

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

November 21, 2006

GSBCA 16914-RELO, GSBCA 16915-RELO
GSBCA 16916-RELO

In the Matters of JOSE R. CASTRO, JOSE E. ORTIZ,
and CHARLES L. FIGUEROA

Andrew L. Colvin, President of American Federation of Government Employees,
Local 1113, Panama City, FL, appearing for Claimants.

Captain Laura Christiensen, Commander, 325th Comptroller Squadron, Air Education
and Training Command, Tyndall Air Force Base, FL; and Rick Miller, Civilian Travel and
Overseas Allowances Policy Manager, Force Sustainment Division, Washington, DC,
appearing for Department of the Air Force.

HYATT, Board Judge.

These claims involve reimbursement of temporary quarters subsistence expenses (TQSE) incurred in connection with the relocations of civilian employees Jose R. Castro, Jose E. Ortiz, and Charles L. Figueroa from Roosevelt Roads Naval Base in Puerto Rico to Tyndall Air Force Base in Florida. All three employees, in the Air Force's view, submitted improperly inflated claims for meal expenses incurred while living in temporary quarters. The disallowance of the claimed expenses and referral of the matter for fraud investigation has been submitted to the Board by the Air Force, on behalf of the claimants, for our review.

In presenting the claims, the Air Force submitted, for each employee, a "Report of Investigation" prepared by the agency's Office of Special Investigations. These documents are denominated as "privileged" under military law and copies have not been provided to any

of the claimants. Their union representative has requested the Board's assistance in obtaining copies of the reports from the Air Force, which apparently has declined to provide access to the reports either to the union or to the employees and is requiring that the employees submit a request in accordance with the agency's Freedom of Information Act procedures.

The Board cannot assist with this request, however, because it does not appear that we have the authority to settle these claims. It is evident from the record that claimants are bargaining unit members of the American Federation of Government Employees (AFGE). The claimants are thus covered by the collective bargaining agreement in effect between Tyndall Air Force Base and the AFGE. This agreement contains a "negotiated grievance procedure" for resolving disputes and disagreements between the employer and union members. The relevant provision states that:

This negotiated grievance procedure shall apply to matters of concern or dissatisfaction regarding the interpretation, application or violation of law, regulations, or this agreement; conditions of employment; or relationships with agency supervisors and officials, including personnel practice charges, and disciplinary and adverse actions. It shall apply to all matters indicated above, whether or not set forth in this agreement.

There are certain enumerated exceptions to the use of the negotiated grievance procedure, but these exceptions do not include the actions complained of here. Although there is also an express recognition that nothing shall prevent employees from appealing appropriate actions to the Merit System Protection Board, there is no similar proviso for other administrative tribunals. Memorandum of Agreement between Tyndall Air Force Base and AFGE Local 1113, art. 20 (March 6, 2001). Thus, we conclude that the parties to the collective bargaining agreement generally intended for the negotiated grievance procedure to apply to claims concerning relocation entitlements.

The Board wrote to the parties, requesting their views on whether the Board had the authority to entertain these claims. The Air Force responded to this letter, stating that it believed these matters should be addressed under the agreement's grievance procedure. The claimants' representative did not respond to our inquiry.

The Board has recognized on numerous occasions that if a claim concerning the expenses of travel or relocation is susceptible to resolution under the terms of a collective bargaining agreement's grievance procedure, we lack the authority to settle the claim using our administrative procedures unless the agreement explicitly and unambiguously excludes

the disputed matter from its procedures. *Rolando J. Jimenez*, GSBCA 16570-TRAV, et al., 05-1 BCA ¶ 32,916; *Carla Dee Gallegos*, GSBCA 14609-RELO, 99-1 BCA ¶ 30,300. The extent of entitlement to TQSE is a “condition of employment” to which the negotiated grievance procedure applies. *Roy Burrell*, GSBCA 15717-RELO, 02-2 BCA ¶ 31,860. Consequently, we conclude that the collective bargaining agreement's grievance procedure is the exclusive means available to these claimants for resolving their claims and the Board lacks the authority to consider them.

Decision

The claims are dismissed.

CATHERINE B. HYATT
Board Judge