



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

February 23, 2018

CBCA 5776-TRAV

In the Matter of MICHAEL P. STRAND

Michael P. Strand, Panama City, FL, Claimant.

Pamela A. Rollins, Comptroller, Naval Surface Warfare Center, Department of the Navy, Panama City, FL, appearing for Department of the Navy.

O'ROURKE, Board Judge.

Background

In July 2016, Dr. Michael Strand, a civilian employee at the Naval Surface Warfare Center in Panama City, Florida, traveled to Norfolk, Virginia, on official business. His travel orders authorized round-trip airfare from Panama City to Norfolk, as well as various taxi fares. For personal convenience, Dr. Strand drove his personal vehicle to Tampa and performed his round-trip travel from there.

On September 22, 2016, Dr. Strand submitted a voucher for reimbursement of his travel expenses. Since he did not utilize the usual and direct route authorized by his orders, but instead traveled a circuitous route, Dr. Strand was required to seek reimbursement based on the constructive cost of his travel, which he did by including with his voucher a constructed travel worksheet (CTW).¹ The CTW listed taxi fares to and from the Panama City airport, for a total cost of \$100. The agency rejected the voucher, stating that “[t]axi fares are not included in CTW” The agency told him to revise the voucher and resubmit it. On September 23, 2016, Dr. Strand resubmitted his voucher as instructed, but notified the

¹ Dr. Strand’s actual cost of travel was greater than the amount claimed in the CTW.

agency he was disputing the denial of the taxi fares. The agency provided Dr. Strand with the JTR references supporting its denial. He responded by pointing out the inconsistencies between the JTR provisions relied on by the agency, and the corresponding provisions in the FTR. He also identified CBCA cases that supported his interpretation. The agency then agreed to further process the taxi fares for payment.²

About thirty minutes later, however, the agency's lead travel administrator informed Dr. Strand that:

I have consulted an expert on this travel. In fact, we cannot approve the taxi fare. . . . My expert has worked with travel and DTS [Defense Travel System] since its inception. He has been to numerous FTR/JTR classes in DC where the instructors repeatedly made clear that the JTR trumps [sic] FTR regarding DoD travel. If you wish to pursue a claim with CBCA please do.

Dr. Strand responded:

Can you or your travel expert provide any documentation that the JTR trumps the FTR regarding DoD travel? I fear he has this backwards. The JTR states that it gets its authority from the FTR. It further states that civilians may appeal travel cases to the CBCA. CBCA decisions repeatedly state that the FTR trumps the JTR.

The agency did not respond with the requested documentation. On September 27, 2016, the agency paid Dr. Strand's travel voucher in the amount of \$1088.23, which did not include the \$100 constructive cost claim for taxi fares. On June 26, 2017, Dr. Strand filed a request for review of the claim at the CBCA. In addition to the taxi fares, the claim included two late payment fees—one for interest accrued on the claim and the other for late payment charges the credit card company could have assessed on the unpaid balance had he not paid the bill out of his own pocket.

On July 24, 2017, the agency submitted a response to Dr. Strand's claims to the Board. The agency acknowledged that he was entitled to full reimbursement of the taxi fares, as well

² Both block 16 of Dr. Strand's travel orders and page 6 of the DTS authorization itself, contain the following remarks: "If any statement in the authorization conflicts with the JTR, the JTR prevails. If the FTR and JTR are in conflict, the FTR prevails." It does not appear that the comptroller representative or the DTS expert understood these remarks when initially reviewing the voucher.

as one late payment since the initial claim for the taxi fares was proper. However, it disagreed with the second late payment fee, reasoning that since the charges on his government travel credit card (GTCC) for the original, authorized travel route were timely reimbursed, no late charges could have been assessed against his GTCC account. The agency did not address a late payment fee potentially owed to Dr. Strand's personal credit card.

In his reply, Dr. Strand argued that the relevant FTR provision does not limit late payment fees to the GTCC. He explained that personal convenience circuitous route travel does not permit use of the GTCC, so he charged his airfare to his personal credit card, which could have been assessed such fees had he not paid the bill himself. Information about late payment fees under the terms and conditions of Dr. Strand's personal credit card was not provided with his reply.

Discussion

The agency has now conceded that the \$100 in taxi fares should have been included in the calculation of Dr. Strand's constructive travel costs. The agency also acknowledged that one of the late payment fees is owed. It is unclear, therefore, why those claims remain unpaid. To the extent that the agency has doubts about its liability or is waiting for the Board's decision on those claims, we briefly address them here.

Calculation of Constructed³ Travel Costs Under the JTR

At the time of Dr. Strand's temporary duty (TDY) to Norfolk, JTR 4710-C governed the calculation of constructed travel costs for circuitous route travel. That provision limited reimbursement 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 [privately owned conveyance] (e.g. parking, tolls) and incurred during travel between the PDS [permanent duty station] and TDY location are not authorized.***

³ The word "constructed" is used in the JTR, whereas the FTR uses the word "constructive."

Calculation of Constructive Travel Costs Under the FTR

The relevant FTR provision remains 41 CFR 301-10.309, which states:

What will I be reimbursed if I am authorized to use common carrier transportation or a rental vehicle and I use a POV [privately owned vehicle] instead?

You will be reimbursed the applicable POV [personally owned vehicle] rate 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.

When calculating the total constructive cost of the authorized transportation mode, the Board previously determined that an agency must consider “*all* the costs that a traveler would incur if he traveled by that authorized mode.” *Stephen M. England*, CBCA 3903-TRAV, 15-1 BCA ¶ 35,870, at 175,368. Here, the taxi fares were authorized on Dr. Strand’s orders. Had he actually flown to Norfolk from Panama City, instead of from Tampa, he would have taken a taxi to get to and from the Panama City airport. This is why the taxi fares were properly included in the calculation of the constructed cost of his travel and should be reimbursed.

