



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

December 16, 2015

CBCA 4891-RELO

In the Matter of WALTER S. HAMMERMEISTER

Walter S. Hammermeister, Hermiston, OR, Claimant.

Terri L. Peterson, Realty Assistant, United States Army Corps of Engineers, Department of the Army, Walla Walla, WA, appearing for Department of the Army.

SOMERS, Board Judge.

Claimant, William S. Hammermeister, seeks reimbursement for real estate expenses relating to the sale of a residence in Bonney Lake, Washington. The agency denied his claim because Mr. Hammermeister entered into a contract for the sale of this residence before he received official notification of his selection for a job located in a different location. However, Mr. Hammermeister is a member of the United Power Trades Organization (the Union). Because the terms of the collective bargaining agreement (CBA) do not explicitly exclude the type of claim at issue here, from the grievance procedure established by the CBA, we lack authority to resolve the claim.

Background

Mr. Hammermeister works for the United States Army Corps of Engineers, Northwestern Division. When Mr. Hammermeister received unofficial notification that he had been selected for another position that would require him to transfer to another permanent duty station, he placed his house on the market. Mr. Hammermeister entered into a contract for the sale of his residence before he received official notification of his selection for the position. The agency denied Mr. Hammermeister's claim for real estate expenses

because he incurred the expenses before receiving official notification of his transfer. Mr. Hammermeister asks us to review the agency decision.

Discussion

Pursuant to the Civil Service Reform Act (CSRA), 5 U.S.C. § 7121 (2012), matters that are required to be “resolved under the grievance procedures in a CBA will not be subject to review outside those procedures unless a specific exception is set forth in that agreement.” *Daniel T. Garcia*, CBCA 2007-RELO, 10-2 BCA ¶ 34,468 (quoting *Rafal Filipczyk*, CBCA 1122-TRAV, 08-2 BCA ¶ 33,886). All matters are covered by the grievance procedures of the CBA unless expressly excluded. *Kelly A. Williams*, CBCA 2840-RELO, 12-2 BCA ¶ 35,116.

Mr. Hammermeister works under a CBA between the Army Corps of Engineers, Northwestern Division, and the United Power Trades Organization. The union is recognized as the exclusive representative of the bargaining unit consisting of the Army Corps of Engineers’ non-supervisory operation and maintenance employees, as defined by the Department of the Army, who are paid from the Pacific Northwest Regional Power Rate Schedule within the Portland, Seattle, and Walla Walla Districts of the Division. Article 5 of the applicable CBA sets forth grievance and arbitration procedures for resolving disputes involving employees. The CBA lists various exclusions from the grievance procedures. CBA § 5.6. Relocation claims are not explicitly excluded from the scope of the grievance procedures.

The United States Court of Appeals for the Federal Circuit consistently has held that if a matter is entrusted to a CBA grievance procedure, “no review outside that procedure may take place unless the parties to the agreement have explicitly and unambiguously excluded that matter from the procedure.” *See Robert Gamble*, CBCA 1854-TRAV, et al., 11-1 BCA ¶ 34,655, at 170,743 (citing *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)). “Decisions by this Board and its predecessor in settling claims by federal civilian employees for travel and relocation expenses, the General Services Board of Contract Appeals, have consistently applied the statute, as interpreted by the Court of Appeals, to dismiss claims whose resolution is governed by provisions of collective bargaining agreements.” *Id.* (citations omitted). “[W]here an employee is subject to the grievance procedures in a CBA that does not explicitly exclude the type of claim at issue, the Board lacks authority to consider the claim.” *See Daniel L. Kieffer*, CBCA 4705-TRAV, 15-1 BCA ¶ 36,050, at 176,066 (citations omitted).

Decision

For the foregoing reasons, the claim is dismissed.

JERI KAYLENE SOMERS
Board Judge