



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

February 19, 2019

CBCA 6271-TRAV

In the Matter of STEWART SIMPSON

Stewart Simpson, San Francisco, CA, Claimant.

Khary Nelson, Travel Branch Chief, Environmental Protection Agency, Cincinnati, OH, appearing for Environmental Protection Agency.

LESTER, Board Judge.

The Environmental Protection Agency (EPA), acting through the Travel Branch of the EPA's Cincinnati Finance Center, has requested an advance decision under 31 U.S.C. § 3529 (2012), asking whether it may reimburse a \$232 fee that one of its employees incurred during official travel. The employee, Stewart Simpson, incurred the fee when, attempting to change his scheduled return airline flight, he contacted what he thought was the airline, but was actually a third party that had created Internet contact information designed to make it look like it was the airline. Although the third party's actions in tricking customers into believing that they have contacted their airline are reprehensible, the applicable regulations required Mr. Simpson to make flight changes in the circumstances here through the EPA's existing travel management service, which, had he done so, would have avoided his involvement in the third party's chicanery. We sympathize with Mr. Simpson's situation, but the agency cannot reimburse the \$232 change fee.

Background

After finishing official business while on government travel near San Diego, California, Mr. Simpson was driving to the San Diego airport when he hit unexpected traffic

that was going to cause him to miss his scheduled return flight to San Francisco. Mr. Simpson did not have contact information for his agency's contract travel service provider, BCD Travel, so, using his cellular phone to access the Siri virtual voice assistant, he looked up a phone number for United Airlines Reservations to allow him to change to a later return flight. The voice assistant identified a phone number for "United Airlines San Diego," and Mr. Simpson, while still in hands-free mode, asked it to connect him. After the call was connected, United Airlines hold music played until a phone representative answered, confirmed that he was with United Airlines, and indicated that the flight change was subject to a \$232 change fee. Because he was traveling on a refundable government ticket, Mr. Simpson did not believe that there should be any change fee, but, unable to convince the United Airlines representative, he provided his government credit card information to pay the \$232 charge and change his flight. The flight change and charge were confirmed by email.

Upon arrival at the airport, Mr. Simpson went to the United Airlines counter to attempt to obtain a refund of the change fee. The United Airlines agent indicated that Mr. Simpson's return flight had been changed, but the agent could find no record in the system of a \$232 fee. When the United Airlines agent called the number that Mr. Simpson had used to make the flight change, the phone representative would not identify the company for which he worked, and the call ended. The charge was not refunded.

After the government credit card company denied Mr. Simpson's attempt to dispute the charge and obtain a credit, Mr. Simpson requested reimbursement of the \$232 fee from the EPA. The EPA's travel office initially indicated that it could find no authority allowing reimbursement because Mr. Simpson, in making the change, had not used the agency's contract travel vendor. After Mr. Simpson asked for further review, the travel branch chief informed Mr. Simpson that his office was going to ask the Board whether there was any way that the EPA could reimburse the charge.

Discussion

Section 301-50.3 of the Federal Travel Regulation (FTR) provides that, unless an employing agency has made E-Gov Travel Service (ETS) available, employees "must use [their] agency's existing Travel Management Service (TMS) to make [their] travel arrangements" when traveling on official business. 41 CFR 301-50.3 (2018). If the employee does not use the required TMS, he or she is "responsible for any additional costs resulting from [that] failure . . . , including service fees, cancellation penalties, or other additional costs," unless the employee falls within "an approved exception under § 301-50.4 or § 301-73.104 of this chapter." *Id.* 301-50.5. Section 301-73.104 relates only to agency-wide exceptions granted by the Administrator of General Services and/or his or her

designee relating to the use of ETS and is inapplicable here. Section 301-50.4 permits an agency to grant, in individual cases, an exception to the use of the agency's approved TMS, but only in situations in which use of the TMS "would result in an unreasonable burden on mission accomplishment," "would compromise a national security interest," or "might endanger [the employee's] life." *Id.* 301-50.4. The EPA has properly determined that none of these exceptions apply to Mr. Simpson's return flight change.

We have no authority to expand these exceptions. The FTR is a legislative rule that has the force and effect of law over government employee travel expense reimbursements. *Jonathan Toy*, CBCA 5383-TRAV, 16-1 BCA ¶ 36,501, at 177,849; *Vera A. Wood*, GSBCA 15637-TRAV, et al., 02-1 BCA ¶ 31,693, at 156,571 (2001). To the extent that the FTR bars reimbursement of a particular travel expense, we are obligated to apply and follow it. "There is no authority, under statute or regulation, for shifting such responsibility to the Government" in the circumstances here. *Nicholas Kozauer*, CBCA 2525-TRAV, 12-1 BCA ¶ 34,912, at 171,654 (2011).

We faced a situation somewhat similar to the one at issue here in *Julie H. Herling*, CBCA 489-TRAV, 07-1 BCA ¶ 33,529. There, through administrative error, an airline ticket was inadvertently purchased for the claimant through a vendor other than the TMS and at a cost higher than would have been available through the TMS. We recognized that "this Board cannot direct payment of public funds for travel expenses incurred by mistake where reimbursement of such expenses is not allowed under statute or regulation." *Id.* at 166,108-09. Because none of the exceptions in section 301-50.4 applied to the claimant's travel arrangements, the agency properly limited the claimant's airfare reimbursement to "the cost of her airfare up to the amount of the government rate [that she would have paid by booking through the TMS]" and required that the claimant "personally bear any extra cost incurred." *Id.* at 166,108; see *Nicholas Kozauer*, 12-1 BCA at 171,654 (fee for cancelling hotel reservation made outside of the TMS was not reimbursable); *Carl H. Welborn, Jr.*, CBCA 2151-RELO, 11-1 BCA ¶ 34,650, at 170,737-38 (2010) (no reimbursement of excess airfare costs incurred when booking outside of TMS); *Vivian E. Nichols*, GSBCA 15493-TRAV, 01-1 BCA ¶ 31,366, at 154,897 (same).

Mr. Simpson told the agency that he was always reluctant to reschedule flights through the agency's TMS because he wanted to save the agency the \$34.30 fee that the TMS assesses each time a travel reservation change is made. Unfortunately, that desire does not meet the "unreasonable burden on mission accomplishment" exception or other exceptions under FTR 301-50.4. The Federal Government has decided that costs associated with TMSs should be allocated across agencies that use them through the imposition of that type of usage fee, and, where the FTR requires use of the TMS, an individual employee's attempt to help his office avoid such fees by booking travel himself or herself is a risk that the employee

voluntarily chooses to take. Similarly, the mere fact that Mr. Simpson needed to change his return flight quickly does not count as the type of emergency that would allow him to avoid using the TMS under FTR 301-50.4, particularly since there is no evidence here that, had he contacted the TMS, it would not have been able to assist him. *See, e.g., Stephanie A. Diehl*, CBCA 2764-TRAV, 12-2 BCA ¶ 35,077, at 172,275; *Louis F. Schleuger*, GSBCA 14954-TRAV, 00-1 BCA ¶ 30,708, at 151,697 (1999); *John T. Davis*, B-216633 (Mar. 27, 1985); 41 CFR 301-50.4(a).

Decision

Although the scam into which Mr. Simpson unwittingly fell was unfortunate, the FTR does not permit reimbursement of the \$232 flight change fee that he incurred when making travel changes without using the EPA's TMS.

Harold D. Lester, Jr.

HAROLD D. LESTER, JR.

Board Judge