



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 29, 2016

CBCA 4879-RELO

In the Matter of TIFFANY M. WASHINGTON

Tiffany M. Washington, Mobile, AL, Claimant.

Michael E. Sainsbury, Office of General Counsel, Defense Contract Management Agency, Fort Lee, VA, appearing for Department of Defense.

HYATT, Board Judge.

On March 3, 2016, the Board dismissed the request of Tiffany M. Washington, claimant, for review of the disallowance of relocation expense reimbursement she sought in connection with a permanent change of station (PCS) move directed by the Defense Contract Management Agency (DCMA). The Board determined that it lacked authority to decide the matter because Ms. Washington was a bargaining unit employee whose claim was covered under a collective bargaining agreement that did not explicitly and clearly exclude the matter from the mandatory grievance procedures for resolving disputes between the employee and the agency. *Tiffany M. Washington*, CBCA 4879-RELO, 16-1 BCA ¶ 36,280.

By letter dated March 28, 2016, Ms. Washington informed the Board that, as a result of her removal from her position with DCMA, she is no longer a federal employee and the union will no longer represent her in pursuit of her grievance with respect to the relocation reimbursements she seeks. She inquired whether, in light of this circumstance, the Board might entertain her claim on the merits. The Board docketed her inquiry as a request for reconsideration of its decision and asked DCMA to file a response to the request. Specifically, the Board asked DCMA to update the status of the grievance process with respect to Ms. Washington's claim for relocation expenses and to address the continued

availability of the grievance process to an employee whose grievance arose, but was not resolved, prior to the cessation of employment with the agency. In addition, the Board asked DCMA to comment on whether the refusal of the union to process the grievance would render the grievance process inapplicable so as to permit the Board to consider Ms. Washington's claim.

DCMA filed a response to the reconsideration request, providing the information requested by the Board. The agency stated that Ms. Washington's employment with DCMA was terminated after DCMA officials made a determination that she knowingly submitted false claims and documentation related to her claim for reimbursement of relocation expenses. DCMA has provided a statement from the Director of the Labor and Employee Relations Division for DCMA, who explains that Ms. Washington filed a grievance in July 2014 seeking information as to why reimbursement of her relocation expenses voucher had been delayed. DCMA responded through claimant's union representative and informed the union that it was conducting an investigation into whether Ms. Washington's voucher was fraudulent. In August 2014, the union filed a step two grievance on behalf of Ms. Washington, requesting an update on the status of her claim and also seeking immediate payment. DCMA provided an update and denied the request for immediate reimbursement. The agency did not consider the merits of the claim during the grievance process prior to the termination of Ms. Washington's employment. No additional grievances were filed and there are no pending grievances related to this claim. The statement further avers that "[a]s a former DCMA employee, Ms. Washington can no longer avail herself of the grievance process nor assert any rights under the agency's collective bargaining agreement."

In accordance with the statement described above, DCMA is of the view that Ms. Washington has no recourse through the union to resolve her claim for reimbursement of relocation expenses. As such, the agency says it has no objection to the Board granting claimant's request for reconsideration and considering the merits of her claim.¹

¹ We note that in conjunction with her request, Ms. Washington has attempted to "elect" a hearing in this matter, relying erroneously on the Board's rules of procedure applicable to the resolution of appeals pursuant to the Contract Disputes Act. The only rules applicable to this matter are Board Rules 401 through 408, 48 CFR pt. 6104 (2015), which specifically address the processing of claims for reimbursement of travel and relocation expenses. These cases are generally decided on the written administrative record provided by the parties and do not provide for the convening of a hearing.

Discussion

The mandatory dispute resolution procedures contained in a federal collective bargaining agreement constitute the exclusive means for resolution of employment disputes unless the negotiated terms of the agreement manifest a clear and unambiguous intent to exclude a matter from the grievance and arbitration processes set forth therein. *Muniz v. United States*, 972 F.2d 1304 (Fed. Cir. 1992) (citing *Carter v. Gibbs*, 909 F.2d 1452 (Fed. Cir. 1990) (en banc)); accord *Dunkleberger v. Merit Systems Protection Board*, 130 F.3d 1476 (Fed. Cir. 1997). The Board dismissed Ms. Washington's claim because the applicable collective bargaining agreement did not expressly and unambiguously exclude the matter from the mandatory grievance procedures for resolving disputes between the employee and the agency.

Although both claimant and DCMA urge that she no longer has any recourse under the union's grievance procedures, even if that contention is correct, it does not follow that the Board may now entertain the merits of her claim. Ms. Washington was employed by DCMA when she claimed reimbursement for relocation expenses, and she exercised her grievance rights as a bargaining unit employee with respect to that claim. Precedent construing the Civil Service Reform Act has uniformly recognized that when a claim has accrued while an employee is subject to the terms of a collective bargaining agreement, which is the case here, that claim can only be resolved under the agreement's grievance procedures, even after the employee's employment ends. As the Court of Appeals for the Federal Circuit has explained:

[I]t is the claimant's status at the time the claim accrues that controls the availability of the grievance procedure. Thus federal employees whose claims were grievable when they arose continue to have access to the grievance procedures after the employee leaves the bargaining unit, unless the collective bargaining agreement provides otherwise. *Muniz*, 972 F.2d at 1312 (citing *Nolde Bros., Inc. v. Local No. 358 Bakery & Confectionery Workers Union, AFL-CIO*, 430 U.S. 243, 255 (1977)). Conversely, the federal agency and union may not forbear to entertain such grievances on behalf of former employees, with respect to claims that accrued while in employee status. This effectuates the comprehensive scheme intended by Congress, as elaborated in *Carter v. Gibbs* and *Muniz v. United States*.

Aamodt v. United States, 976 F.2d 691, 692-93 (Fed. Cir. 1992); see also *Timothy Peter Baker*, CBCA 1632-RELO, 09-2 BCA ¶ 34,275. We have not identified, nor have the parties pointed us to, any provision of the collective bargaining agreement that expressly removes such claims from the grievance process upon termination of employment. Regardless of Ms.

Washington's current employment status, the fact remains that her only means of redress with respect to this claim is provided under the grievance procedures of the collective bargaining agreement. Accordingly, upon consideration of the arguments presented by the parties, we conclude that the Board has no authority to decide this claim.²

CATHERINE B. HYATT
Board Judge

² This is the case even though the agency acquiesces in Ms. Washington's desire for Board review of her claim. The parties cannot by agreement confer upon a tribunal authority which it otherwise lacks. See *Dunkleberger*, 130 F.3d at 1480; *Robert Ferraro*, CBCA 2287-RELO, 11-2 BCA ¶ 34,779; *William Carr*, CBCA 1613-RELO, 09-2 BCA ¶ 34,252.