



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 7, 2009

CBCA 1508-TRAV

In the Matter of HERBERT F. SAKALAUCKS, JR.

Herbert F. Sakalaucks, Jr., Mt. Juliet, TN, Claimant.

John Austin, Office of the Solicitor, Department of the Interior, Knoxville, TN, appearing for Department of the Interior.

VERGILIO, Board Judge.

Although authorized to fly from his permanent duty station via common carrier for a temporary duty (TDY) assignment, the claimant opted to use a privately owned vehicle (POV) and a common carrier with a departure/return location different from his duty station. The regulation that establishes entitlement to reimbursement for use of a POV “instead of” a common carrier is not applicable, because the claimant used the POV in addition to (not “instead of”) a common carrier. Because the claimant lacked authorization under agency guidelines for the travel utilized, the claimant is not entitled to payment for travel.

What the claimant describes as irregularities and improprieties by the agency in the processing of his claim were the agency’s appropriate attempts to understand the claimant’s travels and make a payment in accordance with regulations and agency guidance. The claimant’s submissions did not accurately reflect his travel and costs; the actions of the agency personnel in discerning the inconsistencies in the submissions and untangling the claimant’s travels and costs cannot be faulted, and do not serve as a basis to compensate the claimant.

Background

During 2006, in an attempt to achieve and ensure the consistent application of travel regulations throughout field operations offices, the relevant office within the Department of the Interior (agency) issued applicable guidance directing that any deviations from the regulations must be approved in advance by specific individuals within a given office. The

guidance defines deviations to include driving rather than using a common carrier and traveling by an indirect route.

With a date of October 23, 2007, the agency issued to Herbert F. Sakalaucks, Jr. (claimant) a travel authorization that specifies the places to travel as from Nashville, Tennessee and/or residence within the vicinity to Albuquerque, New Mexico, and return. The designated mode of travel is by common carrier, and, subject to administrative approval, POV. In response to a request by the claimant, the claimant's supervisor instructed the claimant to make Nashville (claimant's duty station), and not Menomonie, Wisconsin (the location claimant intended to visit to conduct personal business), the departure point for travel, because a round-trip ticket between Minneapolis (the airport that would be used) and Albuquerque is significantly more expensive than a round-trip ticket between Nashville and Albuquerque. The claimant was not authorized to use a POV for travel other than to and from the Nashville airport and was not authorized to travel by an indirect route.

The claimant's actual travels and costs are gleaned from the submissions, but not expressly verified by the claimant. The claimant departed his workplace in a POV, traveling 831 miles to Wisconsin. From there, he took an airport shuttle to the Minneapolis airport, departing on a flight that arrived in Albuquerque. His return consisted of the reverse travel, departing Albuquerque to Minneapolis to Menomonie and arriving at his residence after traveling 845 miles in a POV. The claimant utilized frequent flyer miles for the round-trip flight on a common carrier airline. The claimant incurred out-of-pocket dollar costs of \$17 each way for the shuttle to and from the airport, and \$5 in taxes/fees for the frequent flyer flight.

In his initial request for reimbursement, the claimant submitted a travel voucher that states, for November 13, departure and arrival times from his residence to the airport, and from the Nashville airport to the Albuquerque airport, and the times for reverse travel on November 17. The voucher identifies "other" costs totaling \$634.35: a constructive airfare of \$606.60 and a fee of \$27.75. The other two travel items on the voucher are \$12.03 each, based upon mileage, for travel between residence and the Nashville airport. With the voucher, the claimant submitted an invoice from the Government's travel agent. The invoice indicates that the claimant had purchased, and paid for with a credit card, a round trip ticket with travel departing on November 13 and returning on November 16. The cost of the ticket was \$606.60. The submission does not state or otherwise indicate that the claimant utilized a POV to travel from his residence to Wisconsin or that the claimant did not utilize a POV to travel from his residence to the Nashville airport.

In a revised written submission, provided after the Government questioned some items on his initial submission, the claimant indicates the basics of his itinerary (as described above

as his actual travel) and associated requested costs. For the travel, the costs claimed for reimbursement are \$403.03 (based on 831 miles of travel from workplace to Menomonie), \$17 (shuttle, Menomonie to airport), \$997.91 (airfare and fee, Minneapolis to Albuquerque, return), \$17 (shuttle, airport to Menomonie), and \$409.82 (based on 845 miles of travel from Menomonie to residence). A document accompanying the submission reflects that the claimant obtained his common carrier ticket by using frequent flyer miles and paying \$5 for taxes/fees.

