UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

June 17, 2008

CBCA 1122-TRAV

In the Matter of RAFAL FILIPCZYK

Rafal Filipczyk, Diamondhead, MS, Claimant.

Captain B. B. Brown, U. S. Navy, Acting Commanding Officer, Naval Oceanographic Office, Stennis Space Center, MS, appearing for Department of the Navy.

DANIELS, Board Judge (Chairman).

The Civil Service Reform Act provides that generally, collective bargaining agreements between unions and agency management are to provide procedures for the settlement of grievances, and with limited exceptions, the procedures set out in such an agreement "shall be the exclusive administrative procedures for resolving grievances which fall within its coverage." 5 U.S.C. § 7121(a)(1) (2000). The Court of Appeals for the Federal Circuit has consistently held that this law means if a matter is arguably entrusted to a grievance procedure, no review outside that procedure may take place unless the parties to the agreement have explicitly and unambiguously excluded that matter from the procedure. *Dunklebarger v. Merit Systems Protection Board*, 130 F.3d 1476 (Fed. Cir. 1997); *Muniz v. United States*, 972 F.2d 1304 (Fed. Cir. 1992); *Carter v. Gibbs*, 909 F.2d 1452 (Fed. Cir. 1990) (en banc). Decisions by this Board and its predecessor in settling claims by federal civilian employees for travel and relocation expenses, the General Services Board of Contract Appeals, have consistently applied the statute, as interpreted by the Court of Appeals, to dismiss claims whose resolution is governed by provisions of collective bargaining agreements. *E.g., Margaret M. Lally*, CBCA 791-TRAV, 07-2 BCA ¶ 33,713; *James E. Vinson*, CBCA 501-TRAV, 07-1 BCA ¶ 33,502; *Rebecca L. Moorman*, GSBCA 15813-TRAV, 02-2 BCA ¶ 31,893; *Bernadette Hastak*, GSBCA 13938-TRAV, et al., 97-2 BCA ¶ 29,091.

In filing this case, Rafal Filipczyk, a Department of the Navy oceanographer, tests the limits of the rule. Mr. Filipczyk objects to a travel policy which is contained in the August 2003 collective bargaining agreement between his employer, the Naval Oceanographic Office, and the American Federation of Government Employees local which represents employees of that office. In particular, he objects to the application of that policy to vouchers he submitted for travel which took place during September and October of 2007. Mr. Filipczyk notes that the collective bargaining agreement expired in August 2007. Consequently, he believes that even though he is a member of the bargaining unit and would consequently be subject to whatever agreement was in force, the agreement in question does not apply to him.

The Court of Appeals for the Federal Circuit has already addressed and resolved the issue Mr. Filipczyk raises. In *Muniz*, the Court held, consistent with what the district court regarded as "the usual labor law rule" and the Federal Labor Relations Authority's view of the purpose of the Civil Service Reform Act provision in question, whenever the parties to a collective bargaining agreement treat a collective bargaining agreement as remaining in effect beyond its expiration date, the agreement remains in effect. 972 F.2d at 1315-16. The Department of the Navy has stated, without contradiction, "The Command and the Union have continued to honor the signed [labor management agreement] beyond the August 2007 [expiration] date . . . . The contract is under review and until such time as the new agreement has been completed both the Union and the Command have agreed to follow the provisions of the existing contract." Thus, the travel policy contained in the agreement remains in effect, even though the expiration date of the agreement has passed.

Mr. Filipczyk also attempts to avail himself of an exception to the general rule regarding exclusivity of application of a collective bargaining agreement's grievance procedures: such procedures cannot apply to a matter which is specifically provided for by statute. *See Jesse Chavez*, GSBCA 15443-TRAV, 01-1 BCA ¶ 31,365; *Charles M. Auker*, GSBCA 15231-TRAV, 00-1 BCA ¶ 30,898; *John B. Courtnay*, GSBCA 14508-TRAV, 98-2 BCA ¶ 29,791. The question posed by the claimant is whether the Navy may refuse to pay expenses incurred by a civilian employee for lodging on land during the first forty-eight hours the ship on which the employee is performing duty is in port during a stopover. Under statute, an employee is entitled to reimbursement of a per diem allowance while he is "traveling on official business away from the employee's designated post of duty." 5 U.S.C. § 5702(a)(1). Regulation includes lodging expenses within the term "per diem." 41 CFR pt. 301-11 (2007). From these facts, Mr. Filipczyk concludes that the Navy must pay a traveling employee's lodging expenses whenever the employee is spending a night on land -- including within the first forty-eight hours a ship is in port during a stopover.

The statute in question does not resolve, however, whether a Navy oceanographer remains on duty, such that the mission of his cruise is enhanced, during the first forty-eight hours a ship is in port. That is the sort of matter which is addressed through a management determination or a collective bargaining agreement. *Cf. Boege v. United States*, 206 Ct. Cl. 560 (1975); *Federal Aviation Administration*, B-195859 (Mar. 18, 1980). The subject has been addressed here through the latter means. No statute makes impermissible the conclusion which has been reached. We therefore do not have authority to consider it.

The case is dismissed.

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STEPHEN M. DANIELS
Board Judge