



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

May 8, 2019

CBCA 6210-TRAV

In the Matter of KEVAN L. MULLINS

Kevan L. Mullins, San Rafael, CA, Claimant.

Kirsten N. Witter, Jennifer Vergne Formagus, and David J. Taube, Office of Chief Counsel, Internal Revenue Service, Department of the Treasury, Washington, DC, appearing for Department of the Treasury.

RUSSELL, Board Judge.

Claimant, Kevan Mullins, an Internal Revenue Service (IRS or agency) employee, challenges his employer's partial denial of his request for reimbursement of expenses related to two temporary duty assignments (TDY) taken by him in April 2018. His claim specifically centers on whether he is entitled to certain expenses incurred resulting from him taking alternate routes from those provided for in his travel authorizations. Mr. Mullins also requests that the Board sanction the IRS for certain representations made by the agency in support of its positions on Mr. Mullins' claim. As explained below, we deny Mr. Mullins' claim and dismiss his request for sanctions.

Background

Mr. Mullins' claim relates to two TDY assignments that he conducted in Los Angeles and Boston in April 2018. Under the approved authorizations, the Los Angeles and Boston assignments were scheduled for April 17-19 and April 24-26, respectively. For the Los Angeles assignment, Mr. Mullins was scheduled to leave San Francisco International Airport (SFO) for Los Angeles on April 16, stay at a hotel from April 16-20, and leave Los Angeles to return to San Francisco on April 20. For the Boston assignment, Mr. Mullins was

scheduled to leave San Francisco for Boston on April 23, and leave Boston to return to San Francisco on April 27.

Mr. Mullins' actual travel deviated from the two authorizations. For the Los Angeles assignment, Mr. Mullins did fly from SFO to Los Angeles on April 16. However, he checked out of his hotel one day early (i.e., on Thursday, April 18), and drove to Palm Springs. He averred that he performed official work on Friday, April 19, and Saturday, April 20. According to the agency, that work was unrelated to his TDY assignment and could have been performed at any location.

For the Boston TDY assignment, on April 23, Mr. Mullins flew from Palm Springs rather than SFO as reflected in his travel authorization. Similar to the Los Angeles trip, Mr. Mullins checked out of his Boston hotel a day early leaving on Thursday, April 26. That evening, he took a train to New York City and, on Sunday, April 29, flew from the Newark airport to SFO. The agency suggests that Mr. Mullins' expressed purpose for traveling to New York was to retrieve work materials. However, the agency disputes that Mr. Mullins' trip to New York was necessary for any official purpose.

After the two trips, Mr. Mullins submitted two vouchers (one for each TDY assignment) with a total requested reimbursement of \$2956.87. The total authorized amounts for the two assignments was \$4113.34. Mr. Mullins then submitted a supplemental voucher for \$1948.60 for expenses related to his travel deviating from that provided in the authorizations. Specifically, in his supplemental voucher, Mr. Mullins requested reimbursement for (1) additional airfare, (2) additional parking expenses, (3) per diem during the weekend period when Mr. Mullins was in Palm Springs, (4) per diem for New York, (5) baggage expenses, (6) mileage, and (7) train fare from Boston to New York.

In support of his claim, and for purposes of examining the constructive costs of these trips, Mr. Mullins argues that his "official costs" should be based on traveling from the airport in Santa Rosa, California, which is close to his home. According to Mr. Mullins, the "corrected official costs" or "corrected authorized costs" would total \$5099.69 versus \$4113.34. Thus, according to Mr. Mullins, he would be entitled to reimbursement of the amount requested in his supplemental voucher (\$1948.60) because that amount plus the total amounts of the original two vouchers (\$2956.87) – a total of \$4905.47 – would not exceed the "corrected authorized costs" of \$5099.69.

The agency has conceded that Mr. Mullins is entitled to reimbursement for certain additional expenses totaling \$522.10 – including meal and incidental expenses for certain days during both trips, airport parking on April 20 and 27 (for the Los Angeles and Boston TDY assignments, respectively), mileage for Mr. Mullins' return home on April 29 from the

Boston trip, and fees for one checked bag on each flight. Further, the agency has no objection to Mr. Mullins' incorporating personal with business travel.

