



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

September 29, 2020

CBCA 6663-TRAV

In the Matter of JORDAN D. JONES

Jordan D. Jones, Claimant.

Barbara C. Guy, Chief, Career Programs Proponency Division, Civilian Personnel, Department of the Army, Fort Belvoir, VA, appearing for Department of the Army.

RUSSELL, Board Judge.

Claimant Jordan D. Jones, a civilian employee of the Department of Defense, chose to use a personally owned vehicle (POV) for official temporary duty (TDY) travel in lieu of flying, the mode of transportation preferred by the agency. He seeks reimbursement for the full cost of his mileage, and additional costs incurred (lodging, and meal and incidental expenses) traveling to his destination on May 18, 2019, and returning to his home on August 25, 2019. For the reasons stated below, we grant the claim.

Background

On or around April 11, 2019, Claimant Jordan D. Jones, an employee with the Department of the Army, was authorized to travel from Huntsville, Alabama, to Fort Lee, Virginia, to attend a fourteen-week Operations Research/Systems Analysis Military Applications Course (ORSA MAC) at the Army Logistics University. The travel costs for the training were paid for and administered by the Army's Career Program Proponency Division (CPPD). Accordingly, CPPD was responsible for reviewing and approving Claimant's travel authorization, not his Command.

By letter dated April 17, 2019, the Army informed Claimant that, as a student enrolled in ORSA MAC, he was not authorized on-post lodging and, therefore, would have to make

arrangements for off-post lodging. The approved travel authorization does not include a start or end date for travel but notes an approximate number of ninety-eight temporary duty days. No transportation mode is designated or selected on his authorization although the authorization states that travel by privately owned conveyance will be reimbursed at a rate of \$.058 per mile, and that “mileage reimbursement and per diem [will be] limited to [the] constructive cost of common carrier transportation and per diem . . . per [the] JTR.”

Because he was not authorized on-post lodging, and there was no shuttle to and from the training location, Claimant needed to drive his own vehicle, rent a car, or use a taxi daily to commute to his training. Claimant decided to use his vehicle to travel from Huntsville to Fort Lee (a one-way trip of approximately 665 miles) so that he could use his vehicle for daily commuting to and from training. However, because traveling from Huntsville to Fort Lee is over 400 miles one way, and the agency’s preferred mode for official travel over 400 miles is by air, Claimant was required to complete a Constructed Travel Worksheet. The Worksheet is used in those instances where an employee decides not to use the agency’s preferred mode of transportation for official travel. The purpose is to compare the employee’s actual cost of travel with those costs that would have been incurred had the employee used the agency’s preferred mode of travel. The employee’s travel reimbursement is limited to the latter amount.

Claimant’s Worksheet reflected that, if he were to travel by air, he would have incurred approximately \$770.82 in air fare costs, \$60 for traveling to and from the airport, \$2300 for a rental car or taxi, \$100 for shipping costs (e.g., baggage fees, official equipment shipping fees), and \$850 for other transportation-related costs (e.g., gas for rental car, parking at hotel, tolls). Accordingly, Claimant estimated that his round-trip constructive costs to and from Huntsville to Fort Lee would have totaled \$4080.82. His actual mileage costs totaled \$770.82, the same amount that he estimated for air travel. On the Worksheet, Claimant checked the box identifying “[privately owned conveyance as] . . . more efficient, more economical, or result[ing] in a more expeditiously accomplished mission.”

CPPD disagreed with the amount that Claimant used for the air travel expense. CPPD determined air travel costs using the General Services Administration (GSA) City Pair Rate.¹ CPPD calculated that Claimant’s travel would have been \$506.00 at the GSA City Pair Rate, plus an estimated fee of \$20.74 for booking services, for a total constructed cost of \$526.74. CPPD takes the position that Claimant’s reimbursement for the round trip from Huntsville to Fort Lee is limited to this amount, relying on a JTR provision stating that “[n]o other costs,

¹ The GSA City Pair Program is a contract between the Government and certain airlines for routes frequently traveled for Government business. The program requires a traveler to use these routes when they are available. JTR 020206-M.1 (April 2019).

such as taxi fare or parking” should be added when conducting a cost comparison between the use of a POV and the agency’s preferred mode of transportation. *See* JTR 020210-F.

