



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

May 17, 2016

CBCA 5164-RELO

In the Matter of MARTINO H. NGUYEN

Martino H. Nguyen, Portsmouth, VA, Claimant.

Gilbert E. Teal, II, Office of General Counsel, Norfolk Naval Shipyard, Department of the Navy, Portsmouth, VA, appearing for Department of the Navy.

SOMERS, Board Judge.

The Department of the Navy (the agency or Navy) transferred claimant, Martino H. Nguyen, from San Diego, California, to Norfolk, Virginia. Mr. Nguyen sold his residence in California in March 2015 and purchased a residence in Virginia in May 2015. Mr. Nguyen signed a transportation agreement with the Navy in conjunction with his transfer on June 6, 2015. On June 19, 2015, the Navy issued permanent change of station (PCS) orders to Mr. Nguyen.

In August 2015, Mr. Nguyen submitted a claim for reimbursement of PCS expenses of \$16,884 for the purchase of his new residence and \$4,852.84 for the sale of his former residence. The agency denied his claim because Mr. Nguyen incurred these expenses before receiving official PCS orders. Mr. Nguyen appealed to the Board.

In response to the appeal, the agency asserts that Mr. Nguyen is a bargaining unit employee covered under a collective bargaining agreement between the Norfolk Naval Shipyard and the International Federation of Professional and Technical Engineers, Local No. 1. As such, the agency contends that Mr. Nguyen must pursue his remedies through the procedures set forth in the collective bargaining agreement.

Discussion

Pursuant to 5 U.S.C. § 7121(a)(1) (2012), 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.” We cannot review claims that are entrusted to these procedures unless the parties have explicitly and unambiguously excluded that matter from the procedures. *Nathan Patrick*, CBCA 4999-RELO, slip op. at 1 (April 7, 2016) (citing *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)).

The collective bargaining agreement under which Mr. Nguyen is a covered employee sets forth, in article 21, a detailed negotiated grievance procedure which “is the exclusive procedure available to the Union, the Employer, and to the employees in the bargaining unit for the resolution of grievances.” The agreement defines a grievance as “any complaint”

(a) by any employee concerning any matter relating to the employment of the employee;

....

(c) by any employee, labor organization, or agency concerning—

1. the effect or interpretation, or a claim of breach, of a collective bargaining agreement; or
2. any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.

The collective bargaining agreement expressly excludes various employment matters from the negotiated grievance procedures in Appendix A to the agreement. None of these itemized exclusions relate to claims arising out of an employee’s relocation by the agency. 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. *Nathan Patrick*, slip op. at 2, (citing *John A. Fabrizio*, CBCA 2917-TRAV, 13 BCA ¶ 35,199 (2012); *Kelly A. Williams*, CBCA 2840-RELO, 12-2 BCA ¶ 35,116; *Robert Gamble*, CBCA 1854-TRAV, et al., 11-1 BCA ¶ 34,655; *Thomas F. Cadwallader*, CBCA 1442-RELO, 09-1 BCA ¶ 34,077; *Roy*

Burrell, GSBCA 15717-RELO, 02-2 BCA ¶ 31,860). Because claimant is covered under a collective bargaining agreement that does not explicitly and clearly exclude the claim from the mandatory grievance procedures for resolving disputes between the employee and the agency, the Board lacks authority to consider Mr. Nguyen's claim.¹

Decision

For the foregoing reasons, the claim is dismissed.

JERI KAYLENE SOMERS
Board Judge

¹ The agency argues, as a alternative, that Mr. Nguyen's claim must be denied because he sold and purchased his real estate before the Navy had manifested its clear administrative intent to transfer the employee. Because we find that the collective bargaining agreement governs Mr. Nguyen's claim, we do not address the alternative argument.