In the process of reviewing the claimant's submissions, and obtaining additional information from the claimant orally and in writing, various Government employees annotated the submissions and made calculations for the constructive cost of the travel. By December 19, 2007, the agency executed, approved, and forwarded for payment, an amended travel voucher which was provided to the claimant. The claimant has received payment for travel costs of \$24.26, as calculated by the agency as the constructive cost of travel to and from the Nashville airport.

In January 2007, the claimant discussed with agency personnel the disallowance of various components of his amended travel voucher. The claimant was informed that he could file an appeal at this Board. By letter dated May 19, 2008, the agency provided a written summary of its view of the facts and an explanation of how it determined the claimant's entitlement. The letter informed the claimant of an opportunity to supply additional facts or legal arguments, suggesting that further agency review could be obtained. The claimant did not seek further agency review.

The claimant filed this claim at the Board on February 10, 2009. The claimant seeks to be paid authorized travel expenses, interest, and any allowable attorney expenses. Each party has made various submissions.

Discussion

The applicable Federal Travel Regulation (FTR) states that an employee may use a POV for official travel when authorized by his agency. 41 CFR 301-10.300 (2006) (FTR 301-10.300). However, an employee who uses a POV when not authorized is not foreclosed from reimbursement, because another provision of the regulation states that an employee, authorized to use common carrier transportation who uses a POV instead, will be reimbursed on a mileage basis, plus per diem, not to exceed the total constructive cost of the authorized method of common carrier transportation plus per diem. The agency must determine the constructive cost of transportation and per diem for travel by common carrier. FTR 301-10.309.

More pointedly, the regulation dictates that an agency may not prohibit an employee from using a POV on official travel. If an employee

elects to use a POV instead of an alternative authorized form of transportation, the agency must:

(a) Limit reimbursement to the constructive cost of the authorized method of transportation, which is the sum of per diem and transportation expenses the employee would reasonably have incurred when traveling by the authorized method of transportation; and

(b) Charge leave for any duty hours that are missed as a result of travel by POV.

FTR 301-70.105.

The agency authorized this claimant to use a POV to travel from his residence or a location within Nashville to the Nashville airport, and to utilize a common carrier for a flight from Nashville to Albuquerque; the authorization provides for a similar return by common carrier and POV. The claimant lacked authorization to use a POV to travel from Nashville to Albuquerque or to travel by an indirect route.

The claimant did not use a POV to travel to or from the Nashville airport. The claimant's travel was contrary to the authorization he received, and thus in disregard of the agency guidance that required specific approval either to drive instead of using a common carrier or to travel by an indirect route. Despite the lack of authorization for his actual travel, other provisions must be explored to determine if the claimant is entitled to reimbursement.

The above-quoted provision gives the employee the option to utilize a POV instead of an authorized common carrier, and to obtain reimbursement based upon actual costs and the agency's calculations of constructive costs. This claimant did not use a POV "instead of" an authorized common carrier. Rather than using a POV to travel to Albuquerque, and return, the claimant used a POV and a common carrier with an indirect route for travel. Because the claimant did not use the POV "instead of" the common carrier, the provision does not provide the claimant with entitlement to any reimbursement. The "must" language of the provision directing agency payment is not applicable because the claimant did not satisfy the "instead of" prerequisite to payment.

The claimant has traveled by means without authorization and contrary to express agency guidance. The specific limitations in the above-quoted provision of the FTR and

agency guidance are controlling here, over the general provisions of the FTR that state: “If you do not travel by the method of transportation required by regulation or selected by your agency, any additional expenses you incur will be borne by you[,]” and “[I]f, for personal convenience, [you] travel by an indirect route or interrupt travel by a direct route . . . reimbursement will be limited to the cost of travel by a direct route or on an uninterrupted basis. You will be responsible for any additional costs.” FTR 301-10.6, -10.8. The claimant is not entitled to recover any of his travel costs.

The claimant also maintains entitlement to recover money because of what he describes as improper agency actions such as annotating his submissions, submitting paperwork inconsistent with the claimant’s for payment, and not readily providing an explanation or determination of its actions. What the claimant describes as irregularities and improprieties by the agency in the processing of his claim were the agency’s appropriate attempts to understand the claimant’s travels and make a payment in accordance with regulations and agency guidance. The claimant’s initial travel voucher was misleading in depicting travel and costs, such that the agency could neither determine actual nor constructive costs. The claimant’s submissions did not accurately reflect his travel and costs; the actions of the agency personnel in discerning the inconsistencies in the submissions and untangling the claimant’s travels cannot be faulted. The claimant has failed to demonstrate a basis for additional compensation.

JOSEPH A. VERGILIO
Board Judge