



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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February 21, 2025

CBCA 8252-RELO

In the Matter of AMY P.

Amy P., Claimant.

Megan E. Parker, Office of the Assistant Chief Counsel, Customs and Border Protection, Department of Homeland Security, Indianapolis, IN, counsel for Department of Homeland Security.

**KULLBERG**, Board Judge.

Claimant, Amy P., an employee of the United States Customs and Border Protection, Department of Homeland Security (CBP or agency), seeks review of CBP's denial of reimbursement of her claim for real estate transaction expenses. The Board has raised the issue of whether claimant is subject to a collective bargaining agreement (CBA) that precludes the Board from hearing this matter if the CBA's grievance procedures are claimant's sole remedy. CBP contends that the Board should hear this matter. For the reasons discussed below, the Board finds that claimant's CBA is her sole remedy and dismisses this matter.

Background

On July 26, 2024, claimant submitted her claim to CBP for real estate transaction expenses, which she incurred on June 25, 2024. CBP denied her claim because the distance between claimant's residence and her new official station was less than fifty miles and, consequently, did not meet the "50-mile distance test" set forth in the Federal Travel Regulation (FTR). 41 CFR 302-2.6 (2023) (FTR 302-2.6). Claimant submitted her request for the Board to review her claim, which was docketed on November 5, 2024. CBP submitted its agency report, and claimant submitted her response.

The Board's review of the record raised the question of whether claimant was subject to a CBA, and the Board directed both parties to address that question. The parties' responses did not dispute that claimant was subject to a CBA, and CBP submitted a copy of the applicable CBA agreement with the National Treasury Employees Union (NTEU). Article 27 of the CBA, which set forth the grievance procedures, defined a grievance, in section two, as including "any complaint . . . [b]y any bargaining unit employee . . . concerning a claimed violation, misinterpretation, or misapplication of the Agency's policies affecting conditions of employment." Section three of article 27 listed those matters excluded from the grievance procedure, which included the following:

Any matter in which the affected employee has elected to appeal through [] statutory or regulatory processes, e.g., the EEOC (by filing a formal complaint), MSPB (by filing an appeal to the MSPB), FLRA (by filing an FLRA charge)[,] or OSC (by filing a complaint with OSC).

The CBA made no reference to matters involving travel or relocation expenses, which are heard by the Board, and CBP acknowledged that fact. CBP, however, contends that "claimant did not elect to file an internal Agency grievance and instead filed the instant claim with the Board." Agency's Response Regarding Applicability of CBA at 6. Additionally, CBP contends that the Board has authority to decide this matter because in a previous relocation case, *Charles A. Houser*, CBCA 2149-RELO, 11-1 BCA ¶ 34,769, the Board heard the case even though claimant was subject to a CBA. Claimant, however, contends the following:

I want to make it very clear that the Agency was fully aware of the fact that I am a bargaining unit employee from the beginning. The Agency states in their reply that I had the option to file an appeal through the Union or through the Board and I "chose" to appeal through the Board. This is false. As evidence from the attached email dated October 23, 2024 from [the] Supervisory Accounting Coordinator . . . from the Finance and Accounting Division[,] I was told this was the only way to appeal my denied voucher.

### Discussion

There is no dispute that claimant is subject to a CBA, and, accordingly, the Board addresses the issue of its authority over this matter. The Civil Service Reform Act (CSRA) states that a CBA provides the "exclusive administrative procedures for resolving grievances which fall within its coverage." 5 U.S.C. § 7121(a)(1) (2018). "Any collective bargaining agreement may exclude any matter from the application of the grievance procedures that are provided for in the agreement. *Id.* § 7121(a)(2). The CSRA, therefore, provides that "a collective bargaining agreement that includes particular matters within the grievance

process has the effect of depriving employees of recourse to alternative remedies to which they otherwise would have access.” *Dunkleberger v. Merit Systems Protection Board*, 130 F.3d 1476, 1480 (Fed. Cir. 1997). “[T]he language and legislative history of the statute indicate that Congress intended simply to permit the parties to collective bargaining agreements to elect whether to exclude particular subject matters from the coverage of the negotiated grievance procedures.” *Id.*

