



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

April 23, 2013

CBCA 3242-TRAV

In the Matter of HERBERT H. GALLIART

Herbert H. Galliard, Anthony, NM, Claimant.

Phillip D. Hendrick, Acting Chief, Travel Section, National Finance Center, Customs and Border Protection, Department of Homeland Security, Indianapolis, IN, appearing for Department of Homeland Security.

DANIELS, Board Judge (Chairman).

Customs and Border Protection, a bureau of the Department of Homeland Security, authorized Herbert H. Galliard to attend a training program in Laguna Beach, California, in December 2012. Mr. Galliard was stationed in El Paso, Texas, at the time, and the agency's travel orders directed him to travel to Laguna Beach by air and rent a car once there. Mr. Galliard did not follow these orders; instead, he traveled by a privately-owned vehicle (POV).

The agency and the employee agree that Mr. Galliard should be reimbursed for the expenses of his trip at the lesser of his actual expenses or the constructive cost of travel contemplated in the orders. The parties disagree, however, on two of the actual expenses claimed by the employee – the mileage rate at which he should be reimbursed for driving and the distance for which reimbursement is appropriate. The resolution of these issues is important because no matter which party is correct on the issues, the actual expenses are less than the constructive cost of travel contemplated in the orders.

Mileage rate

Mr. Galliard asked to be reimbursed at the rate prescribed for driving a POV; the agency believes that he should be reimbursed instead at the rate for driving a Government-owned vehicle. The provisions of the Federal Travel Regulation (FTR) which bear on this matter are 41 CFR 301-10.309 and -10.310 (2012). They read as follows:

§ 301-10.309 What will I be reimbursed if I am authorized to use common carrier transportation and I use a POV instead?

You 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. Your agency must determine the constructive cost of transportation and per diem by common carrier under the rules in § 301-10.310.

§ 301-10.310 What will I be reimbursed if I am authorized to use a Government owned automobile [GOA] and I use a privately owned automobile [POA] instead?

You will be reimbursed based on a constructive mileage rate limited to the cost that would be incurred for use of a Government automobile. This rate will be published in an FTR bulletin available at <http://www.gsa.gov/ftr>. If your agency determines the cost of providing a GOA would be higher because of unusual circumstances, it may allow reimbursement not to exceed the mileage rate for a POA. In addition, you may be reimbursed other allowable expenses as provided in § 301-10.304 [such as fees for parking and using toll roads].

The agency had in January 2012 informed employees in certain categories, one of which included Mr. Galliard, regarding its policy for travel by car:

Given the budget situation and to ensure that all training requirements are met, TDY [temporary duty] costs must remain at the lowest levels possible. With that in mind, the most cost-effective way to travel to most locations is by air. If for some reason you choose not to travel by air you will be authorized the use of a Government vehicle. We have several available at all times. If you choose not to use a Government vehicle, you may use your Privately Owned Vehicle at the reduced reimbursement rate of \$.19/mile.

The agency tells us, through the declaration of a travel manager in its El Paso office, that thirty-two government vehicles were available for use by employees at the time Mr. Galliard traveled to Laguna Beach.

According to the agency, because its policy mandated use of a government vehicle by employees who are directed to travel by air but choose to drive instead, and a government vehicle was available for Mr. Galliard's trip, he must be reimbursed at the mileage rate for government vehicles. (The policy specifies a rate of nineteen cents per mile, which was the rate when the policy was issued. The parties understand that the rate was twenty-three cents per mile at the time Mr. Galliard traveled to Laguna Beach.)

Mr. Galliard notes that the FTR permits an agency to reimburse an employee who drives a POV at the higher POV rate (55.5 cents per mile at the time he traveled), whenever the agency determines that the cost of providing a government vehicle would be more expensive than allowing an employee to drive a POV. He maintains that for two reasons, the agency should have made such a determination in his situation. First, he could travel more quickly in a POV, since his wife could split the driving with him, obviating the need for rest stops. Speedy travel was important, he urges, because his training in Laguna Beach involved flying aircraft, and agency policy restricts pilots from flying without adequate rest between duty hours.¹ Second, Mr. Galliard contends, the government vehicles available to him were police cars which used fuel inefficiently; his driving a standard passenger car saved fuel (and the cost of fuel) and limited pollution, outcomes which benefited the Government.

