



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

July 1, 2015

CBCA 4752-TRAV

In the Matter of RONALD D. AYLOR

Ronald D. Aylor, Wakefield, KS, Claimant.

Thomas S. Spahr, Director, Travel Functional Area, Enterprise Solutions and Standards, Defense Finance and Accounting Service, Indianapolis, IN, appearing for Department of Defense.

WALTERS, Board Judge.

Claimant, Ronald D. Aylor, a civilian employee of the Department of Defense, chose to use a personally owned vehicle (POV) for official temporary duty (TDY) travel in lieu of flying, the mode of transportation specified in his travel orders. Because driving was more expensive than flying, the Defense Finance and Accounting Service (DFAS) limited his travel reimbursement for actual costs expended to a lower constructed cost of using air transportation. DFAS acknowledges that Mr. Aylor would have incurred and been reimbursed for the round trip mileage of his POV to and from the airport, had he flown to the TDY location. Nevertheless, when calculating the constructed cost, i.e., the limit on actual cost recovery, it included the airfare expense but refused to include the cost associated with round trip mileage to and from the airport (sixty-eight miles round trip – at a cost of \$39.10) or the cost of any other form of transportation to and from the airport. Claimant sought to have the constructed cost raised to include that minor amount of mileage-related cost. Increasing the constructed cost in this manner would translate to his being reimbursed for an additional \$39.10 of the actual cost he expended using his POV.

DFAS submitted this matter for the Board's review on behalf of Mr. Aylor, and subsequently, Mr. Aylor indicated that he would like the Board to determine whether he

should be reimbursed for the mileage in question.¹ As explained below, we grant Mr. Aylor's claim.

Discussion

The sole basis for the agency's refusal to provide reimbursement for the POV mileage here is the following provision of the Joint Travel Regulations (JTR):

If a traveler elects to use a POC [POC, personally owned conveyance, is the same as POV] instead of the authorized transportation mode (other than GOV), reimbursement must be limited to the authorized transportation mode constructed cost, which is the sum of per diem and the transportation cost the Gov't would have incurred if travel was performed by the authorized transportation mode. ***No other costs are added to the computation. Reimbursable expenses associated with driving a POC (e.g., parking, tolls) and incurred during travel between the PDS and TDY location are not authorized.***

JTR 4710-C. DFAS places great emphasis on the above-italicized language of the last two sentences of the provision, and concludes that it has "no regulatory authority to reimburse Mr. Aylor for mileage reimbursement."

We disagree. Authority for such reimbursement is found in section 301-10.309 of the Federal Travel Regulation (FTR), 41 CFR 301-10.309 (2013) ("You will be reimbursed on a mileage basis, plus per diem, not to exceed the total constructive cost of the authorized method of common carrier transportation plus per diem."). The Board previously addressed JTR 4710-C in the context of that FTR provision, found the language in the last two sentences of JTR 4710-C to be at odds with the FTR, and observed that such language must "give way" to the FTR, since, unlike the JTR, the FTR is a "legislative rule" that "trumps" the JTR. We specifically held that the term "authorized transportation mode constructive cost" in the first part of JTR 4710-C must be read to take into consideration "*all* the costs that a traveler would incur if he traveled by that authorized mode," and that, because the above-quoted language of the last two sentences of JTR 4710-C is "unfaithful to the FTR," it "deserves no credence." *Stephen M. England*, CBCA 3903-TRAV, 15-1 BCA ¶ 35,870, at 175,368. Here, DFAS concedes, had Mr. Aylor flown to his TDY assignment, using the

¹ In submitting this matter, DFAS indicated that it no longer disputed Mr. Aylor's claim for the reimbursement of a commercial travel office (CTO) fee in the amount of \$18.20, and would arrange directly with Mr. Aylor to make payment of that amount to him.

“authorized transportation mode,” he would have been reimbursed \$39.10 for his POV mileage to and from the airport. Its computation of the “authorized transportation mode constructive cost” thus properly should have included that mileage related cost.

Decision

The claim is granted. Mr. Aylor should be paid the \$39.10.

RICHARD C. WALTERS
Board Judge