with their dogs for six days, then flew to Seattle where they rented a car and stayed in a hotel until their POV arrived. They continued their journey to Arizona, taking leave en route to visit family.

Claimant filed his travel voucher, requesting reimbursement for authorized expenses listed on both the original travel order and the amendment, as well as other expenses and fees. After an audit, the agency issued a second amendment, revoking, as erroneous, the travel expenses authorized by the first amendment. The agency then performed a cost comparison between claimant's actual costs and his authorized costs, reimbursing him for his authorized costs and denying $8254.43 in additional claimed travel expenses. Claimant asked the Board to review his travel claim and grant the disallowed expenses.

Discussion

The Federal Travel Regulation (FTR) governs the payment of travel and relocation expenses to federal employees, limiting reimbursement of travel costs to what is "necessary to accomplish [the agency's] mission in the most economical and efficient manner." 41 CFR 301-70.1(a) (2018). Travel orders (also referred to as travel authorizations or TAs) "establish 'the conditions, in writing, under which official travel and transportation are authorized at government expense, and [provide] a notice and record of the employee's instructions and entitlements.'" *Kevan L. Mullins*, CBCA 6210-TRAV, 19-1 BCA ¶ 37,344 (citing *Todd E. Johanesen*, CBCA 3124-TRAV, 14-1 BCA ¶ 35,539 (quoting *Jack J. Pagano*, CBCA 1838-TRAV, 10-1 BCA ¶ 34,408)).

Expenses Incurred While Traveling an Alternate Route

Claimant's orders listed the authorized mileage and per diem rates by the most direct route. The agency provided claimant with a copy of the direct route, but for personal reasons, he chose an *alternate* route. While employees are permitted to travel alternate routes between duty stations, the FTR limits reimbursement of such travel to "the cost of travel by a direct route or on an uninterrupted basis," and makes the employee "responsible

for any additional costs." 41 CFR 301-10.8. This Board and its predecessor tribunals have long held that employees who deviate from the direct route and travel on a circuitous route for personal reasons are only eligible for the constructive costs of the direct route. *Alfonso Diaz Del Castillo*, CBCA 2250-TRAV (June 21, 2011) (employee who used personal aircraft for temporary duty travel was only entitled to reimbursement of constructive costs of travel by commercial airfare and rental car); *Lisa Schwartz*, GSBCA 16669-TRAV, 05 -2 BCA ¶ 33,040 (employee who combined personal and official travel could not be reimbursed lodging expense incurred during personal travel portion of trip).

Here, the agency amended claimant's orders after determining that the ferry strike was beyond his control. With the amended authorization in hand, claimant then incurred significant additional travel expenses, and it was not until after he completed his travel that the agency revoked the amendment. Holding fast to the rule that additional travel expenses incurred by taking an alternate route must be borne by the traveler, the agency explained that it "erroneously generated an amended TA to remedy the situation," and referred to the amended TA as an "administrative error." The Board has found that certain errors can void previously authorized travel orders, and thereby divest the employee of the benefits stated therein. "The travel authorization is a record of vested travel entitlements and may not be administratively altered after the fact to increase or decrease benefits in the absence of clear error." *William T. Cowan, Jr.*, GSBCA 16525-TRAV, 05-1 BCA ¶ 32,906.

In this case, the original travel orders contained no such error. The ferry strike, while inconvenient and beyond claimant's control, was not a proper basis to amend his orders. Had he been traveling on the direct route without interruption, he may have been entitled to delay expenses, but we need not decide that issue here since he was on an alternate route and remained in Juneau for three nights before heading to Ketchikan. *See Phillip V. Otto*, GSBCA, 16192-TRAV, 04-1 BCA ¶ 32,429 (even though a severe snowstorm was beyond the employee's control, the resulting delays were caused by employee's decision to prolong his trip for personal reasons, placing him in the predicament of having his trip further delayed by the storm).

We recognize that in relying on the amended TA, claimant incurred significant personal expense. Erroneous travel orders, however, cannot obligate the Government to make payments that are contrary to regulation. *Robert R. Devisser*, CBCA 5094-RELO, 16-1 BCA ¶ 36,332. The agency had no discretion or authority to authorize travel allowances to cover expenses incurred on a circuitous route, especially when there was no official reason to travel that route. *See J. Jacob Levenson*, CBCA 5418-TRAV, 17-1 BCA, ¶ 36, 714, (additional travel expenses incurred on an alternate route are payable when authorized by the agency up front as "officially necessary"). We have long held that the Government is not bound by the acts of its agents which exceed the actual authority conferred by statute or regulation. *David B. Cornstein*, CBCA 6454-RELO, 19-1 BCA ¶ 37,440 (citing *Charles A.*

Hines, CBCA 4846-RELO, 16-1 BCA ¶ 36,392); *Andre G. Chritton*, CBCA 3080-TRAV, 13 BCA ¶ 35,229; *Charles A. Smith*, GSBCA 14418-TRAV, 98-1 BCA ¶ 29,422; *cf. K. Wesley Davis*, GSBCA 15623-TRAV, 02-1 BCA ¶ 31,680 (2001) (an authorization within the agency's discretion "cannot be withdrawn once the employee, on whose behalf the authorization was made, incurs expenses in reliance on it").

