

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

March 30, 2001

GSBCA 15263-TRAV

In the Matter of JAMES P. MULLINS

James P. Mullins, Silverdale, WA, Claimant.

Mike Fujiwara, Naval Intermediate Maintenance Facility, Pacific Northwest, Department of the Navy, Silverdale, WA, appearing for Department of Defense.

NEILL, Board Judge.

The claimant in this case, Mr. James P. Mullins, is a civilian employee of the United States Navy. He asks that we review a determination by his agency that he is not entitled to certain transportation and parking expenses incurred by him in conjunction with a work assignment. For the reasons set out below, we dismiss this case as encompassing a claim which we do not have the authority to settle.

Background

Effective August 15, 1999, Mr. Mullins' permanent duty station (PDS) was changed from the Naval Intermediate Maintenance Facility, Pacific Northwest (NAVIMFAC PACNORWEST), near Silverdale, Washington, to the Navy's Motor Regional Repair Center (MRRC) in Bremerton, Washington. Bremerton is approximately ten miles from Silverdale.

Mr. Mullins' assignment to MRRC in Bremerton was for no more than ninety days. At the end of this period, his PDS was changed back to NAVIMFAC at Silverdale. Mr. Mullins believed that his assignment to Bremerton should have been treated as a temporary duty assignment -- as assignments of other NAVIMFAC personnel to nearby Naval facilities were in the past. He, therefore, submitted a claim for transportation and parking costs incurred in conjunction with his regular commute to Bremerton during the ninety-day period. The claim for these costs was rejected by the Navy on the ground that they were incurred as part of the employee's normal commute to his designated PDS

Mr. Mullins is a member of the International Association of Machinist & Aerospace Workers. His union was particularly distressed by management's decision in April 1999 to no longer treat the periodic assignment of NAVIMFAC employees to regional repair centers or other work sites at Bremerton as temporary duty assignments. At that time, the repair

superintendent at NAVIMFAC, on behalf of the commander, had advised the union in writing that effective April 25, 1999, these assignments would be made simply through the issuance of a standard form 50 personnel action in which the employee's PDS would be changed to Bremerton. The union contended that such a change in PDS was merely a vehicle to curtail the past practice of paying mileage and parking expenses for employees detailed to Bremerton. The union requested immediate negotiations. The command replied that it had no intention of negotiating on this matter. The establishment of a new PDS was said to relate to the organization of the command, a right belonging to management. Accordingly, management contended that assignment to a new PDS was nonnegotiable. The union then proceeded to charge the command with an unfair labor practice.

Mr. Mullins' assignment to Bremerton occurred while this dispute between his union and NAVIMFAC was ongoing. Upon reassignment to NAVIMFAC in Silverdale, he submitted his claim for transportation and parking costs. In accordance with NAVIMFAC's new policy, the claim was, of course, rejected. Mr. Mullins then appealed to this Board. Subsequent to his appeal, Mr. Mullins advised the Board that the union's charge of unfair labor practice had been settled and agreement reached that, for the future, mileage and parking will be paid for employees on assignment to Bremerton for less than six pay periods. Mr. Mullins' own claim, however, was not specifically addressed in the negotiations leading to this settlement -- other than to note that his appeal to the Board was pending.

Discussion

It is well settled that this Board does not have the authority to resolve a dispute between a union member and his or her agency if there is in place a collective bargaining agreement that mandates the use of a grievance procedure for the resolution such disputes.

The Board's position on this matter was first set out in a decision issued shortly after the Board was assigned the authority to settle travel and relocation claims previously exercised by the Comptroller General. Bernadette Hastak, GSBCA 13938-TRAV, et al., 97-2 BCA ¶ 29,091; accord, e.g., Gregory E. Ferby, GSBCA 15255-RELO (Jan. 30, 2001); Gail Favela, GSBCA 14727-TRAV, 99-2 BCA ¶ 30,432; Harold S. Rubinstein, GSBCA 14667-RELO, 99-1 BCA ¶ 30,113; Bernard F. Anderson, GSBCA 14438-TRAV, 98-2 BCA ¶ 29,924; Larry D. Morrill, GSBCA 13925-TRAV, 98-1 BCA ¶ 29,528; William A. Watkins, GSBCA 13970-TRAV, 97-2 BCA ¶ 29,222.

When it became apparent, upon review of the record for this case, that the claimant was a union member, the Board wrote to Mr. Mullins and the agency representative to determine whether, at the time of Mr. Mullins' assignment to Bremerton, there was in place a collective bargaining agreement mandating the use of a grievance procedure for the resolution of disputes between the employee and the agency. The agency has since advised the Board in writing that there is such an agreement and that the article on grievance and arbitration states:

The Employer and Union desire that all employees in the unit will be treated fairly and equitably. This procedure is the exclusive procedure available for settlement of all grievances and any claimed violation, misinterpretation, or

misapplication of this Agreement or any law, rule, or regulation affecting conditions of employment including questions of arbitrability, except for the following which are not grievable.

The agency further states that in the exceptions which follow this provision of the agreement there is no mention of proceedings before this Board.

We, therefore, make no comment upon the merits of Mr. Mullins' claim. Rather, in accordance with well-established precedent, we dismiss it as one which we simply do not have the authority to settle. This is a matter which Mr. Mullins must resolve pursuant to applicable provisions of the bargaining agreement between his union and his employer.

EDWIN B. NEILL
Board Judge