

Board of Contract Appeals
General Services Administration
Washington, D.C. 20405

September 6, 2002

GSBCA 15861-TRAV

In the Matter of MONA LISA DOGANS

Mona Lisa Dogans, New Orleans, LA, Claimant.

Bernard D. Abromavage, Director, Payments & Collections Branch, Department of Housing and Urban Development, Fort Worth, TX, appearing for Department of Housing and Urban Development.

BORWICK, Board Judge.

Claimant, Mona Lisa Dogans, is a civilian employee of the United States Department of Housing and Urban Development. Claimant contests the agency's denial of her request for reimbursement of taxi fares and expenses of telephone calls while on temporary duty (TDY) travel. We dismiss this matter for lack of jurisdiction since claimant is covered by a collective bargaining agreement which prescribes the exclusive administrative means for resolving the matter.

The agency sent claimant on TDY from New Orleans, Louisiana, to Fort Worth, Texas, from September 10 through September 21, 2001. Claimant made \$94.92 worth of phone calls, due in part to the events of September 11, and incurred taxi expenses of \$40 for travel over the weekend.

Claimant is a member of the American Federation of Government Employees (AFGE), and covered by a collective bargaining agreement (CBA) between the AFGE and the agency, in place since February 10, 1998. The agreement provides a procedure for resolution of a grievance, defined as "any complaint by any employee concerning any matter relating to the employment of any employee." CBA art. 22, § 22.01(a). "Grievance" is also defined as "any complaint by . . . any employee . . . concerning . . . any claimed violation, misinterpretation, or misapplication of any law, rule or regulation affecting conditions of employment." *Id.* art. 22, § 22.01(3)(b). Save for the specific exclusions in Section 22.05, the procedure set forth in article twenty-two "constitutes the sole and exclusive procedure for the resolution of grievances by employees of the bargaining unit and between the parties." *Id.* § 22.01. The specific exclusions of Section 22.05 do not include TDY matters.

Under the Civil Service Reform Act of 1978, where a collective bargaining agreement provides procedures for resolving grievances which are within the scope of the agreement, and the agreement does not explicitly and unambiguously exclude the disputed matter from these procedures, the procedures are the exclusive administrative means for resolving the dispute and the Board lacks jurisdiction. Claudia J. Fleming-Howlett, GSBCA 14236-RELO, 98-1 BCA ¶ 29,534; Larry D. Morrill, GSBCA 13925, 98-1 BCA ¶ 29,528. However, when the matter at issue is specifically provided for by Federal statute, that matter is not a condition of employment subject to the grievance procedures in the CBA, and is thus subject to Board jurisdiction. 5 U.S.C. § 7103(a)(14)(C) (2000); John B. Courtney, GSBCA 14508-TRAV, 98-2 BCA ¶ 29,791 (matter of reimbursement for daily commute specifically addressed by statute, thus that matter not subject to exclusive procedures in CBA).¹

The claim before us relates to an alleged entitlement to reimbursement of phone calls and taxicab expenses while on TDY. The agency acknowledges that the issue of the phone calls is covered by the CBA and "appears to be a collective bargaining issue." The agency states, however, that the matter of the taxicabs is "specifically addressed by federal statute," but then refers only to the Federal Travel Regulation, 41 CFR 301-10.420(a)(3) (2001).

Both of these matters are specifically provided for by regulation, not statute, and thus are outside of the exception of the Federal Service Labor Management Relations Act, 5 U.S.C. § 7103(a)(14)(C). The taxicab issue is addressed by 41 CFR 301-10.420(a)(3) (2001), which provides for agency reimbursement of taxicab fare for local travel while on TDY to obtain meals where the nature and location of the work at the TDY station are such that meals cannot be obtained there. Our research has not revealed a Federal statute that specifically provides for either reimbursement or the conditions for reimbursement of taxicab fares at a TDY station.

Similarly the reimbursement of phone calls while on TDY is covered in the FTR under the miscellaneous expense provisions concerning TDY. 41 CFR 301-12.1, -70.301(b). The application of these provisions also involves the exercise of agency discretion as to when telephone calls are deemed to be official calls or in the interest of the Government). Rachelle A. Booth, GSBCA 14713-TRAV, 99-1 BCA ¶ 30,168 (construing similar provisions of the Department of Defense Joint Travel Regulations).

Since both of these matters are governed by regulation and not specifically provided for by Federal statute, they are covered by grievance procedure specified by the CBA between the agency and the AFGE. The Board lacks jurisdiction over all issues presented by the claim, so the claim is dismissed for lack of jurisdiction.

¹ When a law confers relatively broad discretion on an agency to determine some aspect of employment, that aspect is not specifically provided for by statute and is accordingly outside the exception. Bureau of Engraving and Printing v. Federal Labor Relations Authority, 995 F.2d 301, 304 (D.C. Cir. 1993).

ANTHONY S. BORWICK
Board Judge