



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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February 3, 2016

CBCA 5055-TRAV

In the Matter of ROBERT A. CHERRY

Robert A. Cherry, Albuquerque, NM, Claimant.

Francine M. Chavez-Piaso, Supervisory Auditor, Office of Trust Review and Audit, Office of the Special Trustee for American Indians, Department of the Interior, Albuquerque, NM, appearing for Department of the Interior.

**DANIELS**, Board Judge (Chairman).

This case poses the question, should the employee, who drove his privately owned vehicle (POV) while on temporary duty, be reimbursed for his vehicle expenses at the mileage rate established for POVs or the mileage rate established for government-furnished vehicles (GOVs)?

Background

The Department of the Interior (DOI) directed Robert A. Cherry to travel from Albuquerque, New Mexico, to Denver, Colorado, for training in October 2015. The agency determined that the most advantageous method of travel for this trip was by airline. Mr. Cherry proposed that he drive his POV instead of flying. His supervisor calculated the actual cost Mr. Cherry would incur in driving and the constructive cost he would incur if he traveled by air, compared the two, and advised him that the agency would limit reimbursement to the constructive cost of air travel, which was lower.

Later, the supervisor wrote to him, "I have reserved a GSA [General Services Administration] Vehicle for your trip to attend training in Denver . . . . You are authorized

to use a GOV to attend training. If you prefer to use a POV, you will use the lower GOV mileage rate.”

Mr. Cherry drove his POV to Denver and was reimbursed for his vehicle expenses at the mileage rate for GOVs.

### Discussion

The Federal Travel Regulation (FTR) contains a section which bears directly on the question presented:

#### **What will I be reimbursed if I am authorized to use a Government-furnished automobile and I use a privately owned automobile instead?**

You will be reimbursed based on a constructive mileage rate limited to the cost that would be incurred for use of a Government-furnished automobile.

41 CFR 301-10.310 (2015).<sup>1</sup> Because Mr. Cherry was authorized to use a GOV and used his POV instead, the agency properly reimbursed him at the mileage rate appropriate for the use of a GOV.

Mr. Cherry does not view the case as so simply resolved. He points out that the agency initially determined that the most advantageous method of travel for his trip was by air, and the agency made a cost comparison involving travel by air and travel by POV. These actions, he believes, citing 41 CFR 301-10.309, entitle him to receive the lower of the two compared costs. This FTR section states that if an employee is authorized to use common carrier transportation or a rental vehicle while on temporary duty and uses a POV instead, he “will be reimbursed the applicable POV rate on a mileage basis, . . . not to exceed the total constructive cost of the authorized method of common carrier transportation.” For support, Mr. Cherry notes that in two previous cases in which employees had driven their POVs while on official travel, reimbursement was authorized at the POV mileage rate, although the agencies had attempted to limit it to the GOV rate. The cases he cites are *Robert A. Cherry*,

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<sup>1</sup> The section also establishes an exception to this rule: “If [the] agency determines the cost of providing a Government-furnished automobile would be higher because of unusual circumstances, it may allow reimbursement not to exceed the mileage rate for a privately owned automobile.” Neither Mr. Cherry nor his agency has suggested that this exception is applicable here.

CBCA 3878-TRAV, 14-1 BCA ¶ 35,707 (involving a claim he brought), and *Gregory A. Andrews*, GSBCA 16360-TRAV, 04-2 BCA ¶ 32,683.

Neither of the cases cited by Mr. Cherry dictates the result he seeks here. Unlike the situation in the case before us, the employees there were not authorized to travel by automobile and their agencies did not make GOVs available to them before they traveled. The agency's authorization to Mr. Cherry to use a GOV makes FTR section 301-10.309 irrelevant to a resolution of this case. Where an agency authorizes an employee to use a GOV for travel and he uses a POV instead, section 301-10.310 says that with an exception not relevant here, the mileage rate will be the one established for use of a GOV.

### Decision

The claim is denied.

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STEPHEN M. DANIELS  
Board Judge