The arguments made by Mr. Galliard are inventive, and perhaps they could have been considered by the agency when it made its policy regarding the use of vehicles in lieu of air travel and when it applied that policy to his situation. Nevertheless, the agency established a clear policy at variance with those arguments, informed him of that policy well in advance of his trip, and did not act irrationally in determining that his use of his own vehicle would have been more expensive for the Government than his use of a government vehicle. Further, the points made by the employee are not entirely convincing. Agencies cannot be expected to make travel policy and rulings based on assumptions that non-government personnel (such as a spouse) will accompany an employee who is traveling on official

¹ Mr. Galliard also contends that if he had used a government vehicle, his time of travel would have been extended because he would have had to begin his day by backtracking from his home to an agency facility, going through processing to be issued a vehicle, and then returning past his home on the way to Laguna Beach. This argument ignores the simple fact that he could have picked up a government vehicle on the evening before the trip, eliminating any need for backtracking on the day of travel.

business. And the list of vehicles provided by the agency includes some which are passenger cars and some whose fuel efficiency cannot be compared with the efficiency of other vehicles because it is not rated on the charts provided by Mr. Galliard. We conclude that the agency properly calculated the actual costs of this employee's travel by using the mileage rate specified for use of government vehicles. *See David L. Mount*, CBCA 1990-TRAV, 10-2 BCA ¶ 34,503.

Distance traveled

Over what number of miles should this rate be applied? Mr. Galliard says that the odometer on his vehicle shows that he drove 1785 miles on this trip. The agency says that according to Mapquest.com, the distance between El Paso and Laguna Beach is 788 miles; multiplying this number by two and adding the thirty miles the employee says he drove to and from the training site yields a total of 1606 miles for the trip.

What accounts for the 179-mile difference? In filing his case with the Board, Mr. Galliard contended that he used a global positioning system (GPS) unit in his vehicle, and that such units "continuously receive road condition and traffic information, then determine suitable alternate routes around traffic jams and other delays. This can result in a variation in the mileage indicated by the internet and the actual mileage recorded on the odometer." In responding to agency comments, he asserts that travel from El Paso to Laguna Beach on Interstate Highway 10, through Los Angeles, is much faster than travel to that city on Interstate Highways 5 and 8, through San Diego (the route selected by Mapquest.com).

According to the FTR, distance traveled by a POV between origin and destination is measured "[a]s shown in paper or electronic standard highway mileage guides, or the actual miles driven as determined from odometer readings." 41 CFR 301-10.302. Thus, both the method used by the agency and the method used by the employee are permissible. We would expect, however, that if an employee had driven by a direct route, the difference between the two methods would be minimal. Here, it is not. Mr. Galliard's explanation of the difference is not persuasive. While a GPS unit may assist a driver in avoiding delays, he does not allege that he used his unit for that purpose. And the difference in miles between the two routes postulated for travel from El Paso to Laguna Beach is a mere ten miles (798 versus 788), so driving on one rather than the other should not make a difference of 179 miles.

We consequently find convincing the agency's hypothesis that Mr. Galliard drove on a circuitous route for his own personal convenience. The FTR provides that if an employee travels by such a route, his "reimbursement will be limited to the cost of travel by a direct route [The employee] will be responsible for any additional costs." 41 CFR 301-10.8.

Decision

The agency should pay Mr. Gallart the actual expenses of his trip to Laguna Beach, including \$369.38 for 1606 miles driven at the twenty-three-cents-per-mile rate specified for the use of a Government-owned vehicle.

STEPHEN M. DANIELS
Board Judge