UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

May 7, 2009

CBCA 1511-TRAV

In the Matter of CARLETON BULKIN

Carleton Bulkin, Arlington, VA, Claimant.

Danny McClough, European and Eurasian Affairs and International Organization Affairs, Department of State, Washington, DC, appearing for Department of State.

WALTERS, Board Judge.

The claimant, Mr. Carleton Bulkin, is employed by the Department of State, European and Eurasian Affairs Bureau, Office of Regional Security and Political Military Affairs. He seeks review of the Department's determination regarding his responsibility for excess travel costs in the amount of $870.20.

Factual Background

On October 30, 2008, Mr. Bulkin made a reservation for a round trip flight from Washington, D.C., to Brussels, Belgium, for official travel in conjunction with his attendance at a North Atlantic Treaty Organization (NATO) meeting. The trip was to take place from November 30 through December 4, 2008. The reservation was made through the Department's designated travel agency, Carlson Wagonlit Government Travel (CWGT). At a cost of $1213.40, a V-class (VCA) round-trip United Airlines ticket was purchased. A VCA ticket is a discounted government economy coach-class ticket. The cost of the ticket was charged to a government account to be paid directly by the Department to CWGT.

On November 21, 2008, Mr. Bulkin contacted CWGT and inquired as to whether he could use his personal frequent flyer mileage to upgrade the previously purchased ticket to a business-class ticket. He was told that the VCA ticket was not upgradeable and that an upgrade could only be accomplished from another economy coach-class ticket, a Y-class (YCA) ticket. Mr. Bulkin then requested that the VCA ticket be changed to a YCA ticket, so that he might take advantage of an upgrade using his personal frequent flyer miles. He asked for such an upgrade and was not certain to obtain one, since there were more such requests than there were available business-class seats at the time. CWGT complied with Mr. Bulkin's request for a ticket changeover, and changed the VCA ticket to a YCA ticket, at a cost increase of $870.20 (the YCA round trip ticket costing $2083.60). The cost of the YCA ticket again was charged directly to the government account with CWGT. At the time, the CWGT agent did not advise Mr. Bulkin of the cost difference or of the fact that he would have to bear the additional cost personally. Neither did Mr. Bulkin inquire as to whether the change from VCA to YCA would involve any cost impact.

Sometime thereafter, a CWGT supervisor, whose name Mr. Bulkin does not recall, contacted Mr. Bulkin and informed him that the change to a YCA ticket would cost several hundred dollars for which Mr. Bulkin would be personally responsible. Mr. Bulkin, in response, told the CWGT supervisor that he did not want to pay this sum and thus requested that the ticket be changed back to a VCA ticket. The supervisor promised to do so. No written record of this conversation was made, however, either by CWGT or by Mr. Bulkin, and Mr. Bulkin received no written confirmation that the ticket was, in fact, changed back to V-class.

On November 30, when Mr. Bulkin arrived at the airport, he discovered that the ticket had never been changed back to VCA. He learned further that his earlier request for an upgrade using his own personal frequent flyer miles had been processed and approved, such that he was assigned a business-class seat. Mr. Bulkin did not attempt to contact CWGT from the airport to effect the change back to a VCA ticket and to cancel the business-class upgrade. He asserts, without further elaboration, that he had insufficient time to contact CWGT and implies that any attempt to do so would have been futile, citing to one prior instance when he could not sustain a cell phone signal while trying to speak to a CWGT agent from the airport. He also rejects the notion that he might have used a landline telephone, stating that, to avoid problems with flight security, he carried no change with him. Mr. Bulkin instead boarded the aircraft and used the YCA ticket, further upgraded to business-class.

Subsequently, the Department sought to have Mr. Bulkin reimburse it for the $870.20 difference between the VCA and YCA tickets. Mr. Bulkin appealed the matter to the Board.

Discussion

The Department of State Foreign Affairs Manual (FAM) states that the "general policy of the U.S. Government" is that "less-than-premium-class accommodations must be used for all modes of passenger transportation." 14 FAM 561.1. In terms of airplane travel, the FAM provides, with certain specified exceptions, that "U.S. Government employees who use commercial air carriers for domestic and international travel on official business must use coach-class airline accommodations." 14 FAM 567.2. On the other hand, in terms of seat upgrades using an employee's personal frequent flyer miles, the FAM expressly permits "travelers" to "redeem frequent flier miles (or use personal funds) to upgrade to business- or first-class accommodations when performing official travel."

Although the FAM does not address the situation where, as here, an employee orders a change from one type of coach-class ticket to a more expensive coach-class ticket, in order to allow for an upgrade using his own frequent flyer miles, the Department, in July 2008, issued an instruction specifically prohibiting the purchase of higher-cost upgradeable tickets with Government funds just to allow for such an upgrade:

> The Office of Logistics Management (A/LM) has received a number of inquiries regarding the use of frequent flyer miles to obtain travel upgrades. The criteria for upgrading a particular fare vary by air carrier. Some fares require more miles than others to upgrade and some fares cannot be upgraded at all. Travelers may not choose a higher cost fare at USG expense in order to qualify for an upgrade.