Claimant requests reimbursement of his travel costs above the CPPD constructive cost amount of \$526.74. Specifically, he seeks \$570.11 – \$244.08 in mileage costs and \$326.03 for lodging and meals and incidental expenses (M&IE). Claimant was reimbursed for his mileage from his home in Huntsville to Fort Lee, and was partially reimbursed for mileage for his return trip. In his claim, he seeks reimbursement of \$244.08, the amount not reimbursed for mileage. He additionally seeks lodging costs and M&IE for May 18, 2019, and August 24, 2019, reflecting an additional travel day each way given the driving distance between Huntsville and Fort Lee. CPPD objects to paying for lodging and M&IE on these days arguing that Claimant would have incurred expenses for one travel day each way, not two, if he had traveled by common carrier.

Although CPPD, as the reimbursing agency opposes Claimant’s request for reimbursement, Claimant’s Command supports his position. Specifically, in a memorandum, the Acting Ballistic Missile Defense Evaluation Director, Army Evaluation Center, U.S. Army Test and Evaluation Command, shared his view that there was an “incomplete determination of what [was] ‘advantageous to the government’” stating further:

For the “advantageous to the government” issue, the Agency’s response addresses the outcome of the determination but disregards JTR 020203, paragraph B, which contains determination criteria that justifies most of Mr. Jones’ request . . . e.g., trip length of 14-weeks; guidance from the Career Program Proponency Division (CPPD) that transportation to/from lodging would not be provided, making Mr. Jones responsible for finding his own way to class; . . . From the cost comparison that Mr. Jones compiled, there was an estimated \$3,100 savings to the government which again demands explanation of how the Agency’s determination was made. The driving route and overnight stops he chose also ensured compliance with Army risk management practices that limit daily mileage to a safe range. . .

Discussion

The Applicable Travel Regulations

In deciding this matter, we look to the Federal Travel Regulation (FTR), and because Claimant is a civilian employee of the Department of Defense, we also look to the Joint Travel Regulations (JTR). Both the FTR and the JTR require that the agency select the method of transportation most advantageous to the Government. 41 CFR 301-10.4 (2019) (FTR 301-10.4); JTR Section 020203. The FTR presumes that the most advantageous

method of transportation by order of precedence will be common carrier, government vehicle, POV, or special conveyance for travel. FTR 301-10.3.

The FTR provides specific guidance when an employee decides to use his personal vehicle, as Claimant did here, instead of common carrier transportation:

What will I be reimbursed if I am authorized to use common carrier transportation or a rental vehicle and I use a POV instead?

You will be reimbursed the applicable POV rate on a mileage basis, plus per diem, not to exceed the total constructive cost of the authorized method of common carrier transportation plus per diem. . .

FTR 301-10.309. The term “per diem,” as used in the FTR, includes lodging as well as an allowance for M&IE. *Id.* 300-3.1.

The FTR further explains:

If an employee elects to use a POV instead of an alternative authorized form of transportation, the agency must: (a) Limit reimbursement to the constructive cost of the authorized method of transportation, which is the sum of per diem and transportation expenses the employee would reasonably have incurred when traveling by the authorized method of transportation; and (b) Charge leave for any duty hours that are missed as a result of travel by POV.

FTR 301-70.105.

The JTR states that “[w]hen Government transportation is not directed, commercial travel by airplane, train, bus, or ship is generally the most advantageous method of transportation and should be selected when reasonably available. Of these types, travel by airplane is usually preferable when available.” JTR 020203-A.2. The following factors are to be used when determining which type of transportation is most advantageous to the Government for temporary duty travel: mission requirements, including trip length and transportation of baggage, tools, or equipment; availability of other transportation modes and the effect on productive time; temporary duty location in relation to traffic conditions, routing, and weather; temporary duty location in relation to the lodging, meal facilities, and transportation availability, other than a personally-owned vehicle, between these points; overall cost advantage when accompanying passengers in the same personally-owned vehicle are also under official travel orders; productive time lost due to additional travel time; efficiency, economy, or other reasons favorable to personally-owned vehicle use to accomplish the mission expeditiously; unavailability of practicable commercial

transportation; and delay to mission caused by the use of an airplane, train, bus, or ship. JTR 020203-B.

