



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

July 28, 2015

CBCA 4705-TRAV

In the Matter of DANIEL L. KIEFFER

Daniel L. Kieffer, Magnolia, MS, Claimant.

Sylvia A. Shawver, Chief, Audit Support Office, and Shirley L. Autry, Deputy Director, Finance Center, United States Army Corps of Engineers, Millington, TN, appearing for Department of the Army.

LESTER, Board Judge.

Claimant, Daniel L. Kieffer, challenges a demand by the United States Army Corps of Engineers (USACE) for the return of what the agency believes was an overpayment of Mr. Kieffer's lodging costs while on temporary duty (TDY). Because Mr. Kieffer is a member of a bargaining unit, the National Federation of Federal Employees (NFFE), with a collective bargaining agreement (CBA) that does not exempt the type of claim that Mr. Kieffer has presented here, we lack authority to resolve his claim.

Background

The USACE issued orders for Mr. Kieffer to travel on TDY to Port Allen Lock, Louisiana, from his permanent duty station with the New Orleans District in New Orleans, beginning November 10, 2014, and ending January 8, 2015. During his time in Port Allen Lock, Mr. Kieffer stayed at a recreational vehicle (RV) park with a daily lodging cost below \$20. His original travel orders, relying upon Joint Travel Regulation (JTR) 4250 (which became effective November 1, 2014), indicated that he was entitled to a flat rate per diem for long term TDY, which would provide him with a daily lodging reimbursement of \$62.25 and

reimbursement for meals and incidental expenses (M&IE) of \$46 per day. Mr. Kieffer was reimbursed for lodging and M&IE at that flat rate for the time that he spent in Port Allen Lock.

Subsequently, the USACE Finance Center Audit Support Office (Audit Support Office), which is responsible for reviewing travel performed by USACE employees, determined that JTR 4250 did not apply to Mr. Kieffer's situation and that, rather than a flat rate per diem, Mr. Kieffer should have been reimbursed at the regular TDY per diem rate. Recalculating Mr. Kieffer's entitlements under that rate, the Audit Support Office determined that Mr. Kieffer had been overpaid by more than \$1400. The USACE billed Mr. Kieffer to recover this overpayment, and Mr. Kieffer has challenged the demand for repayment.

Discussion

Pursuant to the Civil Service Reform Act (CSRA), 5 U.S.C. § 7121 (2012), matters that are required to be "resolved under the grievance procedures in a CBA will not be subject to review outside those procedures unless a specific exception is set forth in that agreement." *Robert E. Estill*, CBCA 2855-TRAV, 12-2 BCA ¶ 35,160, at 172,543; *see* 5 U.S.C. § 7121(a)(1) ("Except as provided in paragraph (2) of this subsection, any collective bargaining agreement shall provide procedures for the settlement of grievances, including questions of arbitrability," and, "[e]xcept as provided in subsections (d), (e), and (g) of this section, the procedures shall be the exclusive administrative procedures for resolving grievances which fall within its coverage."). "Unless a matter is specifically excluded, it is covered by the provisions of the [CBA]." *Warren Newell*, CBCA 2132-RELO, 10-2 BCA ¶ 34,601, at 170,534.

Article 11 of the applicable CBA between the USACE New Orleans District and the NFFE, of which Mr. Kieffer is a member, establishes a negotiated grievance procedure for the resolution of disputes involving employees. That provision defines a "grievance" in very broad terms:

For the Union, "grievance" means any complaint by any employee concerning any matter relating to the employment of the employee, or any complaint by the Union concerning any matter relating to the employment of any employee, or any complaint by any employee or the Union concerning the effect or interpretation, or a claim of breach of a collective bargaining agreement, or any claimed violation, misinterpretation, or misapplication.

CBA § 11.2(b). Any employee grievance, as that term is defined in article 11, must "follow the rules, guidelines and procedures of the District's Administrative Grievance System

described in DR 690-1-771,” except that the NFFE may also elect the additional step of arbitration. *Id.* § 11.2(a). If the parties cannot “agree as to whether a grievance is subject to the negotiated grievance procedure, the question will be referred to an arbitrator for resolution,” which will be governed by the procedures for arbitration set forth in article 12 of the CBA. *Id.* § 11.6. Because the CBA includes requirements for “[p]ay while traveling and per diem” for covered employees, *id.* § 24.1, it is quite clear that disputes about travel and per diem are encompassed within article 11’s grievance procedures.

We have repeatedly recognized that, where an employee is subject to the grievance procedures in a CBA that does not explicitly exclude the type of claim at issue, the Board lacks authority to consider the employee’s claim:

[W]here 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 procedure for resolving grievances which fall within its coverage.” 5 U.S.C. § 7121(a)(1) (2006). The United States Court of Appeals for the Federal Circuit consistently has held that if a matter is entrusted to a CBA grievance procedure, no review outside the 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).

Derrick E. Clemons, Sr., CBCA 4412-RELO, 15-1 BCA ¶ 35,973, at 175,751 (quoting *Louis V. Cosse, Jr.*, CBCA 3404-TRAV, 13 BCA ¶ 35,385, at 173,630); see *Devang I. Thaker*, CBCA 3994-RELO, 14-1 BCA ¶ 35,764, at 174,988 (“Statute commands that the grievance procedures in any collective bargaining agreement involving federal employees be ‘the exclusive administrative procedures for resolving grievances which fall within [their] coverage.’” (quoting 5 U.S.C. § 7121(a)(1)); *Estill*, 12-2 BCA at 172,543 (“this Board lacks authority to decide a travel or relocation claim brought by an employee who is subject to the grievance procedure in a CBA unless that agreement explicitly excludes such claims from that grievance procedure”).

Here, the CBA applicable to Mr. Kieffer’s bargaining unit not only does not explicitly exclude travel pay claims from the scope of its grievance procedures, it expressly encompasses them. Accordingly, “we lack authority to settle the claim or render a ruling on the merits.” *Clemons*, 15-1 BCA at 175,751.

Decision

For the foregoing reasons, this case is dismissed.

HAROLD D. LESTER, JR.
Board Judge