



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

January 11, 2016

CBCA 5032-RELO

In the Matter of JEFFREY M. DOWNING

Jeffrey M. Downing, Rosslyn, VA, Claimant.

Scott A. Tiedt, Director, Transportation and Travel Management Division, Department of State, Washington, DC, appearing for Department of State.

SHERIDAN, Board Judge.

Claimant, Jeffrey M. Downing, seeks reimbursement of \$619.92 of expenses that were incurred as a result of his permanent change of station (PCS) travel.

Background

Claimant, a civilian employee of the Department of State (State), and his three eligible family members were authorized official PCS one-way travel from Kathmandu, Nepal to Sunapee, New Hampshire, to Washington, D.C., to Tokyo, Japan, and to Jakarta, Indonesia, between July 2015 and August 2016. Claimant was required to report for training in Washington, D.C., to be held from August 17, 2015, through May 20, 2016.

Mr. Downing's claim focuses on the travel segment from Sunapee (Manchester Airport (MHT)) to Washington, D.C. (Reagan National Airport (DCA)).

On June 15, 2015, claimant contacted Carlson Wagonlit Travel (CWT), State's travel management center, to make airline reservations from Boston, Massachusetts, Logan International Airport (BOS) to DCA. This new reservation prompted the system to send an auto-generated email message on June 15, 2015, to claimant alerting him that tickets would

not be issued until he provided a copy of his travel authorization. On June 16 claimant sent CWT a copy of his travel orders.

CWT contacted claimant on June 16, 2015, to advise him that he was not authorized to depart from BOS. According to claimant, once he was told that he could not fly out of BOS he worked with CWT, on June 17, to reserve tickets for travel from MHT to DCA on the morning of August 16:

The CWT technician cancelled the BOS reservation and rebooked the tickets from MHT to DCA. We had a lengthy discussion on the telephone as the CWT technician was initially trying for us to fly out of very small regional airports (some much further away from our HOR [home of record] than MHT). We clearly settled on MHT and I received the booking. As far as we were concerned, this matter was resolved. The only contact from CWT was emails containing the booking.

Claimant maintains that he did not realize at the time that CWT was only reserving the tickets, not purchasing them. Claimant states that he did not understand that he had to do something more to finalize the travel from MHT to DCA.

State asserts that when claimant changed his reservations from BOS back to MHT, he was advised that he needed to send his travel orders again to CWT. State maintains that claimant was told this via email messages sent on June 16 and 17, and August 12 and 14. In denying claimant's reimbursement, State wrote to claimant: "The airline automatically cancels tickets that have not been issued within 48 hours so they can resell them. You made no attempts to contact CWT to rectify this in a timely manner. The reservations for the unpurchased tickets were then returned to the airline and seats were sold resulting in no tickets available by the time you spoke [again] to CWT."

Claimant acknowledged receipt of the emails, but said that because they attached the itinerary, he believed "this was simply reminder emails of the upcoming itinerary. . . . From our perspective, [CWT] already had the travel orders on 16 June, so there does not seem to be a reason why CWT would need them again." Claimant maintains that he did not understand that he needed to take further action to finalize ticketing. As far as claimant understood, he and his family had a flight from MHT to DCA on the morning of August 16. The airline canceled the reservation because the tickets were not timely purchased.

On the morning of his scheduled flight, August 16, 2015, claimant attempted to check-in on-line. When he was unable to do so, claimant contacted CWT, which informed him the tickets were never purchased. The CWT agent attempted to rebook the tickets for August

16, but was unable to do so because there were no flights available due to an unexpected Federal Aviation Administration shutdown on August 15 that impacted air travel. The CWT agent advised claimant that he should consider booking a rental vehicle from MHT.

Claimant rented a vehicle through CWT and drove himself and his family from Sunapee to Washington, D.C. He sought \$619.72 in expenses for the lease of the rental car, fuel, and tolls for the trip, which he made on August 16, 2015. Claimant posits that had he flown from MHT to DCA as planned it would have cost \$2159.32.

State notes that:

Consistent with 14 FAM [Foreign Affairs Manual]¹ 566.3-2, the Department was willing to reimburse Mr. Downing \$108.79 for mileage from Sunapee, New Hampshire to Washington, D.C. (473 miles at the PCS rate of \$0.23 per mile) [but] the FAM does not provide the Department with the authority to reimburse for additional costs.

Travelers are regularly reminded of their financial risk should they purchase any service not previously authorized in advance by an official with authority to commit or obligate U.S. government funds. CWT's records indicate that, prior to renting the car, Mr. Downing was informed that use of the rental car may not be reimbursed. On August 16, Mr. Downing contacted CWT's Emergency Service Center (ESC), and was informed that all flights from MHT and BOS to the Washington, D.C. area airports were sold out. The PNR [passenger name record] data entered by the CWT agent on August 16 states: "nothing avail today on any carrier to any of the 3 WAS airports. [Claimant] opted to rent a car and drive. . . . Pax adv[ised] ESC cannot guar[antee] reimb[urserment] by the gov[ernment] of any additional t[ravel] expenses."

