



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

November 7, 2014

CBCA 3799-TRAV

In the Matter of SCOTTIE A. MURRAY

Scottie A. Murray, Fountain, CO, Claimant.

Joel S. Stringer, Director, Human Resource Management, Department of the Army, Quantico, VA, appearing for Department of the Army.

POLLACK, Board Judge.

In August 2013, the Army approved Renewal Agreement Travel (RAT) for Mr. Scottie A. Murray, claimant, a civilian employee of the Army. This approval was in conjunction with Mr. Murray's agreement to extend his then-current tour in Korea.

Congress has established the use of RAT as an incentive for foreign-stationed employees continuing in their foreign posting. RAT provides for a round-trip flight for the employee and his immediate family to their home base in the continental United States (CONUS), before the employee proceeds on the extended tour. Specifically, the statute, 5 USC §5728(a) (2012), provides:

[A]n agency shall pay from its appropriations the expenses of round-trip travel of an employee, and the transportation of his immediate family, but not household goods, from his post of duty outside the continental United States, Alaska, and Hawaii to the place of his actual residence at the time of appointment or transfer to the post of duty, after he has satisfactorily completed an agreed period of service outside the continental United States, Alaska, and Hawaii and is returning to his actual place of residence to take leave before serving another tour of duty at the same or another post of duty outside the continental United States, Alaska, and Hawaii under a new written agreement made before departing from the post of duty.

In this instance, Mr. Murray's approval for the travel called for him exercise his RAT rights in October 2013. He planned to fly to CONUS and stay for thirty-two days. He intended to use accrued annual leave during the time in CONUS, thereby not being without income.

Mr. Murray embarked on his RAT; however, within twenty-four hours of his departure, the October 2013 shutdown of the federal government was instituted. Mr. Murray was contacted by his command. He was told that he could remain in the United States; however, if he did, he would be on a furlough (non-paid) status and, further, he could not access his leave. The other alternative was to return to Korea. For reasons not necessary for this decision, during the Government shutdown, employees such as Mr. Murray who were physically in Korea, were being paid and while in Korea had access to their leave.

Mr. Murray states in his claim that he could not afford to remain in the United States without income for the period. It is undisputed that as long as the shutdown continued, and as long as Mr. Murray remained in CONUS, he would have been on a furlough status and, as such, ineligible for pay or for the use of his leave. At the time, the duration of the furlough was uncertain. Therefore, Mr. Murray returned to Korea.

There is no dispute that the Army paid for the airfare both coming and going. There is also virtually no dispute (as reflected in correspondence from various Army officials) that what happened here essentially nullified the purpose and benefits associated with the RAT entitlement. Put another way, a flight to the United States with a twenty-four hour turn-around was neither what Mr. Murray expected, what the Army intended to give him, nor what the statute contemplated as to RAT travel.

Mr. Murray contends that the Army should be required to grant him a second RAT entitlement, so that he can actually enjoy the time in the United States which was effectively denied to him as a consequence of the Government shutdown. Officials within Mr. Murray's command support his being provided the RAT opportunity that was disrupted. In supporting the reinstatement of the RAT travel, the command points out that, in the end, the travel he earned as an entitlement tied to his overseas extension was wasted and he was not given a fair opportunity to use his RAT travel. Nonetheless, the agency considered its hands tied. It did, however, recommend submission of the matter to the Board. In justifying its decision to not provide Mr. Murray relief, the Army concluded that under the statute and regulations it is required to treat the circumstances here as fulfillment of the RAT incentive, thereby barring it from either reinstating the RAT travel or paying for a substitute. The Army, however, has cited no specific prohibition addressing this situation. Rather, in supporting its position, it has relied on there being no "cure" provision in either the statute or regulation that specifically addresses this situation, and it has also alluded to other

situations (JTR C5586/C5588) where relief to an employee was denied because the added cost was incurred due to an employee taking a voluntary action that the employee did not need to take. The Army has designated Mr. Murray's decision to return to Korea as a comparable voluntary action.

We find that the Army is not barred from taking action so as to fulfill the purpose of the RAT in this instance. The purpose of the statute is clear on its face. Congress intended to provide RAT as an incentive or reward to an employee who agrees to an extension of his tour. The incentive is not simply a flight from point A to B and back, but rather a flight that gives the employee the opportunity to spend time in the CONUS location. Clearly that intent was not achieved here.

Statutes provide broad guidance. Regulations that implement statutes cannot cover each and every circumstance. If a regulation provides a specific prohibition, we are bound by it, regardless of whether we would otherwise have chosen that result. However, where as here, the circumstances and nuances are not specifically addressed and we are dealing with an extraordinary situation (RAT travel during a furlough due to Government closing), we need to be guided by the intent of Congress, as well as common sense and fairness. In this case we find the intent of the statute is clearly to provide an opportunity to fly back to the United States and spend some time at an employee's selected destination. Due to extraordinary circumstances, the claimant did not receive the benefit promised or intended. We find nothing in the regulations or statute that prohibits the Army from allowing Mr. Murray another opportunity, to fulfill the purpose of the RAT program.

We find in favor of Mr. Murray on the claim.

HOWARD A. POLLACK
Board Judge