The JTR provision on which CPPD relies for limiting Claimant's reimbursement states:

When a traveler uses a POV instead of an authorized type of transportation, a cost comparison is done to determine reimbursement. The POV mileage is compared to the constructed cost of the authorized transportation type and the lesser of the two amounts is reimbursed. **The constructed cost is the sum of the transportation ticket cost plus the [Travel Management Company] fee. The per diem that the Government would have incurred if travel had been performed by the authorized transportation mode is paid. No other costs, such as taxi fare or parking, are included in the comparison.**

JTR 020210-F (emphasis added).

Claimant's Request for Reimbursement

We note that, as Claimant's Command indicated, there is nothing in the record evidencing that CPPD, as a threshold matter, undertook the analysis required by JTR 020203-B, to determine the mode of transportation that would have been most advantageous to the Government. As noted by the Command, it appears that the agency's determination of what would have been "most advantageous for the government" is "incomplete."

The record indicates that CPPD presumed that air travel was the most advantageous given the Government's preference for this mode of transportation. Yet, as indicated above, the JTR requires that a Defense agency consider a number of factors when making a determination on the mode of transportation that would be most advantageous to the Government including "temporary duty location in relation to the lodging, meal facilities, and transportation availability, other than a personally-owned vehicle, between these points;" "efficiency, economy, or other reasons favorable to personally-owned vehicle use to accomplish the mission expeditiously;" and "unavailability of practicable commercial transportation." Claimant and the Command presented factors demonstrating that POV use would likely have been the most advantageous transportation mode, at least as compared to air travel, given that Claimant's options for commuting between his lodging and training location would have been limited and costly had Claimant traveled by air to Fort Lee, Virginia, his TDY location. For example, as explained by Claimant, a taxi or rental car to commute to and from training would have cost approximately \$2300, and other transportation-related costs (e.g., gas for rental car, parking at hotel, tolls) would have cost

approximately \$850. His actual cost for gas to use his POV (\$770.82) was less than the constructive cost amounts. However, we see no point in remanding this claim to the agency to undertake a post-trip analysis under JTR 020203-B. Instead, we find that, pursuant to FTR 301-70.105, Claimant prevails because his actual costs were less than the estimated constructive costs, i.e., the expenses he would have incurred had he traveled by air carrier, the agency's preferred method for employee travel. One of our predecessor boards, the General Services Board of Contract Appeals, explained how this regulation should be applied:

The regulation requires an agency, when an employee chooses to travel in his or her own vehicle rather than by the means of transportation most advantageous to the Government, to calculate the employee's travel costs in two separate ways. First the agency should determine, through the standard application of statute and regulation, the allowability of the various components of an employee's travel claim . . . Second, the agency should determine the total constructive cost of the employee's travel had he or she traveled by the method of transportation deemed to be in the Government's best interest . . . [C]onstructive costs are by their very nature *not* costs which are actually incurred. Although these costs, too, should be determined through application of statute and regulation, the calculation necessarily will involve assumptions. As with the employee's travel costs determined in standard fashion to be allowable, the agency should likewise calculate a total constructive cost. After computing the two totals, the agency should compare them. If the total of costs determined in standard fashion to be allowable is greater than the total of the constructive costs, the agency should limit reimbursement to the latter figure.

Peter C. Thurman, GSBCA 15562-TRAV, 01-2 BCA ¶ 31,516 (quoting *Russell E. Yates*, GSBCA 15109-TRAV, 00-1 BCA ¶ 30,785). This Board follows this guidance. *Robert A. Cherry*, CBCA 3878-TRAV, 14-1 BCA ¶ 35,707; *Daniel G. Shelton*, CBCA 473-TRAV, 07-1 BCA ¶ 33,493.

