

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

October 13, 2006

GSBCA 16929-TRAV

In the Matter of JACK W. TUCKER

Jack W. Tucker, Las Vegas, NV, Claimant.

Kenneth T. Rye, Assistant Counsel, Military Sealift Fleet Support Command, Virginia Beach, VA, appearing for Department of the Navy.

DANIELS, Board Judge (Chairman).

In deciding this case, we reiterate two principles regarding federal travel law.

First, we have frequently enunciated the equitable rule that once an agency has authorized travel or relocation allowances which it had the discretion to grant, and the employee incurs expenses in reliance on the authorization, the agency must reimburse the employee for those expenses. *See, e.g., Thelma H. Harris*, GSBCA 16303-RELO, 04-1 BCA ¶ 32,540 (2003); *Linda M. Conaway*, GSBCA 15342-TRAV, 00-2 BCA ¶ 31,133; *Cheryl A. Cadwell*, GSBCA 14148-RELO, 97-2 BCA ¶ 29,066. The rule is reciprocal as well: once an employee voluntarily agrees to pay travel or relocation allowances which are within an agency's authority to grant or deny, the agency is not responsible for reimbursing the employee for those costs.

Second, if an agency interrupts an employee's leave by directing him to perform temporary duty, the agency is responsible for the expenses incurred by the employee in traveling to the location at which the duty is performed. If an employee chooses to interrupt his leave to perform temporary duty, however, he is responsible for whatever expenses he incurs in traveling to the duty location.

Background

Civilian mariners provide fuel, ammunition, food, and supplies to Navy ships throughout the world. In June 2004, one of these government employees, Jack W. Tucker, completed a shipboard assignment, returned to his home in Las Vegas, Nevada, and entered into leave status.

While on leave, Mr. Tucker requested permission from his organization, the Military Sealift Fleet Support Command (MSFSC), to attend a Department Head Administrative Management class in Chesapeake, Virginia. MSFSC explains, “This course is designed for department heads or those soon to enter this position (masters, first officers, supply officers, chief stewards, chief engineers and pursers).” Mr. Tucker’s placement officer denied the request because this class was not required for the performance of the employee’s duties in the position he held, able seaman.

Mr. Tucker wanted very much to attend, however, because he thought that doing so would increase his chances of being selected as a ship’s purser. Upon reconsideration, the placement officer found that there was a vacancy in the class. She and Mr. Tucker agreed on the conditions of his attendance: MSFSC would permit him to attend the class without charge, but consistent with the agency’s general policy for employees for whom a training assignment is not essential, he would have to pay for his travel and other costs related to the course. Mr. Tucker acknowledges that he was not pleased with this arrangement, but that he did agree to it. In July 2004, Mr. Tucker attended the class in question.

Mr. Tucker maintains that MSFSC’s determination not to reimburse him for the costs of travel to and from the course was unfair because he has a certificate of registry as a Chief Purser and the agency has paid for such costs incurred by individuals who had lesser qualifications. He also tells us, perhaps contradictorily to the statement as to the certificate of registry, that he was assigned purser-related duties during March and April of 2002 and was a purser trainee from January to May 2006.

Discussion

MSFSC calls to our attention as particularly relevant to this case a decision by our predecessor in settling claims by federal civilian employees involving claims involving travel expenses, the General Accounting Office (GAO). In that decision, *Donald F. X. McIntyre*, B-192636 (Dec. 15, 1978), GAO explained that “[t]here are situations in which an employee may be authorized to travel at his own expense when the travel involves work or training of mutual interest to the employee and the Government.” (The specific circumstance in the *McIntyre* case was that the agency had no travel funds due to budgetary restrictions.) When

this occurs, the rights and responsibilities of the agency and the employee become fixed; there is no error in the travel orders (or absence thereof), so no change to the arrangement may be made later.

GAO's decision in *McIntyre* is not only relevant to Mr. Tucker's claim, but also consistent with provisions of the Federal Travel Regulation which say that an agency may pay "only those expenses essential to the transaction of official business" and that an employee may agree not to be paid expenses he incurs in traveling to a training event. *See* 41 CFR 301-2.2, -11.3(a) (2004). The decision is persuasive, so we will apply it. MSFSC reasonably determined that because the course in question is for department heads or individuals about to assume such duties, and Mr. Tucker is an able seaman, consistent with general agency policy, it could not justify paying for him to attend the course. The agency's accommodation of Mr. Tucker's desires, by permitting his attendance, was agreed to by the employee. Having agreed to the arrangement without reservation, Mr. Tucker cannot challenge it now.

There is another longstanding rule that prevents Mr. Tucker from recovering travel expenses incurred in connection with his attendance at the class. If an employee's leave is interrupted for the performance of work at a location different from his place of leave, the critical factor in determining who is responsible for the expenses of travel from the leave location to the duty location and back is whether the agency directs the employee to perform the work. If the employee elects of his own volition to perform the work, he is responsible for his travel expenses. This rule was established long ago by the Comptroller General, our predecessor in settling claims by federal civilian employees for expenses of official travel and transportation, and we adopted it in *Larry E. Johnson*, GSBCA 16774-TRAV (July 18, 2006) (citing *Paul P. Magallanes*, B-190646 (Jan. 25, 1978)); *see also J. C. Morris*, B-242804 (June 3, 1991).

In this case, it is clear that MSFSC did not direct Mr. Tucker to interrupt his leave to attend the course in question. To the contrary, the agency reasonably determined that because the course is for department heads or individuals about to assume such duties, and Mr. Tucker is an able seaman, consistent with general agency policy, it could not justify paying for him to attend. The employee himself insisted on attending the course. MSFSC's ultimate accommodation of Mr. Tucker's desires by permitting his attendance does not transfer to the agency the responsibility for paying for the expenses he incurred in traveling to the location where the course was given.

Decision

The claim is denied.

STEPHEN M. DANIELS
Board Judge