

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

July 26, 2005

GSBCA 16670-TRAV

In the Matter of BILLY LEE BELCHER

Billy Lee Belcher, Pueblo, CO, Claimant.

Peter A. Campagna, Deputy General Counsel, Litigation Division, Employment Law Branch, Headquarters Army & Air Force Exchange Service, Departments of the Army and Air Force, Dallas, TX, appearing for Department of Defense.

GOODMAN, Board Judge.

Claimant is a civilian employee of the Army and Air Force Exchange Service (AAES or agency). He has asked that this Board review the agency's denial of his claim of entitlement to unspecified costs he alleges he incurred during a five-year period during which he claims he was on temporary duty (TDY).

Factual Background

Claimant was living in Pueblo, Colorado, when he was hired in May 1999 by the AAES and sent to the agency's Distribution Center in Waco, Texas, for orientation and training as a truck driver. After training, he returned to Pueblo, Colorado, and commuted daily to duty at Fort Carson, Colorado, a distance of approximately thirty-five miles. He drove round-trip missions to and from Fort Carson and returned home every night.

From the beginning of his employment with the AAES through January 2005 claimant was issued blanket TDY orders which designated his official duty station as "Waco Distribution Center" and authorized TDY to deliver "merchandise to branches, exchanges of distribution centers" pursuant to an itinerary from "Ft. Carson, CO to CONUS exchanges and distribution centers as directed - return: Ft. Carson."

In January 2005, the agency realized that claimant had been erroneously paid according to the Wage Schedule prevailing in Waco, Texas, apparently because his TDY orders designated Waco as his official duty station. The agency sought to recoup wages paid to claimant in excess of those to which he had been entitled.

Shortly thereafter, claimant submitted a request, based upon the designation in his travel orders that his official duty station was Waco, Texas, that the agency reimburse him an unspecified amount for “expenses incurred while on official Temporary Duty Travel and . . . any and all entitlements associated with Temporary Duty Travel” from the beginning of his employment through January 7, 2005.¹

The agency denied claimant’s request, stating that an employee is only on temporary duty when on official business away from the employee’s permanent duty station. Despite the designation of Waco, Texas, as his official duty station in claimant’s orders, and claimant’s assertions that he received his pay and other human resource services from the Waco Distribution Center, the agency found that his permanent or official duty station was the vicinity of Pueblo and Fort Carson, Colorado, as he lived in Pueblo and commuted to Fort Carson daily.² As claimant commuted from Pueblo to Fort Carson, drove his missions, and returned home every night, the agency determined that he was not on TDY travel.

Claimant has asked this Board to review the agency’s determination. The agency has filed a response, including a motion to dismiss this case. The agency asserts that claimant, as a member of a collective bargaining unit, could have, and therefore should have, raised this issue through the grievance procedure contained in the collective bargaining agreement between the agency and the bargaining unit. The agency further asserts that claimant was not eligible for temporary duty entitlements, as his permanent duty station is and always has been Fort Carson, Colorado, he did not file travel vouchers as required by agency procedures, he did not incur travel expenses, and he did not exhaust his administrative remedies at the agency level.

¹ There is no evidence in the record of this case that claimant submitted travel vouchers specifying expenses actually incurred for which he claims reimbursement.

² In making this determination, the agency relied upon the regulation contained in its Exchange Operating Procedure (EOP) which states that “[A] permanent duty station is the building or other place (base, post, or activity) where an employee regularly reports for duty. Permanent duty station can also mean the residence or other quarters from which the employee regularly commutes to and from work.” EOP A1-23 (March 1999).

Discussion

If a claim concerning 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. Jiminez*, GSBCA 15670-TRAV, 05-1 BCA ¶ 32,916; *Carla Dee Gallegos*, GSBCA 14609-RELO, 99-1 BCA ¶ 30,300.

The agency has submitted a complete copy of the collective bargaining agreement. That agreement contains a detailed grievance procedure which states that it will be the sole and exclusive procedure available to the employer, the union, and the employees of the unit for the resolution of grievances. The agreement defines a grievance as any complaint by any employee concerning "any matter relating to the employment of the employee" or "any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment." The agreement contains forms for employees to use to initiate the grievance procedure, and specific procedures to be followed thereafter. If the decision on a grievance processed under the grievance procedure is not satisfactory, either party may refer the issue to arbitration, and the agreement contains detailed procedures for arbitration.

This claim involves a complaint of an alleged violation, misinterpretation or misapplication of a regulation affecting a condition of employment, i.e., the regulation that defines claimant's official duty station. This subject is not governed by statute. *See, e.g., Rolando J. Jiminez*. Disputes regarding such matters are specifically included in the grievance procedure. Consequently, the agreement's grievance procedure is the exclusive means available to claimant for resolving his claim.

Decision

The claim is dismissed.

ALLAN H. GOODMAN
Board Judge