Resolving Conflicts Between the JTR and the FTR

The Board has repeatedly found that when a conflict exists between the JTR and the FTR, the relevant provisions of the JTR must “‘give way’ to the FTR, since, unlike the JTR, the FTR is a ‘legislative rule’ that ‘trumps’ the JTR.” *Ronald D. Aylor*, CBCA 4752-TRAV, 15-1 BCA ¶ 36,028, at 175,984. When calculating constructed travel costs, the Board also determined that “the last two sentences of JTR 4710-C,” are “unfaithful to the FTR” and “deserve[] no credence.” *Id.* In this case, those sentences are not relevant. The JTR and the FTR are, in fact, consistent. The perceived conflict arose because of the comptroller’s misreading of the JTR. The cost of the taxi fares is, therefore, properly included in the constructive cost calculation.

In its response, the agency requested that the Board pursue having changes made to the FTR and JTR so that they are “clear and in alignment with the Board’s prior rulings.” While we can appreciate the frustration that agency officials experience when provisions of the JTR conflict with the FTR, the Board has no authority to modify those regulations. Our role is to interpret statutes and regulations in order to resolve disputes. Our many opinions that address conflicts between the JTR and FTR serve to assist agencies in determining entitlement to travel benefits. “Tribunals write decisions not only to resolve particular

disputes before them, but also to provide parties with advice which can be applied to similar situations in the future, so that additional disputes can be avoided.” *Lori L. Brattin*, CBCA 2831-TRAV, 12-2 BCA ¶ 35,121, at 172,448.

Late Payment Fees

Section 301-71.210 of the FTR addresses the issue of late payment fees. It provides:

How do we calculate late payment fees?

Late payment fees are calculated either by:

- (a) Using the prevailing Prompt Payment Act Interest Rate beginning on the 31st day after submission of a proper travel claim and ending on the date on which payment is made; or
- (b) A flat fee, of not less than the prompt payment amount, based on an agencywide average of travel claim payments; and
- (c) In addition to the fee required by paragraphs (a) and (b) of this section, you must also pay an amount equivalent to any late payment charge that the card contractor would have been able to charge had the employee not paid the bill. Payment of this additional fee will be based upon the effective date that a late payment charge would have been allowed under the agreement between the employee and the card contractor.

The agency conceded that Dr. Strand should be paid a late fee in accordance with section paragraph (a) above. It disagreed, however, that he is entitled to payment of a late fee under paragraph (c). The agency’s position is that the charges on his GTCC for the original, authorized travel route were timely reimbursed, such that no late charges could have been assessed against his GTCC account. Since Dr. Strand referenced his GTCC in his claim—not his personal credit card—the agency’s response was reasonably limited to a potential late charge to his GTCC. However, in his August 28, 2017, reply to the agency’s response, Dr. Strand further elaborated:

The \$100 from claim 1 was due to me within 30 days of my submission of a proper voucher (22 September 2016), whereupon it would be used to pay, in part, my \$816.20 [airfare charged] to my personal credit card company. Because my agency improperly denied me this payment, I had to use personal funds to pay this debt to avoid incurring late payment charges from my personal

credit card company. While I can find no CBCA decisions addressing this issue, it appears to me that the wording of FTR Section 301-71-210 does not restrict payment of “an amount equivalent to any late payment charge that the card contractor would have been able to charge had the employee not paid the bill” exclusively to the case where the late payment would be due to the GTCC company.

We agree that the relevant provision does not limit payment of such late fees to the GTCC. What we must untangle here is whether the agency’s failure to pay the \$100 in taxi fares on the original voucher could have resulted in a late charge to his personal credit card. The agency did not review that particular claim. Although claims filed with the Board that have not been adjudicated by the agency are typically dismissed as premature under Rule 401 (48 CFR 6104.401 (2015)); *Steve Resch*, GSBICA 14526-RELO, 1998 GSBICA LEXIS 103 (Mar. 26, 1998), this requirement comes from the Board’s rules, not the language of the statute itself, making the application of Rule 401 a matter of judicial discretion. *Michael D. Beasley*, CBCA 5262-RELO, 16-1 BCA ¶ 36,427 (citing *Scott E. Beemer*, CBCA 4250-RELO, 15-1 BCA ¶ 35,960).

At this time, we decline to adjudicate the claim for the second late payment fee, not only because the agency has not reviewed it, but also because there are insufficient facts before the Board to decide it. The record contains no information on late payment fees related to Dr. Strand’s personal credit card. Nor is it apparent whether the travel voucher payment on September 27, 2016, together with the July 25, 2016, and September 2, 2016, refunds of the cost of the original airline tickets, were sufficient and timely to cover the cost of the personally procured ticket, thereby precluding the assessment of a late fee. For these reasons, we are dismissing this claim as premature under Board Rule 401. The agency shall adjudicate the claim first. To the extent that additional information is required, the agency should obtain the information directly from Dr. Strand.

Decision

The claim to include \$100 for taxi fares in the constructive cost calculation is granted. The claim for a late payment fee under 41 CFR 301-71.210(a) is granted. The agency shall calculate the amount of the fee using the prevailing Prompt Payment Act interest rate beginning on October 23, 2016, and ending on the date on which payment is made. The late payment fee under 41 CFR 301-71.210(c) is dismissed as premature.

KATHLEEN J. O’ROURKE
Board Judge