



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

January 11, 2011

CBCA 2184-RELO

In the Matter of MARK J. MUSAUS

Mark J. Musaus, Atlanta, GA, Claimant.

William E. Lill, Lead Fiscal Services Specialist for Relocation, National Business Center, Department of the Interior, Lakewood, CO, appearing for Department of the Interior.

DANIELS, Board Judge (Chairman).

The Department of the Interior's Fish and Wildlife Service (FWS) transferred Mark J. Musaus from the Washington, D.C., area to the Atlanta, Georgia area, in January 2010. Mr. Musaus structured the move in a way that he believed would save the Government several thousands of dollars. When he asked for reimbursement of one expense to which he thought he was entitled, however -- the cost of breaking the lease on his home in the Washington area -- the department's National Business Center (NBC) refused to make payment. Mr. Musaus asks us to review and set aside this determination.

The employee's good intentions notwithstanding, we hold that NBC was correct in rejecting the claim for lease-breaking expenses.

Background

On November 27, 2009, FWS informed Mr. Musaus of his impending transfer, to take effect the following January. The agency issued to him orders which authorized (among other benefits) temporary quarters subsistence expenses (TQSE), shipment of household goods, and temporary storage of those goods for thirty days. The orders were later amended to include lease-breaking expenses.

At the time, the employee and his wife were living in a home which they rented in the Washington area. Their lease provided that they pay \$2150 per month in rent for the house. It also provided that if they wished to terminate the lease, they would have to give the landlord sixty days' notice, beginning on the first day of a month.

In early December, Mr. Musaus told the landlord's property manager that he would soon be transferred to Atlanta. The property manager asked him to give formal, written notice when he knew he would be vacating the house; without that notice, the manager said, he could not advertise and re-lease the dwelling.

On January 19, 2010, Mr. Musaus reported to his new duty station. He lodged with family members in the Atlanta area and did not ask FWS to pay TQSE. His wife remained in the rented house in the Washington area until the end of February.

Later that month, he and his wife signed a contract to purchase a home in the Atlanta area, with settlement to occur at the end of February. Mr. Musaus informed the landlord that he and his wife would vacate the rented house. Both parties to the lease understood that this action obligated Mr. Musaus to pay rent for the months of February and March, and he did indeed pay that rent.

Mr. Musaus, seconded by FWS, urges that he be reimbursed, as a lease-breaking expense, the \$4300 in rent that he paid for the months of February and March. The employee and the agency note that by not seeking reimbursement for TQSE and not requiring temporary storage of household goods, he has saved the Government considerable money -- even with payment of the \$4300. The NBC insists that under the Federal Travel Regulation (FTR), this sum does not qualify for reimbursement.

Discussion

The FTR provision which we must interpret and apply is 41 CFR 302-11.7 (2009). This provision says that expenses for a transferred employee's settlement of an unexpired lease are reimbursable when the lease is for residence quarters at the employee's old official station, but only if four conditions are present.¹ The condition which is the focus of this dispute is (c), which requires that "[y]ou [the employee] have not contributed to the expenses

¹ The provision states the conditions in the alternative ("or"), but the meaning is clearly that all of them must be fulfilled, so the conjunction "and" should have been used. *Lorenzo Henderson*, CBCA 651-RELO, 07-1 BCA ¶ 33,539.

by failing to give appropriate lease termination notice promptly after you have definite knowledge of your transfer.”

Mr. Musaus and FWS maintain that this condition was met because the employee gave the landlord notification in December that he would be terminating the lease early and in January that he and his wife would vacate their rented home at the end of February. NBC contends that the condition was not met because although the employee knew in late November that he would be transferred in January, he did not give notice of lease termination until January.

We agree with NBC. The regulation requires that notice be given “promptly after you have definite knowledge of your transfer,” not “promptly after you have definite knowledge that you will be vacating the residence.” While Mr. Musaus told the property manager in December that he would be terminating the lease at some unspecified time, he did not give notice of when he would actually be terminating it until January -- two months after he had definite knowledge of his transfer.

Even if we did not reach this conclusion, we would still deny reimbursement of the claim for the month of February. “[A]n underlying premise upon which the lease termination expense benefit is grounded is that the leased premises were actually vacated and the employee no longer continued to receive a benefit from the terminated lease.” *Patsy S. Ricard*, 67 Comp. Gen. 285 (1988); *see also Paul S. Sayah*, GSBCA 14356-RELO, 98-1 BCA ¶ 29,595. “So long as a member of an employee’s immediate family remains in occupancy of permanent quarters which are leased at the old station, the employee continues to receive the benefit of the lease and that part of the rent paid for the days of the month during which the apartment was last occupied may not be reimbursed.” *Robert T. Haas*, B-243017 (Aug. 6, 1991). Because Mr. Musaus’s wife remained in the rented home in the Washington area through the month of February, even if he had given notice in December that he would be terminating the lease, he could not recover the rent he paid for February as a lease-breaking expense.

STEPHEN M. DANIELS
Board Judge