

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

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December 27, 2006

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GSBCA 16978-TRAV

In the Matter of JAMES H. O'DONNELL, JR.

James H. O'Donnell, Atlanta, GA, Claimant.

Kirsten N. Witter and Katherine Austin, General Legal Services, Office of Chief Counsel, Internal Revenue Service, Washington, DC, appearing for Department of the Treasury.

**DANIELS**, Board Judge (Chairman).

James H. O'Donnell, Jr. is a re-employed annuitant of the Internal Revenue Service (IRS). Mr. O'Donnell has asked us to review the IRS's calculation of the income tax reimbursement allowance (ITRA) due him as a result of his long-term temporary duty travel. The amount an employee receives in ITRA is dependent in part on his earned income. 41 CFR pt. 302-17 (2005) (as referenced incorrectly in 41 CFR 301-11.532, -11.535). Mr. O'Donnell's pay is small relative to that of employees who perform similar work, since his salary is reduced by the amount of his pension benefit. He believes that the IRS has acted improperly in not considering the pension to be earned income.

As suggested by the IRS, we have no authority to consider Mr. O'Donnell's complaint. Pursuant to 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 those procedures, the procedures are the exclusive administrative means for resolving the matter. *Wilbur D. Abrams*, GSBCA 15045-TRAV, 99-2 BCA ¶ 30,481; *Henry E. Carroll, Jr.*, GSBCA 14206-TRAV (Dec. 29, 1997); *Bernadette Hastak*, GSBCA

13938-TRAV, et al., 97-2 BCA ¶ 29,091. Mr. O'Donnell is a member of a bargaining unit whose actions are governed by the National Agreement between the IRS and the National Treasury Employees Union. That agreement establishes "the only administrative procedure available to bargaining unit employees for the processing and disposition of grievances" other than specifically-excluded matters, and reimbursement for travel expenses is not a specifically-excluded matter. Consequently, Mr. O'Donnell must use the agreement's procedures, not the Board's, for resolution of his complaint.

Mr. O'Donnell brought this case to us on the advice of an employee of the office of the IRS's Chief Financial Officer. While the provision of this inaccurate advice is regrettable, it cannot change our view of the case. Bad advice given by an agency's employees does not alter the law on which the Board's conclusions are based. *Thomas R. Kehne*, GSBCA 16979-TRAV (Dec. 15, 2006); *Jenny L. W. Jones*, GSBCA 15808-RELO, 02-2 BCA ¶ 31,894.

The case is dismissed.

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STEPHEN M. DANIELS  
Board Judge