



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

April 13, 2016

CBCA 4340-TRAV

In the Matter of SUZANNE R. SINNO

Suzanne R. Sinno, Washington, DC, Claimant.

Kathryn Bendoraitis and David J. Taube, Ethics and General Government Law Branch, General Legal Services, Office of Chief Counsel, Internal Revenue Service, Washington, DC, appearing for Department of the Treasury.

DANIELS, Board Judge (Chairman).

The Internal Revenue Service (IRS) required one of its employees, Suzanne R. Sinno, to change her airline reservations for an official business trip. The change imposed additional costs on Ms. Sinno because, due to her compliance with provisions of the IRS City-to-City Travel Guide, she had paid for the reservations herself. The agency has reimbursed the employee for only a portion of the extra costs she incurred. The employee asks us to direct the agency to pay the remainder of the extra costs. We find for the employee.

Background

Ms. Sinno was originally directed to travel from Washington, D.C., to San Diego, California, to assist with the IRS's San Diego Tax Forum from July 15 to 17, 2014. She made airline reservations for this trip on June 27. She planned to fly from Washington to San Diego on July 15, visit a friend in Las Vegas, Nevada, after the tax forum had concluded, and fly back to Washington from Las Vegas on July 20. Airfare for a round-trip ticket from Washington to San Diego was more expensive than airfare for the trip Ms. Sinno planned, so the IRS agreed to pay for all of her airfare.

Shortly before the tax forum was to begin, a relative of one of Ms. Sinno's co-workers passed away. Their supervisor directed Ms. Sinno to fly to San Diego a day earlier than expected, on July 14, and arrive in San Diego sufficiently early on that day to participate in an afternoon meeting there, so as to substitute for the co-worker.

A representative of the IRS's travel management center (TMC), CWTSato Travel (Sato), informed Ms. Sinno that because she had paid for her airline tickets personally, she would have to pay a \$200 cancellation fee to change her reservation. She asked the IRS to reimburse her for this fee. At 3:51 p.m. on the last business day before July 14, the IRS agreed to do so. The agency's reasoning was as follows: "Since the [maximum] contract fair [sic] is \$399.00 each way for a total of \$798.00, you may be reimbursed for your entire airfare in the amount of \$545.50 and the change fee of \$200.00 for a total of \$745.50 since this cost is less than the contract fare."

Ms. Sinno then called Sato to change her reservations. Sato ticketed her on a flight from Washington to San Diego on July 14 at a cost of \$963 (rather than the previous \$331.50) and on the same flight on which she was originally booked from Las Vegas to Washington on July 20 at a cost of \$638 (rather than the previous \$214). The IRS and Sato maintain that the difference in the cost of the flight west resulted from Ms. Sinno's having insisted on taking a particular flight, which was not on a carrier that had a contract with the Government for this route. Ms. Sinno says that she did no such thing; she asked only to be put on a flight which would get her to San Diego in sufficient time to participate in the afternoon meeting she was directed to attend. The IRS and Sato tell us that the difference in the cost of the flight east resulted from a difference in fares charged by the carrier on the dates on which the two reservations were made.

After returning from this trip, Ms. Sinno claimed entitlement to reimbursement of the entire cost of her airfare, \$1601, plus Sato's fee for making the change in reservations, \$30. The agency responded, "The IRS has reimbursed you for official travel . . . in the amount of \$798.00. We do not have authority to reimburse you an additional \$833.00 for adding on a personnel [sic] trip."

Discussion

The IRS acknowledges that, in the agency's words, "the change to Ms. Sinno's travel plans was due to agency need." "[T]he cost of that change," however, says the agency, "was due to her personal choice to travel by an indirect route." Her decision to travel home from a location other than San Diego meant that her flights had to be ticketed as "leisure in conjunction with official travel," or LICWO. "Thus the high costs associated with the

change to Ms. Sinno's reservation were due to the fact that it was a LICWO booking, which was the result of Ms. Sinno's choice to travel by an indirect route for personal reasons."

The requirement for LICWO booking is prescribed by the IRS City-to-City Travel Guide. This guide imposes considerable burdens on employees who wish to deviate from the agency's directions when traveling on official business. The guide says, "If you would like to combine personal travel with official travel and go to multiple locations, you must contact the TMC agent for assistance." The TMC is then to "book the official travel fare from your official station to the TDY [temporary duty] location and return to your official station" and give the employee two options: either "exchange the ticket for a leisure fare for the entire itinerary," or "add a leisure fare from the TDY location to the leisure destination back to the TDY location." The guide further provides, "If you want to make other arrangements, you need to ask the TMC to issue the official ticket early and go directly to the airline for an exchange or reissue."

