

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

June 8, 2005

GSBCA 16621-TRAV

In the Matter of FELIX VALENTIN

Felix Valentin, Caguas, PR, Claimant.

Louis D. LoPresti, Regional Finance Officer, Office of the Assistant Secretary for Administration and Management, Department of Labor, Boston, MA, appearing for Department of Labor.

DANIELS, Board Judge (Chairman).

A civilian employee “must always use a contract city-pair fare for schedule air passenger transportation service” unless one or more of five specified conditions exists. 41 CFR 301-10.107 (2004). One of those conditions is that “[t]he contractor’s flight schedule is inconsistent with explicit policies of [the employee’s] Federal department or agency with regard to scheduling travel during normal working hours.” *Id.* 301-10.107(b). These provisions of the Federal Travel Regulation (FTR) are pivotal to our settlement of a claim brought by Felix Valentin, an employee of the Department of Labor.

Mr. Valentin was directed to travel from San Juan, Puerto Rico, to Hartford, Connecticut, on official business in July 2004. He asked Omega Travel, his agency’s contract travel agent, to make airline reservations for him. Omega proposed a flight leaving San Juan at 5:23 p.m. and arriving in Hartford at 9:11 p.m. and a return flight leaving Hartford at 7:05 a.m. and arriving in San Juan at 10:55 a.m. Mr. Valentin did not accept this itinerary. Omega then proposed a flight leaving San Juan at 8:20 a.m. and arriving in Hartford at 5:22 p.m. and a return flight leaving Hartford at 8:22 a.m. and arriving in San

Juan at 3:55 p.m. (The second set of flights involved one stop each way.) Mr. Valentin accepted this itinerary and actually traveled in accordance with it.

The fare for the second set of flights was more expensive than the fare for the first set.¹ The Department of Labor has reimbursed Mr. Valentin only for the fare of the less expensive set. The employee claims the difference between the actual cost of his flights and the amount of reimbursement he has received.

Among the reasons given by Mr. Valentin in support of his claim is that under agency policy, without special permission (which he did not have), employees must travel during official working hours, and his official working hours are during the day. We asked the agency to provide a copy of its policy, and it did so. The policy states:

Scheduling Travel. -- Travel During Duty Hours. DOL [Department of Labor] Agencies and Authorizing Officials will ensure that Temporary Duty (TDY) travel by employees will be performed during their normal duty hours.

The policy lists four exceptions to this rule, but the agency does not contend that any of them applies to Mr. Valentin's situation. Nor does the agency contend that the flights originally proposed by Omega were during the employee's normal duty hours.

The only reasons cited by the agency for not reimbursing Mr. Valentin for the full cost of his airfare are that the lower fares were more advantageous to the Government and that the employee did not, prior to flying, complete a form requesting permission to accept a fare other than the city-pair fare. The agency's own travel policy renders these arguments non-persuasive. The policy provides that travel by employees "will be performed during their normal duty hours," not that it will be performed during these hours only when that is less expensive for the agency. We have no evidence that Mr. Valentin could have flown at contract city-pair fares during his normal duty hours, so whether he completed a form before or after flying to Hartford, the agency, consistent with its policy and the FTR, would have to grant permission to accept a higher fare. *See Abdul Kalik Raja*, GSBCA 14029-TRAV, 97-1 BCA ¶ 28,944.

¹ The agency assumes that the first set of fares were contract city-pair fares and the second set were not. The contract carrier for the San Juan-to-Hartford route in July 2004 was American Airlines, and both itineraries were exclusively on that carrier. We do not know whether American Airlines offered contract city-pair fares on only some of its flights between these two cities. For the purpose of resolving this case, we assume along with the agency that the carrier did so.

We conclude that because an explicit policy of the Department of Labor required Mr. Valentin to travel during normal working hours, even though the employee's travel cost more than the contract city-pair fares for the route he took, the agency is responsible for the entire cost of the airfare.

Having resolved the case on this ground, we do not consider Mr. Valentin's alternative reason for not accepting the itinerary originally proposed by Omega. Nevertheless, we note that reason because it highlights a matter which merits consideration by the agency responsible for the FTR, the General Services Administration. Mr. Valentin states that he declined the night flight from San Juan to Hartford in part because he is a diagnosed claustrophobic and gets panic attacks when he travels at night. He has submitted to his agency documentation of this medical condition and has requested reasonable accommodation of it. The agency has asked a physician to evaluate this request.

The FTR permits an agency to authorize and approve an employee's use of first-class or other premium-class seats on airplanes when such use "is necessary to accommodate a disability or other special need." 41 CFR 301-10.123(b), -10.124(c). (A "disability," for the purposes of the FTR, is "a physical or mental impairment that substantially limits one or more major life activities." *Id.* 300-3.1.) The provision of the FTR regarding use of contract city-pair fare does not mention accommodation of a disability or other special need, however. Thus, the regulation is not clear as to whether, if an employee has a disability which can be reasonably accommodated by allowing him to take a flight which does not have a city-pair fare, the agency has authority to make that accommodation.

Suppose the Department of Labor were to conclude that Mr. Valentin is claustrophobic, that his claustrophobia is a disability, and that this disability can reasonably be accommodated by allowing him to fly during the day. Suppose further that the only daytime flights which will take him to temporary duty locations at appropriate times do not have city-pair fares. May the agency authorize him to take one of those flights? We urge the writers of the FTR to address this question, so as to avoid the need for a determination by this Board if the matter arises again in such a way that it must be decided by us.

STEPHEN M. DANIELS
Board Judge