UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

November 7, 2016

CBCA 5507-RELO

In the Matter of IMMANUEL L. WEST

Immanuel L. West, Denver, CO, Claimant.

Ginger Allen, Section Chief, Travel and PCS, National Operations Center, Bureau of Land Management, Department of the Interior, Denver, CO, appearing for Department of the Interior.

CHADWICK, Board Judge.

When the Government geographically transfers an employee in the interests of the Government, it pays the costs of transporting the employee's household goods to the new location. One way an agency can do this is to assume full responsibility for the move. "It selects the carrier, arranges for packing and crating of the [goods], prepares a bill of lading, and pays charges incurred." *Richard L. Beams*, CBCA 2370-RELO, 12-1 BCA ¶ 35,044, at 172,162 (2011); *see* 41 CFR 302-7.14(b), -7.401(a) (2015). Even if the agency opts for this method, however, the employee may "pursue other methods," and the agency will reimburse the employee for "the actual cost incurred, not to exceed what the Government would have incurred under the method selected by [the] agency." 41 CFR 302-7.16. The employee may also have the goods moved somewhere other than the authorized duty station, in which case the employee's "reimbursement is limited to the cost of transporting the property in one lot from the authorized origin to the authorized destination." *Id*. 302-7.7.

What if an employee makes his own arrangements and causes the agency to incur a new cost it would not have incurred if the Government had handled the move? Must the agency still reimburse the employee up to the full amount "it would have incurred" under the transportation method it originally selected, or should it deduct from the reimbursement the money it paid to accommodate the employee's alternate plan? We grant this claim

because we see nothing in the Federal Travel Regulation (FTR) that either authorizes or requires a back charge to the claimant on the facts before us.

The facts are undisputed and straightfoward. The Bureau of Land Management (BLM) transferred the claimant, Immanuel L. West, from West Virginia to Denver, Colorado, in 2016. BLM arranged for his household goods to be transported and stored in Denver under a government bill of lading. At that point, the method of moving changed. Mr. West decided that he wanted the goods moved to Albuquerque, New Mexico, where he planned to retire eventually, instead. BLM encouraged him to hire his own moving company for this purpose and agreed in writing to reimburse him for the "actual costs," not to exceed "the $4,044.55 that BLM would have paid on [his] behalf" to move the goods the rest of the way from storage to a location in the Denver area, which included "$2,942.40 [for] delivery out, $89.25 [for] uncrating, and $1012.90 [for] full unpacking."

Mr. West's chosen carrier collected his goods from the Denver warehouse and completed the move. The dispute arose because the warehouse operator charged BLM a separate fee of $988.40 for "Handling Out[,] Not Cartage" to move the goods from storage to the loading area. BLM knew in advance that it would incur this fee; Mr. West did not. Indeed, Mr. West had no contractual relationship with the warehouse company. Mr. West's moving costs exceeded $4044.55. When he submitted his reimbursement claim for that amount, BLM deducted the $988.40 warehouse handling fee and reimbursed him $3056.15. Mr. West timely sought review.

BLM argues that "[i]f an employee, *or the government on the employee's behalf*, incurs costs that exceed the costs the government would have incurred for the authorized transportation/storage, the employee must bear the excess cost" (emphasis added). Therefore, it argues, Mr. West is responsible for the warehouse handling fee because he "was allowed the benefit of" the handling services. This could be a sensible policy. However, we do not see it reflected in the FTR as it applies to this particular situation. When a transferred employee makes his own moving arrangements, the formula for reimbursement under the FTR is simple: "the actual cost incurred" up to the amount "the Government *would have incurred* under the method selected by [the] agency." 41 CFR 302-7.16 (emphasis added). Although BLM does not make the argument explicitly, we infer that it must interpret the words "the actual cost incurred" to include costs incurred by either the Government or the employee. We do not read the provision that way. It is addressed to employees and advises them that "your reimbursement is limited" as described. *Id*. Employees are not "reimbursed" for "actual costs" of the Government. They are reimbursed for their own costs. This supports at least a strong presumption that "reimbursement" of "actual costs" refers to reimbursement of employees' out-of-pocket costs, and there is no language in the relevant FTR provisions that casts doubt on this presumption.

Accordingly, FTR 302-7.16 does not take into account the *Government's* actual costs at all. The comparison is between the employee's actual costs and the Government's projected costs. Perhaps this was an oversight by the drafters, perhaps not. Certainly, the FTR does not expressly address situations like this one, in which the responsibility for transportation was changed mid-move. Nonetheless, the warehouse handling fee, while an "actual cost" of Mr. West's move, was incurred by BLM and not by him. Mr. West had no contract with the warehouse, no ability to negotiate or limit the fee, and no personal liability for it. Under the plain regulatory language, BLM must reimburse Mr. West for his own actual costs of moving his household goods from Denver to Albuquerque, up to $4044.55, the amount BLM would have paid to complete a move to the Denver area.

Decision

The claim is granted.

KYLE CHADWICK
Board Judge