This Board has held that “if a matter is arguably entrusted to a collective bargaining agreement’s grievance procedures, no review outside those procedures may take place, unless the parties to the agreement have explicitly and unambiguously excluded that matter from the procedures.” *James R. Davison*, CBCA 5454-TRAV, 17-1 BCA ¶ 36,890, at 179,783 (citing *Dunkleberger*, 130 F.3d at 1480); see *Muniz v. United States*, 972 F.2d 1304, 1309 (Fed. Cir. 1992); *Carter v. Gibbs*, 909 F.2d 1452, 1458 (Fed. Cir. 1990) (en banc)). The Board, accordingly, has dismissed relocation and travel claims brought by claimants who were subject to a CBA where that agreement was silent as to whether the grievance procedures included travel or relocation claims. See, e.g., *Jonathan K.*, CBCA 7979-RELO, 24-1 BCA ¶ 38,677, at 188,015; *Alan K.*, CBCA 7594-RELO, 23-1 BCA ¶ 38,275, at 185,865; *Rodney S. Bath*, CBCA 6702-RELO, 20-1 BCA ¶ 37,523, at 182,231; *Robert Gamble*, CBCA 1854-TRAV, 11-1 BCA ¶ 34,655, at 170,743. The exception to this result is limited to employees subject to a CBA that specifically provides for bringing such a claim to this Board. *Todd Chandler*, CBCA 3593-TRAV, 14-1 BCA ¶ 35,536, at 174,137-38 & 174,139 n.1 (CBA allowed employees to submit travel claim to the General Services Board of Contract Appeals, which was the Board’s predecessor).

Claimant was subject to a CBA that broadly defined a grievance as any complaint about a “violation, misinterpretation, or misapplication of the Agency’s policies affecting conditions of employment.” That language in the CBA was consistent with the definition of a grievance in the CSRA, which was “any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.” 5 U.S.C. § 7103(a)(9)(C)(ii). The CSRA defines “conditions of employment” as “personnel policies practices, and matters, whether established by rule, regulation or otherwise, affecting working conditions.” *Id.* § 7103(a)(14). The Board has interpreted “grievance” and “conditions of employment” in a similar context as follows:

The collective bargaining agreement which was in effect . . . provided that its grievance procedures “shall be the exclusive administrative procedures available to bargaining unit employees and the parties for resolving grievances which fall within its coverage.” The agreement defines a “grievance” to include “any issue raised . . . concerning . . . any claimed violation, misinterpretation, or misapplication of any law, rule or regulation affecting conditions of employment.” This case alleges a misapplication of a regulation

affecting a condition of employment, so it is a grievance subject to the collective bargaining agreement's exclusive administrative procedures.

*Daniel T. Garcia*, CBCA 2007-RELO, 10-2 BCA ¶ 34,468, at 170,030.

Claimant is subject to a CBA that broadly defined a grievance to include "policies affecting conditions of employment." This matter involves claimant's allegation that CBP improperly denied her request for reimbursement of real estate transaction expenses under the "50-mile distance test" in FTR 302-2.6 and whether such an allegation relates to a condition of her employment that is subject to the grievance procedure in the CBA. Additionally, the CBA here makes no provision for excluding relocation claims from the grievance procedure. Accordingly, the Board finds that the claim in this matter is subject to the grievance procedure in the CBA, and the Board has no authority to hear this case.

CBP cites the Board's decision, *Charles A. Houser*, in support of its contention that the Board has authority to hear this matter. *Houser* involved a relocation claim by a CPB employee who was subject to a CBA that excepted from its grievance procedures "[a]ny matter in which the affected employee has elected to appeal through a statutory or regulatory process, e.g., the EEOC (by filing a formal complaint), MSPB (by filing an appeal to MSPB), FLRA (by filing a FLRA charge[)], or OSC by filing a complaint with OSC." *Charles A. Houser*, 11-1 BCA ¶ at 171,111. In finding that it had authority, the Board in *Houser* stated:

The claimant is covered by a CBA. However, that agreement carves out an exception to the grievance procedure in instances where an employee elects to appeal the agency action through a statutory or regulatory process. The language in the CBA is broad, and while examples are provided, they do not limit the operative word in the provision, which is "any." The process at this Board is established by statute at 31 U.S.C. § 3702(a)(3). It consequently falls under the plain meaning of the CBA provision. Accordingly, we have jurisdiction. This distinguishes this case from a number of earlier decisions where different language was in issue. See *Daniel T. Garcia*, CBCA 2007-RELO, 10-2 BCA ¶ 34,468.

*Id.* at 171,111-12.

The Board's decision in *Houser* is not controlling in this matter. The *Garcia* decision, which *Houser* acknowledged as having different operative language, defined a grievance broadly to include "conditions of employment." The *Houser* decision did not state whether the CBA in that matter had similar language as that found in *Garcia* regarding "conditions of employment." In this case, the CBA had such language, and the Board's reasoning in *Garcia* applies to this matter. Additionally, the Board in *Houser* limited its authority to a

case in which a claimant elected to have the Board hear his claim. In this case, claimant has represented that CBP never informed her of the availability of the grievance procedure, and nothing in the record suggests claimant “elected” to bring her claim to the Board. For those reasons, the Board limits *Houser* to its stated facts, which are not present in this matter.

Decision

The claim is dismissed.

*H. Chuck Kullberg*  
H. CHUCK KULLBERG  
Board Judge