



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

May 24, 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).

On April 23, 2013, we held that the Customs and Border Protection bureau of the Department of Homeland Security acted properly in determining that after employee Herbert H. Galliard drove his privately-owned vehicle (POV) to a temporary duty assignment, he should be reimbursed at the mileage rate prescribed for government vehicles, applied to the number of miles which would have been driven over a direct route.

Mr. Galliard asks us to reconsider this decision. He takes particular issue with the agency policy which we upheld – that an employee who is authorized to travel by air but chooses to drive his own vehicle, rather than an available government automobile, will be reimbursed at the mileage rate for government vehicles. Mr. Galliard’s principal argument is that this policy is illegal – and indeed, unconstitutional.

Mr. Galliard’s argument is specious. His theory is that the policy conflicts with a law enacted by Congress, section 301-72.2(c) of the Federal Travel Regulation (FTR). This section provides that an agency “[m]ay . . . utilize methods of transportation other than common carrier (e.g., POVs, chartered vehicles, etc.) . . . [w]hen the total cost by common carrier would exceed the cost of the other method of transportation.” 41 CFR 301-72.2(c) (2012). This rule was promulgated by the Administrator of General Services, not enacted

by Congress. It gives agencies discretion to use “methods of transportation other than common carrier” when appropriate, and (contrary to Mr. Galliard’s belief) does not limit those methods to the examples provided. Government vehicle is a method of transportation other than common carrier; the regulation permits agencies to use such a method. The determination of Customs and Border Protection to authorize that method is thus permissible under the FTR provision in question. It is not illegal and is not even remotely unconstitutional.

The other positions taken by Mr. Galliard in his motion are similarly unpersuasive. For example, his challenge to an agency employee’s declaration as to the availability of government vehicles cannot be accepted for two reasons: first, because it consists of hearsay information whose provider has refused to make a declaration without a subpoena, which is not available in travel cases; and second, because even if the number of available cars was less than noted in the declaration, this does not mean that a car was not available for Mr. Galliard’s trip.

Mr. Galliard has not given us a valid reason to reconsider our decision in this case. Consequently, his motion is denied.

STEPHEN M. DANIELS
Board Judge