Mr. Downing also should have been on notice that his transaction for the tickets to DCA was not complete because, unlike previous occasions where he would have purchased tickets through CWT, he had not been provided with an e-ticket. That alone should have indicated to Mr. Downing that additional steps may need to be taken.

1 14 FAM contains the regulations associated with State employees' travel.

Discussion

It appears that claimant did not fully understand the nuances of State's travel system and because of that he faced exigent circumstances that required him to move forward immediately, without first obtaining authorization. Claimant picked a reasonable solution that in the end cost State less than the air travel it had authorized. Claimant did all this while maintaining contact with and seeking advice through the State's travel management center. Instead of amending claimant's travel orders to reflect the changed conditions and mode of transportation necessitated by claimant's circumstances, State refused to pay for most of the \$619.72 in expenses that claimant incurred by driving instead of flying. State's denial is not reasonable, given the circumstances presented and that there is ample authority to permit reimbursement.

The Federal Travel Regulation (FTR) provides, at chapter 301, the rules for temporary duty (TDY) travel to be used for the payment of PCS travel expenses. 41 CFR 302-4.100 (2015). FTR 301-10.6 provides:

What is my liability if I do not travel by the authorized method of transportation?

If you do not travel by the method of transportation required by regulation or authorized by your agency, any additional expenses you incur which exceed the cost of the authorized method of transportation will be borne by you.

41 CFR 301-10.6.

In pertinent part, State's own regulations address the use of rental vehicles in 14 FAM 566.2-1 and 566.3-2. Paragraph (f) of 14 FAM 566.2-1 addresses reimbursement for rental vehicles that have been authorized and provides, "Reimbursement for rental fees and actual expenses for gas and tolls is authorized." 14 FAM 566.2-1(f).

The FAM also addresses an employee's right to elect to use a rental vehicle for his own personal convenience and be reimbursed. 14 FAM 566.3-2 states:

When the employee elects to use a rented vehicle for personal convenience^[2] and use of the rental vehicle has not been specifically authorized, as per 14 FAM 566.2-1, paragraphs f and g, reimbursement for travel expenses will be the lesser of:

- (1) Mileage, plus per diem and other expenses allowable on the authorized mode of transportation stated in the travel authorization; or
- (2) The constructive cost of the U.S. Government airfare on a direct route, plus per diem and other expenses. For any portion of the journey not connected by air service, reimbursement may not exceed the constructive cost of less than premium-class accommodations on a surface common carrier.

Employees who travel on official business are expected to use the same standard of care when they incur expenses as would a prudent person traveling for personal business. 41 CFR 301-2.3. Claimant was faced with few options, and acted reasonably and prudently, when he was confronted with the dilemma of having no airline tickets and no hope of air travel to get him and his family to Washington, D.C., on time for the start of his training.

Claimant posits that had he and his family flown from MHT to DCA as planned it would have cost State \$2159.32. State has not disputed this figure. It cost claimant \$619.72 to lease a vehicle and drive to Washington, D.C. Since \$619.72 is less than \$2159.32, no adjustment of reimbursement is required. *Cf. Stephen M. England, CBCA 3903-TRAV, 15-1 BCA ¶ 35,870* (citing several cases articulating how constructive costs should be calculated under FTR 301-10.309).

Claimant faced a version of every federal traveler's nightmare: A planned flight canceled, with no other flights available, and the traveler needs to be at his or her destination before the next available flight. Some action is required, but the agency is rarely willing or able to give precise directions and change the travel authorization to reflect the conditions presented. Often, federal travelers are required use their own judgment and incur costs in these situations, e.g., rent a hotel room and wait for the next available flight or lease an

² Claimant here did not elect to rent the vehicle for his personal convenience; however, the fact that State's regulations allowed him to do so, and obtain reimbursement, should have informed State that reimbursing the \$619.72 claimant seeks was the correct action to take.

automobile and drive to the destination. The traveler picks a solution and hopes he or she will be reimbursed. In selecting an option the traveler must use the same standard of care when he or she incurs expenses on behalf of the Government as would a prudent person traveling for personal business. When a traveler acts reasonably, as a prudent traveler, an agency will typically retroactively amend the travel orders and reimburse the employee for the costs associated with the circumstances.

Given the circumstances presented in this matter, claimant acted reasonably and, as a prudent traveler, he should be compensated for his expenses.

Decision

The claim is granted. State shall reimburse the claimant \$619.72.

PATRICIA J. SHERIDAN
Board Judge