UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 12, 2013

CBCA 3404-TRAV

In the Matter of LOUIS V. COSSE, JR.

Louis V. Cosse, Jr., Slidell, LA, Claimant.

Paul W. Tyler, Naval Oceanographic Office, Department of Defense, Stennis Space Center, MS, appearing for Department of the Navy.

WALTERS, Board Judge.

Claimant, Louis V. Cosse, Jr., is a civilian employee of the Department of the Navy, Naval Oceanographic Office. According to the agency, claimant regularly is assigned temporary duty aboard naval ships traveling across open waters that may be docked in foreign ports. It is undisputed that claimant is a member of a collective bargaining unit, the American Federation of Government Employees (AFGE) Local 1028, and that his employment conditions are governed by the terms of a collective bargaining agreement (CBA). It is also undisputed that the CBA provides for reimbursement to employees for hotel costs incurred only after the first forty-eight consecutive hours that the ship is in a port. If employees choose to take hotel rooms at a port within the first forty-eight hours, they do so at their own cost. Meals taken while at the port, however, are reimbursed.

Claimant served on a ship that docked at Sasebo, Japan, for eight days, from August 24 through August 31, 2012, and at Subic Bay, Philippines, for six days, from October 1 through October 6, 2012. It seems that claimant rented hotel rooms within the first forty-eight hours of being docked at each of the two ports. Although there is no dispute either about his not being reimbursed for hotel rental on those occasions or about his having been reimbursed for the cost of meals, claimant disputes the agency's refusal to reimburse him for a total of $40 of "incidental expenses" allegedly incurred by him while staying at the

hotels – $23 on August 25, 2012, and $17 on October 2, 2012. The agency maintains that the "incidental expenses" (e.g., fees and tips given to porters, baggage carriers, hotel staff, etc.) are "inherently associated with an employee's lodging" and that, accordingly, reimbursement of such costs would be precluded by the bar on lodging reimbursement in claimant's CBA. Claimant challenges the agency's interpretation of the CBA, pointing to the provisions for per diem under the Joint Travel Regulations (JTR) and the manner in which the regulations divide an employee's per diem into two components: (1) lodging and (2) meals and incidental expenses (M&IE). In particular, claimant cites to JTR chapter 4, part B, section C4565, Per Diem Computation Examples, Day 9 of Example D.1, where the regulations call for the employee to receive the M&IE component of his per diem, notwithstanding that he would be denied recovery for the lodging component.

It is apparent to the Board that the dispute at issue revolves around the proper interpretation of claimant's CBA. This Board is without authority to resolve such a dispute. Indeed, where an employee's employment conditions are governed by a collective bargaining agreement between a union and agency management, the Civil Service Reform Act mandates that procedures specified within the CBA be the "exclusive administrative procedures for resolving grievances which fall within its coverage." 5 U.S.C. § 7121(a)(1) (2006). The Court of Appeals for the Federal Circuit consistently has held that if a matter is arguably entrusted to a CBA 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). On this basis, both our Board and our predecessor in considering these matters, the General Services Board of Contract Appeals, have dismissed claims the resolution of which is governed by CBA provisions. *Kenneth L. Clemons*, CBCA 3067-TRAV, 13 BCA ¶ 35,305; *John A. Fabrizio*, CBCA 2917-TRAV, 13-1 ¶ 35,199 (2012); *Kelly A. Williams*, CBCA 2840-RELO, 12-2 BCA ¶ 35,116, at 172,438 (and cases cited therein).

Here, article 6 of the CBA Negotiated Grievance Procedure, incorporates the provisions of the Civil Service Reform Act and its definition of "grievance" as "any complaint . . . by any employee . . . concerning . . . the effect or interpretation . . . of this Agreement." The CBA does not carve out an exception, explicit, unambiguous or otherwise, that would exclude from the grievance procedure the instant dispute over the interpretation of the CBA bar to lodging recovery as it applies to the treatment of incidental expenses. Resolution of the dispute thus must be pursued exclusively under the CBA grievance procedure and would not be within the purview or authority of this Board.

Decision

The case is dismissed for lack of jurisdiction.

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RICHARD C. WALTERS
Board Judge