

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

May 11, 2006

GSBCA 16842-TRAV

In the Matter of KENATH O. TRAEGDE

Kenath O. Traegde, Dorchester, MA, Claimant.

Janet R. Schlueter, Director, Office of State and Tribal Programs, Nuclear Regulatory Commission, Washington, DC, appearing for Nuclear Regulatory Commission.

DANIELS, Board Judge (Chairman).

Invitational travelers may have their claims for travel expenses settled by this Board. Neither an invitational traveler nor any other claimant may receive reimbursement from the Government, however, for an expense for which the Government is not responsible.

Background

This case was filed by Kenath O. Traegde, an employee of the Commonwealth of Massachusetts. Mr. Traegde was invited by the Nuclear Regulatory Commission to attend training at the Commission's headquarters in Rockville, Maryland, in January 2006. The training session ended on January 11, and when it was over, Mr. Traegde went to Washington-Dulles Airport, expecting to fly home to Boston that afternoon. His United Airlines flight was delayed and then canceled due to mechanical difficulties. Because no other flight to Boston was available that evening, he was forced to spend the night in a nearby hotel and fly home the following day. The Commission refused to pay for the cost of the hotel room. Mr. Traegde asks us to reverse this decision.

The Commission initially rejected Mr. Traegde's claim because it believed that the cost of his lodging had been paid by the airline. As Mr. Traegde has made plain, the airline

did not cover this cost. Whether the airline should have borne the cost, however, remains a contested matter.

Mr. Traegde's flight and two others were canceled at about the same time, causing a long line of unhappy travelers to queue up at the airline's customer service counter. Mr. Traegde called a member of the Commission's administrative staff to report this event, and she instructed him to remain in line to get whatever vouchers the airline might provide. Mr. Traegde despaired of reaching the front of the line within a reasonable period of time, however, and instead called the Commission's travel agent, who reserved for him a hotel room and a flight the next day.

According to the Commission, United Airlines representatives have stated that if Mr. Traegde had remained in the line and reached the customer service counter, he would have been given a voucher for the cost of the hotel room. According to Mr. Traegde, one airline representative told him the same thing, but another told him the opposite. A letter he received from the airline's customer relations department, in response to his request for reimbursement of the cost of the hotel room, stated, "[W]e don't compensate customers based on their being involved in flight irregularities."

Discussion

Our authority to resolve travel claims is based on statute and a delegation from the Administrator of General Services. The statute is 31 U.S.C. § 3702(a)(3) (2000), which provides, "Except as provided in this chapter or another law, . . . [t]he Administrator of General Services shall settle claims involving expenses incurred by Federal civilian employees for official travel and transportation, and for relocation expenses incident to transfers of official duty station." The delegation is to exercise the Administrator's power in this regard. GSA Order ADM P 5450.39C CHGE 78 (Mar. 21, 2002).

Mr. Traegde's claim clearly involves expenses incurred for official travel and transportation. But we may settle it only if he is also deemed a "Federal civilian employee." Mr. Traegde is an employee of the Commonwealth of Massachusetts. May he also be considered, for the purpose of the claims settlement statute, a Federal civilian employee?

In two recent cases filed by invitational travelers, we questioned but did not decide whether we could settle travel claims by such individuals. We were able to dismiss *Robert V. Rumple*, GSBCA 16534-TRAV, 05-1 BCA ¶ 32,850 (2004), without facing the issue because agency payment of the entire amount in dispute left us without a dispute to resolve. We addressed the substantive issue posed by *Jason D. Rohloff*, GSBCA 16576-TRAV, 05-2 BCA ¶ 33,009, only because it was obvious that we could not award the amount in dispute even if the traveler had been a federal employee.

Mr. Traegde's claim is different from *Rumple* in that an amount remains at issue, and it is different from *Rohloff* in that the resolution is not an obvious denial. This is an appropriate occasion on which to speak clearly to the jurisdictional question.

