



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

May 6, 2015

CBCA 4412-RELO

In the Matter of DERRICK E. CLEMONS, SR.

Derrick E. Clemons, Aberdeen Proving Ground, MD, Claimant.

Erik J. Feustel, Administrative Law Attorney, Army Installation Management Command, Department of the Army, Aberdeen Proving Ground, MD, appearing for Department of the Army.

POLLACK, Board Judge.

Derrick E. Clemons, Sr. is an employee of Army Installation Management Command, Aberdeen Proving Ground, Maryland (agency). The claimant contests the agency decision to deny him costs associated with his purchase of a home as part of a permanent relocation in June 2014.

In responding to this claim, the agency has submitted information that the claimant is represented by the American Federation of Government Employees and as such is subject to a collective bargaining agreement (CBA) in place between that entity and his agency at the time of the relocation. The agency has asked that the case be dismissed, asserting that any remedy available to Mr. Clemons must be under the CBA provisions. The CBA provides at article 20, sections 1 and 2, that it is the exclusive procedure available to employees for the processing, resolving, and settlement of grievances that fall within its scope. A grievance is defined as any valid complaint by an employee concerning any matter related to his or her employment. It further covers any valid complaint by an employee concerning a claimed violation, misinterpretation, or misapplication of law, rule, or regulation affecting conditions of employment. Section 3 of the agreement identifies matters that are excluded from the grievance procedure. Matters involving relocation reimbursement are not excluded.

There is no dispute that Mr. Clemons is a non-dues-paying member of the bargaining unit. That he is non-dues paying does not change the fact that the agreement is applicable to employees, such as him, who fall under its auspices. Our rulings are consistent — where there is a CBA in place that covers the employee, absent specific exclusions, that agreement provides the sole administrative procedure for the processing and disposition of grievances, including matters such as this involving relocation costs. *Kenneth L. Clemons*, CBCA 3067-TRAV, 13 BCA ¶ 35,305; *Kelly A. Williams*, CBCA 2840-RELO, 12-2 BCA ¶ 35,116; *Todd Maniscalki*, CBCA 2665-RELO, 12-1 BCA ¶ 34,981; *Robert Stanislaw*, CBCA 1503-RELO, 09-2 BCA ¶ 34,193.

As this Board recently pointed out in *Louis V. Cosse, Jr.*, CBCA 3404-TRAV, 13 BCA ¶ 35,385,

[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. *Dunkleberger 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).

Id. at 173,630

Consistent with the above, we must dismiss this action, as we lack authority to settle the claim or render a ruling on the merits.

Decision

The case is dismissed.

HOWARD A. POLLACK
Board Judge