UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

June 30, 2016

CBCA 5218-TRAV

In the Matter of ANDREW RECTOR

Andrew Rector, Brownsville, OR, Claimant.

Jeremy Roper, Lead Financial Specialist, Office of the Chief Financial Officer, Department of Agriculture, Beltsville, MD, appearing for Department of Agriculture.

SHERIDAN, Board Judge.

Claimant, a consumer safety inspector for the Food Safety and Inspection Service (FSIS or agency), Department of Agriculture, contests the agency's denial of compensation of a $42 service fee from AirBnB.

After reviewing the claim filed by Mr. Rector, the Board noted that he appeared to be a bargaining unit employee covered under a collective bargaining agreement between the FSIS and the National Joint Council of the Food Inspection Locals, American Federation of Government Employees, AFL-CIO. The agency provided a copy of the collective bargaining agreement. In an order issued on May 2, 2016, the Board discussed the case law pertinent to the scope of its authority in travel and relocation cases as they apply to employees covered by collective bargaining agreements. Claimant was ordered to explain to why the case law did not apply to him, but he did not respond to the Board's order.

Discussion

As we recently pointed out in *Nathan Patrick*, CBCA 4999-RELO, 16-1 BCA ¶ 36,341, at 177,196:

> By statute, the grievance procedures in a collective bargaining agreement applicable to a claim of a covered federal employee shall be "the exclusive administrative procedures for resolving grievances which fall within its

> coverage." 5 U.S.C. § 7121(a)(1) (2012). The United States Court of Appeals for the Federal Circuit consistently has held that if a matter is arguably entrusted to a collective bargaining agreement's grievance procedures, no review outside those procedures may take place, unless the parties to the agreement have explicitly and unambiguously excluded that matter from the procedures. *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); *see also, e.g.*, *Walter S. Hammermeister*, CBCA 4891-RELO, 16-1 BCA ¶ 36,194 (2015); *Daniel L. Kieffer*, CBCA 4705-TRAV, 15-1 BCA ¶ 36,050.

The collective bargaining agreement covering claimant includes a grievance procedure set forth in article 33 which provides:

> **Section 1. Purpose**
>
> The purpose of this Article is to provide a fair and mutually acceptable method for the prompt and equitable settlement of grievances filed by an employee(s), the Union or the Agency. This negotiated grievance procedure shall be the exclusive procedure available to the parties to this Agreement and bargaining unit employees for resolving grievances as hereinafter defined except as specifically provided in Section 2 of this Article.

Section 2 of article 33 enumerates eight employment matters that are excluded from the negotiated grievance procedure. None of the itemized exclusions relate to claims arising out of an employee's travel.

We also noted in *Nathan Patrick*, at 177,196 that:

> The Board has held that language making the grievance procedures applicable to a disagreement involving the interpretation of any law, rule, or regulation affecting "conditions of employment" subsumes travel and relocation expenses unless the collective bargaining agreement specifically provides otherwise.

Because claimant is covered by a collective bargaining agreement that does not explicitly and clearly exclude his claim from the mandatory grievance procedures for resolving disputes between the employee and the agency, the Board lacks authority to consider Mr. Rector's claim.

Decision

For the foregoing reasons, the claim is dismissed.

PATRICIA J. SHERIDAN
Board Judge