For the purpose of the subchapter of the United States Code dealing with travel and subsistence expenses, the term "employee" includes "an individual serving without pay." 5 U.S.C. § 5701(2) (2000). Such a person "may be allowed travel or transportation expenses, under this subchapter, while away from his home or regular place of business and at the place of employment or service." *Id.* § 5703. The Government Accountability Office (GAO – formerly the General Accounting Office) has interpreted this statute to permit an agency "to invite a private individual (or more than one) to a meeting or conference at government expense, but only if that individual is legitimately performing a direct service for the government." *DoD Section 6 School Board Members – Invitational Travel Orders*, B-260,896 (Oct. 17, 1996); *see also Chairman, United States Civil Service Commission*, 37 Comp. Gen. 349 (1957); *Secretary of Commerce*, 27 Comp. Gen. 183 (1947).¹ Such an individual is called an "invitational traveler." 41 CFR 301-1.2(c) (2005). The GAO's understanding of the law is persuasive and of long standing, so we will follow it. Because an invitational traveler is a Federal civilian employee for the purpose of the federal travel expense laws, we may settle travel expense claims brought by such a traveler. Because the Nuclear Regulatory Commission paid for the costs of Mr. Traegde's trip, we will assume (without deciding) that his travel to the Commission's headquarters was for the purpose of providing a direct service to the Commission, and that he was consequently an invitational traveler.

We proceed to the merits of the case.

Mr. Traegde's official government travel was prolonged, forcing him to spend an extra night in a hotel, due to circumstances beyond his control. Such a circumstance would generally cause the Government – the Commission, in this case – to be responsible for the cost of the lodging. 41 CFR 301-11.9 (per diem allowance continues until traveler returns to his home, office, or other authorized point). Here, however, the Commission contends that its responsibility is excused by the obligation of United Airlines to pay that cost.

¹ GAO has been careful to distinguish a person performing a direct service for the Government (whose travel expenses may be paid by an agency) from someone who is "merely . . . attending a meeting or convention, the subject matter of which is related to the official business of some federal department or agency" (whose travel expenses may not be paid). B-260896; *In the Matter of Funding of Conferences*, 55 Comp. Gen. 750 (1976).

Mr. Traegde and the Commission have presented conflicting evidence as to the airline's obligation. To determine whether United Airlines was actually responsible for Mr. Traegde's stay in the hotel, we examined the airline's contract of carriage. This contract contains the conditions upon which the airline transports or agrees to transport passengers. In particular, we examined the version of the contract of carriage which was in effect on January 3, 2006, because the version which is in effect on the date on which a ticket is issued governs the transportation of the ticketed passenger, and Mr. Traegde's ticket was purchased on January 3, 2006.²

The provision of the contract of carriage which is relevant to this case is Rule 240, "UA [United Airlines] Failure to Operate on Schedule or Failure to Carry." According to this provision, generally, "Passengers will be provided on[e] night's lodging, or a maximum allowance for one night's lodging as established by each location, when a UA flight on which the passenger is being transported is diverted to an unscheduled point, and the delay at such point is expected to exceed four hr. [hours] during the period 10:00 p.m. to 6:00 a.m." The rule contains several exceptions to this general statement. Principal among them are that the statement does not apply where (a) the passenger has purchased a standby ticket, (b) the airline is able to transport the passenger within two hours on another flight, (c) the passenger's trip is interrupted at a city which is his permanent domicile, (d) various combinations of specified cities are involved, or (e) a "force majeure event" such as "[a]ny condition beyond UA's control" is involved. None of these exceptions applies to Mr. Traegde's flight from Washington-Dulles Airport to Boston on January 11, 2006. Mr. Traegde held a non-standby ticket on this flight, the airline was unable to transport him within two hours on another flight, Washington was not his permanent domicile, Washington-Dulles and Boston were not among the specified combinations of cities, and the flight was canceled due to problems within the airline's control. We can find no other applicable exception to the general rule, either. As we read United's contract of carriage, therefore, the airline was obligated to provide Mr. Traegde with the night's lodging or an established maximum allowance for that lodging.

² Obtaining a copy of this version of the contract of carriage proved extremely difficult. Although a copy of United Airlines' current contract of carriage is available on the Internet, <<http://www.united.com/page/article/0,6722,2743,00.html>> (last visited May 10, 2006), the current contract was issued after Mr. Traegde's ticket was purchased, so it does not apply to his transportation. The airline was remarkably uncooperative in responding to our telephonic requests for a copy of the relevant contract. We eventually were able to get a copy of that contract with the assistance of the Audit Division of the Office of Transportation and Property Management of the General Services Administration's Federal Supply Service.

We do not know whether some other United Airlines regulation required Mr. Traegde to remain in line to secure this benefit *before* spending the night in the hotel. If it did, he forfeited his right to the benefit by not requesting reimbursement at the appropriate time. If there was no such airline rule, United may still be responsible for the cost of the hotel room (or an allowance toward that cost). In either event, however, the Nuclear Regulatory Commission has no obligation to cover the cost of Mr. Traegde's lodging on that last, unplanned night of his trip.

Decision

The claim is denied.

STEPHEN M. DANIELS
Board Judge