



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

DISMISSED FOR LACK OF JURISDICTION: May 10, 2021

CBCA 6901

ARTHUR JEAN PIERRE,

Appellant,

v.

AGENCY FOR GLOBAL MEDIA,

Respondent.

Arthur Jean Pierre, pro se, Silver Spring, MD.

Maryellen Righi and James McLaren, Office of General Counsel, United States Agency for Global Media, Washington, DC, counsel for Respondent.

Before Board Judges **BEARDSLEY**, **KULLBERG**, and **LESTER**.

BEARDSLEY, Board Judge.

Arthur Jean Pierre (appellant) appealed the decision of the contracting officer for the Agency for Global Media (AGM) terminating for cause his personal services contract. The contracting officer has withdrawn the termination for cause and converted it to a termination for convenience. AGM moves to dismiss the appeal for lack of jurisdiction, asserting that the dispute is now moot. Appellant opposes the motion, arguing that the matter has not been resolved and the Board retains jurisdiction. Because there is no further relief we can provide, we grant the motion and dismiss the appeal.

Background

In May 2020, the AGM contracting officer issued a decision terminating for cause appellant's personal services contract, asserting that appellant had violated the Voice of America's best practices guide and journalistic codes found in the contract. Appellant timely appealed the decision to the Board, challenging the termination. In response to AGM's motion to dismiss, appellant withdrew his monetary claim for "\$100,000 to pay for my legal fees and other expenses as defined in the Small Business Act and regulations." Appellant, however, maintained his appeal of the contracting officer's decision to terminate appellant's contract for cause, asking for "reinstatement with back pay for all months that I have been unemployed and moving forward in my career with the [AGM], renew my contract with no prejudice of that early termination."

By letter dated March 23, 2021, the contracting officer advised appellant that the agency had decided to convert the termination for cause to a termination for convenience. The effective date of the termination for convenience was May 21, 2020. The contracting officer withdrew his decision terminating the contract for cause.

Discussion

"[T]he only relief available under an appeal of a termination [for cause] is the conversion of the termination [for cause] to one for the convenience of the Government." *Primestar Construction v. Department of Homeland Security*, CBCA 5510, 17-1 BCA ¶ 36,612 (2016) (quoting *Aurora, LLC v. Department of State*, CBCA 2872, 16-1 BCA ¶ 36,198 (2015)); see *Mubashir Ali v. Agency for Global Media*, CBCA 6914 (Feb. 24, 2021) (citing *Universal Home Health & Industrial Supplies, Inc. v. Department of Veterans Affairs*, CBCA 4012, et al., 16-1 BCA ¶ 36,370, *reconsideration denied*, 16-1 BCA ¶ 36,530). Here, the contracting officer withdrew the termination for cause and replaced it with a termination for convenience. A "contracting officer's conversion action moots the appeal of the original" termination for cause. *Avue Technologies v. Agency for Global Media*, CBCA 6752, et al., 20-1 BCA ¶ 37,639. As a result, there is no longer a dispute that the Board has jurisdiction to address. *Mubashir Ali* (citing *Avue Technologies*; *H.H. Christian Co.*, AGBCA 82-120-1, 83-1 BCA ¶ 16,335); *Sylvan B. Orr v. Department of Agriculture*, CBCA 5299, 16-1 BCA ¶ 36,522 ("If a matter becomes moot, 'it no longer presents a justiciable controversy over which a federal court may exercise jurisdiction.'" (quoting *Humane Society of the United States v. Clinton*, 236 F.3d 1320, 1331 (Fed. Cir. 2001))). "Once we are aware that we lack jurisdiction to entertain an appeal, we have 'no other recourse but to dispose of the case by dismiss[ing]' it based upon the jurisdictional defect." *Duke University v. Department of Health & Human Services*, CBCA 5992, 18-1 BCA ¶ 37,023 (quoting *Rex Systems Inc. v. United States*, No. 92-411C, 1993 WL 13726058, at *3 (Fed. Cl. Dec. 13, 1993), *appeal dismissed*, 41 F.3d 1517 (Fed. Cir. 1994) (table)).

Appellant opposes the motion to dismiss because he wants to maintain the appeal until all issues raised, including his request for reinstatement of the contract with back pay, are resolved. The Board cannot take jurisdiction over this request for back pay or other relief until after a termination for convenience “settlement proposal has been presented and ripened into a claim that the contracting officer has decided, and a new appeal filed.” *Mubashir Ali* (citing 41 U.S.C. § 7104(a) (2018); *I-A Construction & Fire, LLP v. Department of Agriculture*, CBCA 2693, 15-1 BCA ¶ 35,913). Appellant has already submitted a termination for convenience settlement proposal as provided for under Federal Acquisition Regulation 49.104(h). *See* 48 CFR 49.104(h) (2019). Appellant indicated that he is awaiting the contracting officer’s final decision.

Appellant asserts that a dispute remains because the termination for cause was inappropriate, in bad faith, took appellant’s dignity and tarnished his reputation. Yet, appellant has not alleged that the termination for cause “was issued with the type of bad faith that might preclude conversion of the termination into one for convenience.” *Mubashir Ali* (citing *J.R. Mannes Government Services Corp. v. Department of Justice*, CBCA 5638, 17-1 BCA ¶ 36,911). “To prove bad faith by the Government, a contractor must establish, by clear and convincing evidence, that a government official acted with ‘some specific intent to injure the [contractor].’” *J.R. Mannes* (quoting *Am-Pro Protective Agency, Inc. v. United States*, 281 F.3d 1234, 1240 (Fed. Cir. 2002)). Moreover, appellant has not alleged that the agency’s decision to convert the termination for cause to one for convenience was made in bad faith. “A termination for convenience will only be a breach of contract if ‘the tribunal finds that the termination was motivated by bad faith or constituted an abuse of discretion, or that the Government entered into the contract with no intention of fulfilling its promises.’” *J.R. Mannes* (quoting *Universal Home Health & Industrial Supplies, Inc. v. Department of Veterans Affairs*, CBCA 4012, et al., 16-1 BCA ¶ 36,370 (quoting *Greenlee Construction, Inc. v. General Services Administration*, CBCA 415, et al., 07-2 BCA ¶ 33,619)). “In the absence of bad faith or a clear abuse of discretion, the contracting officer’s election to terminate for the government’s convenience is conclusive.” *Id.* (quoting *T&M Distributors, Inc. v. United States*, 185 F.3d 1279, 1283 (Fed. Cir. 1999)). The Board lacks jurisdiction to address appellant’s challenge to the agency’s basis for the termination for cause because there is no further relief we can provide. We, therefore, grant the motion and dismiss the appeal for lack of jurisdiction.

Decision

The appeal is **DISMISSED FOR LACK OF JURISDICTION.**

Erica S. Beardsley

ERICA S. BEARDSLEY

Board Judge

We concur:

H. Chuck Kullberg

H. CHUCK KULLBERG

Board Judge

Harold D. Lester, Jr.

HAROLD D. LESTER, JR.

Board Judge