Department of State Department Notice Announcement 2008_07_086 (July 18, 2008).

The Department cites to this instruction to support its position that Mr. Bulkin is to bear the additional cost of the YCA ticket here. Other than mentioning that the instruction was mounted and accessible to its employees on a Department Intranet site, the Department did not establish that Mr. Bulkin received or had actual knowledge of the instruction when it was issued, and he indicates otherwise, relating that, during the timeframe in July 2008 when the instructions were issued, he was "transferring from overseas assignment in Afghanistan to the Department [in Washington] via home leave." Nevertheless, we need not explore whether the instruction to agency personnel in this case was intended to be and qualified as a binding regulation, *see Hamlet v. United States*, 63 F.3d 1097 (Fed. Cir. 1995), such that Mr. Bulkin ought be charged with constructive knowledge of the instruction in the same manner as a published regulation having the "force and effect of law," *e.g., Federal Crop Insurance Corp. v. Merrill*, 332 U.S. 380, 384 (1947), since the CWGT supervisor here did make plain to Mr. Bulkin that he would be held responsible for the extra cost of the YCA ticket. Thus, Mr. Bulkin had actual knowledge of the Department's policy, at least as of the time of his telephone conversation with that CWGT supervisor and before he boarded the airplane.

Mr. Bulkin urges that he should not be forced to bear responsibility for that extra $870.20 in cost, however, since the CWGT supervisor, a supervisor of the Government's designated travel agency, had promised him to reverse the ticket changeover request. In reply, the agency maintains that Mr. Bulkin cannot divest himself of his own responsibility, and cites to the FAM as precluding as "unacceptable" any "excess costs" incurred by reason of "luxury accommodations and services unnecessary or unjustified in the performance of official business." 14 FAM 561.2. In this case, from the agency's perspective, even though a YCA ticket is merely another form of coach-class ticket and may not itself be considered "luxury accommodations," the additional cost to secure such an upgradeable economy class ticket, so that Mr. Bulkin could use his personal frequent flyer mileage for an upgrade to a business-class seat, was neither necessary nor justified for the instant trip.

Our Board has observed: "It is a fundamental, overarching principle that a federal civilian employee traveling on official business 'must exercise the same care in incurring expenses that a prudent person would exercise if traveling on personal business."' *James M. Cunningham*, CBCA 1106-RELO, 08-2 BCA ¶ 33,944, at 167,959 (quoting *Jack L. Hovick*, CBCA 655-TRAV, 07-2 BCA ¶ 33,616 (in turn quoting 41 CFR 301-2.3 (2006))). Similarly, 14 FAM 513 obligates Department employee travelers to make a "conscientious effort to minimize costs of official travel and to assume any additional expenses incurred for personal convenience." The FAM further provides as to the "traveler's responsibility":

> [E]mployees are expected to use good judgment in the costs they incur for all official transportation expenses as if they were personally liable for payments.

14 FAM 515a. Here, in terms of adhering to the principle regarding prudence in the incurrence of travel expenditures, Mr. Bulkin has not demonstrated that his use of a YCA ticket resulted in any economic or logistical benefit for the agency. *See Cunningham*, 08-2-BCA at 167,959 (citing *Peter C. Thurman*, GSBCA 15562-TRAV, 01-2 BCA ¶ 31,516).

Moreover, as the agency correctly notes, Mr. Bulkin had numerous opportunities from the time of booking up until the time he actually boarded the flight to minimize his costs of official travel and to avoid the additional cost at issue, opportunities of which he failed to avail himself. Even though the CWGT agent who made the changeover from VCA to YCA did not warn him of the cost increase, Mr. Bulkin could and should have inquired as to whether his requested ticket change would entail any cost impact. Next, notwithstanding the CWGT supervisor's undocumented promise, Mr. Bulkin had an obligation to the agency to assure that the changeover had been reversed. Not having received an e-mail or other written confirmation of the reversal prior to going to the airport, he should have called CWGT to obtain that confirmation. Finally, once he arrived at the airport and discovered that the reversal had not been made, he was obliged to do everything possible to see that CWGT effected the reversal. The excuses he offers regarding a single prior instance where he could not sustain a cell phone signal and his lack of pocket change are feeble at best, and are hardly sufficient to shift responsibility for the ticket cost differential from him to the agency. In short, we find that Mr. Bulkin failed to exercise care, prudence, and good judgment in this instance and thus is liable to the agency for the $870.20 cost differential.

Decision

The claim is denied.

_____
RICHARD C. WALTERS
Board Judge