



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

---

April 7, 2016

CBCA 4999-RELO

In the Matter of NATHAN PATRICK

Nathan Patrick, Hoover, AL, Claimant.

Kevin Saman, Office of the General Counsel, Department of Commerce, Washington, DC, appearing for Department of Commerce.

**HYATT**, Board Judge.

Claimant, Nathan Patrick, was selected for a position with the National Oceanic and Atmospheric Administration (NOAA) in Tuscaloosa, Alabama. At the time he was hired by the agency, he was employed, under a temporary appointment, with the National Park Service in Boulder City, Nevada. He has challenged NOAA's classification of his status as that of a new employee, rather than as a transferee, for purposes of providing relocation benefits and seeks the Board's review of the agency's denial of the expanded benefits accorded to an employee transferring in the interest of the Government.

After reviewing the claim filed by Mr. Patrick, the Board noted that claimant appeared to be a bargaining unit employee covered under a collective bargaining agreement between NOAA and the National Weather Service Employees Organization (NWSEO) and asked the agency to submit a copy of the applicable agreement. The agency has provided a copy of the collective bargaining agreement and argues that the agreement precludes consideration by the Board of Mr. Patrick's claim. In addition, the agency points out that Mr. Patrick had already pursued a grievance through two steps of the process before filing his claim at the Board.

### 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. *Dunkleberger 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.

The collective bargaining agreement under which Mr. Patrick is a covered employee sets forth, in article 10, a detailed grievance procedure which “will be the sole procedure available to the NWSEO, Management, or bargaining unit employees for resolving grievances.” A grievance is defined to mean any complaint –

A. by any employee concerning any matter relating to the employment of the employee;

...

C. By any employee, labor organization, or agency concerning –

1. The effect or interpretation, or a claim of breach, of a collective bargaining agreement; or
2. any claimed violation, misinterpretation, or mis-application of any law, rule, or regulation affecting conditions of employment.

The collective bargaining agreement enumerates various 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. 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, the Board lacks authority to consider Mr. Patrick's claim.

### Decision

For the foregoing reasons, the claim is dismissed.

---

CATHERINE B. HYATT  
Board Judge