Under the circumstances here, we find that the original travel orders and the PCS packet clearly informed claimant that travel expenses were calculated using the direct route. Although Department of the Interior policy permits use of the AMHS, it is not a mandate. Rather, it merely presents employees with one option for travel, and in this case, an option that represented an alternate route. The fact that claimant provided the agency with a copy of his intended route did not modify his travel benefits. The full scope of claimant's travel and relocation entitlements were known when his orders were originally issued, which he acknowledged when he signed them. Indeed, those costs were fixed at the outset of his trip regardless of which route he ultimately traveled.

For the foregoing reasons, we deny the airfare and POV shipping expenses from Ketchikan to Seattle. We also deny all other travel expenses claimed as a result of traveling an alternate route, such as per diem, lodging, and ferry fees. Claimant's orders entitled him and his spouse to eleven days of per diem, mileage, and lodging at specified rates. Both the number of days to make the trip and the rates authorized were determined by regulation and by using the most direct route from claimant's former PDS, to his new one. The agency reimbursed claimant for the cost of travel by the direct route and in accordance with authorized rates. Costs incurred in excess of those authorized were properly denied. *See Norlin M. Ulad*, CBCA 5998-TRAV, 19-1 BCA ¶ 37,342; *Robert F. Teclaw*, CBCA 1572-TRAV, 09-2 BCA ¶ 34,166.

Rental Car Costs in Seattle

We also deny the costs of renting a car in Seattle. Although claimant's original orders authorized use of a rental car, that authorization was for the purpose of a house hunting trip, which claimant was entitled to make *prior* to his PCS. *Ricardo Herrera*, CBCA 998-RELO, 08-1 BCA ¶ 33,815. The FTR requires a specific authorization for renting a car, including a determination that such use is advantageous to the Government. 41 CFR 301-10.450; *Glenn N. Wilson*, CBCA 2852-TRAV, 12-2 BCA ¶ 35,135. The agency did not make that authorization here, making the employee liable for the cost:

> **What is my liability if I do not travel by the authorized method of transportation?** If you do not travel by the method of transportation required by regulation or authorized by your agency, any additional expenses you incur

> which exceed the cost of the authorized method of transportation, will be borne by you.

41 CFR 301-10.6 Claimant arrived in Seattle before his POV, leaving him without local transportation. While inconvenient, that predicament was entirely his own. His orders did not entitle him to this cost; nor does the FTR authorize a rental car while awaiting a POV shipment. *George B. Kale II*, CBCA 5487-RELO, 17-1 BCA ¶ 36,624. Also, the expense did not comply with the prudent traveler rule, which requires federal civilian employees traveling on official business to "exercise the same care in incurring expenses that a prudent person would exercise if traveling on personal business." 41 CFR 301-2.3. For these reasons, we find that claimant's decision to rent a car in Seattle was for personal convenience, and is not eligible for reimbursement

Pet Fees

The FTR authorizes reimbursement of costs associated with the transportation and handling of pets, but not for the purpose of lodging or boarding pets. 41 CFR 302-16.2(b) tbl. While waiting for his POV to arrive, claimant and his spouse spent one night in a hotel, in Seattle. They also had their dogs with them. As a result, the hotel charged them pet fees, for which claimant now seeks reimbursement. Because the FTR prohibits pet fees for lodging, we find that the agency properly denied the fees. *Cady L. Tyron*, CBCA 6625-RELO, 20-1 BCA ¶ 37,600; *Joseph P. Piechota*, CBCA 6430-RELO, 19-1 BCA ¶ 37,377; *Shawnie M. Peters*, CBCA 5520-RELO, 18-1 BCA ¶ 36,952; *see also Landon A. Sario*, CBCA 6609-RELO (Aug. 5, 2020).

Decision

For the foregoing reasons, we deny the additional travel expenses.

Kathleen J. O'Rourke
KATHLEEN J. O'ROURKE
Board Judge