These impositions are required by neither the governing Federal Travel Regulation (FTR) nor the contract under which Sato functioned as the IRS's TMC during the time of Ms. Sinno's travel. The FTR simply informs employees that "[y]our agency will not pay for excess costs resulting from circuitous routes, delays, or luxury accommodations or services unnecessary or unjustified in the performance of official business." 41 CFR 301-2.4 (2014). The regulation adds, with particular reference to Ms. Sinno's situation, "What is my liability if, for personal convenience, I travel by an indirect route or interrupt travel by a direct route? Your reimbursement will be limited to the cost of travel by a direct route or on an uninterrupted basis. You will be responsible for any additional costs." *Id.* 301-10.8.

The provisions of the FTR are of critical importance because the FTR is a legislative rule. As we have often explained, such a regulation is one –

issued under express authority from Congress, for the purpose of affecting individual rights and obligations by filling gaps left by a statute, after following the Administrative Procedure Act's notice and comment provisions. It therefore has controlling weight – the force of law – unless the provision in question is arbitrary, capricious, or manifestly contrary to statute. Any agency rule which is inconsistent with an FTR provision is consequently trumped by the FTR and must give way.

Kevin D. Reynolds, CBCA 2201-RELO, 11-1 BCA ¶ 34,756 (citing cases); *see* 5 U.S.C. § 5707(a) (2012) (authorizing the Administrator of General Services to promulgate the FTR).

The contract between Sato and the General Services Administration, under which the IRS placed a delivery order which was in effect when Ms. Sinno traveled, is consistent with the FTR as to payment by employees for additional costs of travel by circuitous or indirect routes. It does not contemplate the impositions of the IRS Travel Guide. The contract merely gives Sato the “ability to plan and book leisure (personal) travel conducted in conjunction with official travel,” as long as three conditions exist: “[l]eisure travel services are provided at no cost to the Government”; “[t]ravelers cannot book City-Pair or other Government-negotiated fares (which are not authorized for personal use) for leisure travel”; and “[a] method for direct payment by the traveler is provided for personal travel.”

Both the FTR and the Sato contract thus envision that while an employee may use the services of Sato to book leisure travel which is conducted in conjunction with official travel, the employee will have to pay personally for the leisure travel and will be reimbursed for it to the extent of the costs which would have been incurred if the employee had traveled solely for official purposes. Neither the FTR nor the Sato contract contemplates that an employee who wishes to combine leisure travel with official travel will have to pay for the official travel personally or pay additional sums for official travel if an agency requires a change in official travel plans.

The increase in the cost of Ms. Sinno’s travel from Washington to San Diego was caused by two IRS actions. First, the agency supervisor decided to have Ms. Sinno make a last-minute change in plans to arrive in San Diego a day earlier than planned and at an early hour on that day. We credit Ms. Sinno’s explanation that she requested that Sato put her on a flight that would meet the supervisor’s requirements; any suggestion to the contrary in Sato notes is likely, we find, to have been the result of a misunderstanding by Sato personnel. Second, the IRS Travel Guide required that even though this travel was for official business, the ticket be purchased by the employee for leisure travel, which precluded the use of the city-pair contracts negotiated by GSA. *See* 41 CFR 301-10 subpt. B. The cost of official travel, per the FTR, should have been paid by the agency, using a city-pair contract unless otherwise authorized by the FTR. The IRS Travel Guide provisions to the contrary are not consistent with the governing regulation and therefore may not be given effect.

The increase in the cost of Ms. Sinno’s return from Las Vegas to Washington was caused as well by an IRS action. Had the Travel Guide not required that employees who link leisure travel to official travel purchase tickets for both portions of a trip as a package – a choice not sanctioned by the FTR – Ms. Sinno could have traveled home on the ticket she originally bought, notwithstanding the need to fly to San Diego earlier than planned. We agree with the IRS that if an employee purchases a ticket for leisure travel, expecting that the trip will be linked with official travel, and the official travel is canceled, the employee is still responsible for the cost of the leisure travel ticket. Thus, if the agency had canceled Ms.

Sinno's trip to San Diego after she had purchased a ticket from Las Vegas to Washington, she would have no recourse against the agency for the cost of that ticket. But this does not mean that if an agency modifies the official travel portion of a trip, with no impact on the leisure travel portion, the employee must pay the higher cost of the leisure travel ticket at the time of modification.

Decision

The claim is granted. The IRS shall pay to Ms. Sinno the additional cost of her trip which resulted from agency actions which are inconsistent with FTR provisions, \$833.

STEPHEN M. DANIELS
Board Judge