Relying on JTR 020210-F, CPPD argues that, for constructive cost analysis, the price of the airline ticket that would have been purchased (\$506.00) plus the estimated booking fee (\$20.74) should be compared to the Claimant's actual cost of using his POV (\$770.82) – and that Claimant's reimbursement is limited to the former (i.e., \$506.00+\$20.74, or \$526.74). However, this Board has found the language of JTR 020210-F (identified with different section numbers in previous versions of the JTR) to be inconsistent with FTR 301-70.105. The FTR provision limits travel cost “reimbursement to the constructive cost of the authorized method of transportation” defined as “the sum of per diem and transportation expenses the employee would reasonably have incurred when traveling by the

authorized method of transportation.” Under the FTR, the Board previously determined that an agency must consider “all the costs that a traveler would incur if he traveled by that authorized mode.” *Stephen M. England*, CBCA 3903-TRAV, 15-1 BCA ¶ 35,870 (emphasis in original).

We rely on FTR 301-70.105 instead of JTR 020210-F in deciding this claim because, as previously held by the Board, the FTR is “a legislative rule, . . . a regulation issued under express authority from Congress, for the purpose of affecting individual rights and obligations by filling gaps left by a statute.” *Robert A. Cherry* (citing *Kevin D. Reynolds*, CBCA 2201-RELO, 11-1 BCA ¶ 34,756 (citing numerous prior decisions)). The FTR “therefore has controlling weight – the force of law – unless the provision in question is arbitrary, capricious, or manifestly contrary to statute.” *Id.* Any agency rule, like the JTR provision at issue here, “which is inconsistent with an FTR provision is consequently trumped by the FTR and must give way.” *Id.*

Thus, consistent with FTR 301-70.105, had Claimant traveled by air, the constructive costs of his trip would not only include the expenses for air travel and the booking fee (\$526.74, using the agency’s figure) but also the other expenses that Claimant would have incurred including those noted on his Constructed Travel Worksheet – \$60 for traveling to and from the airport, \$2300 for a rental car or taxi, \$100 for shipping costs (e.g., baggage fees, official equipment shipping fees), and \$850 for other transportation-related costs (e.g., gas for rental car, parking at hotel, tolls).² The constructed costs, totaling approximately \$3836.74, exceeds Claimant’s actual travel expenses of \$770.82 for mileage and \$326.03 for the two extra days of lodging and M&IE. *See* 41 CFR 301-10.309.

CPPD objects to paying for the lodging and M&IE costs arguing that Claimant would not have incurred the two extra days of lodging had he traveled by air. However, in considering constructive costs, the task is to compare all allowable costs avoided with actual

² JTR 020210-F also seems to be at odds with the Defense Travel System Constructed Travel Worksheet used by Claimant for the constructive cost analysis of his trip. That worksheet includes a section to provide estimates for costs avoided due to the employee taking his or her requested, instead of the agency’s preferred, mode of transportation. Categories under this section include, but are not limited to, “Transportation costs at all TDY sites (e.g., rental car, bus to/from airport, taxi),” “Transportation-related costs at all TDY sites (e.g., gas for rental car, parking at hotel, tolls),” and “Shipping costs (e.g., baggage fees, official equipment shipping fees).” Accordingly, even the agency’s worksheet used for constructive cost analysis contemplates the possibility that “constructive costs,” the costs that an employee avoided by not taking the agency’s preferred mode of transportation, might include other costs in addition to the price of an airline ticket and the booking fee.

expenses, with reimbursement limited by the former amount. Per diem expenses, including lodging and M&IE, are reimbursable costs. FTR 301-10.309. Claimant seeks per diem for the two travel days due to driving to and from his TDY location (approximately 665 miles one way), one day at the start of his trip and one day at the end of his trip. There is nothing on his approved travel authorization indicating that the two travel days were outside of his authorized travel period. The authorization does not include a start or end date for travel but instead notes an approximate number of ninety-eight temporary duty days. Further, as the Command stated, “[t]he driving route and overnight stops [Claimant] chose . . . ensured compliance with Army risk management practices that limit daily mileage to a safe range.” Accordingly, we find that Claimant is entitled to reimbursement for his lodging costs and M&IE.

Decision

The claim is granted in the amount of \$570.11 – \$244.08 for the mileage costs and \$326.03 for lodging and M&IE.

Beverly M. Russell
BEVERLY M. RUSSELL
Board Judge