However, the agency objected to Mr. Mullins' proposed method of calculating constructive costs. The agency, in its response to Mr. Mullins' claim, noted that, although there were city pair flights from both SFO and the Santa Rosa airport, SFO is slightly closer to Mr. Mullins' permanent duty station (PDS) than the airport in Santa Rosa, and the flights were less expensive from SFO (\$52 or \$91) than Santa Rosa (\$269). The agency also determined that arranging the TDY assignments under two authorizations (totaling \$4113.34), not the constructive combined authorization proposed by Mr. Mullins (totaling \$5099.69), saved the Government around \$1000.

Discussion

In considering Mr. Mullins' claim, we rely on both the Federal Travel Regulation (FTR) and the agency's Internal Revenue Manual (IRM). The FTR limits the agencies reimbursement of travel costs to what is "necessary to accomplish [the agency's] mission in the most economical and efficient manner." 41 CFR § 301-70.1(a)(2018). We address first Mr. Mullins' proposed method of calculating constructive costs for determining the authorized amount for the two TDY assignments, followed by a discussion of the specific expenses in dispute.

A. The Travel Authorizations

"[T]he FTR specifies that an employee performing a TDY assignment must 'travel to [his or her] destination by the usually traveled route unless [the] agency authorizes or approves a different route as officially necessary.'" *Inez J. Kelly*, CBCA 4814-TRAV, 16-1 BCA ¶ 36,456, at 177,671 (quoting 41 CFR 301-10.7). "Although the FTR does not expressly state that 'the usually traveled route' . . . means a route directly from the traveler's PDS to the assigned TDY station and back, that is how [this] concept[] [has] long been interpreted." *J. Jacob Levenson*, CBCA 5418-TRAV, 17-1 BCA ¶ 36,714, at 178,771. "[W]hen an employee chooses for reasons of personal preference to travel by a route or method different from the one authorized by his agency," as Mr. Mullins did here, the employee's reimbursement is limited to "the constructive cost of the authorized method of transportation, which is the sum of per diem and transportation expenses the employee would reasonably have incurred when traveling by the authorized method of transportation." *Alfonso Diaz Del Castillo*, CBCA 2250-TRAV, slip op. at 3 (June 21, 2011); *see also Lisa Schwartz*, GSBCA 16669-TRAV, 05-2 BCA ¶ 33,040, at 163,763 (agency was correct in calculating excess per diem costs resulting from employee taking circuitous route to temporary duty station as follows: constructing the per diem cost employee would have

incurred had she not combined personal travel with business travel, comparing the constructive per diem costs to the per diem costs the employee actually incurred, and reimbursing the employee her actual per diem costs to the extent those actual costs did not exceed the constructive costs). Additionally, the FTR “requires an employee to use a contract city-pair fare unless certain exceptions exist.” *Larry E. Hamilton*, CBCA 468-TRAV, 07-2 BCA ¶ 33,606, at 166,432; 41 CFR 301-10.106.

Under his proposed method of calculating constructive costs, Mr. Mullins urges that he would be entitled to up to \$5099.60 to cover reimbursement of expenses for the two TDY assignments. However, under the two authorizations approved by the agency, his reimbursement for expenses was limited to \$4113.34. For a number of reasons, we will not disturb the agency’s determination as to the authorized amount for the TDY assignments.

First, consistent with the FTR, the agency’s calculation was based on Mr. Mullins traveling from his PDS and returning. *J. Jacob Levenson*, 17-1 BCA at 178,771. Second, for the Los Angeles TDY assignment, the agency showed that having Mr. Mullins travel from SFO to Los Angeles was more economical than having him travel from the airport in Santa Rosa; and for the Boston TDY, the agency showed that there were no contract city pair flights that Mr. Mullins could have taken from Santa Rosa. *See* 41 CFR 301-10.106. Mr. Mullins presents no persuasive reason – premised on the agency’s mission or travel regulations – why the agency should have made an exception for him to travel by more costly means other than on city pair flights for the Boston TDY assignment.

Third, under the FTR provision concerning travel assignments that straddle non-work days, like Mr. Mullins’ two TDY assignments at issue here, the agency (not the traveler) is responsible for deciding “the most cost effective situation (i.e., remaining in a travel status and paying per diem or actual expenses or permitting [the traveler’s] return to [the traveler’s] official station).” 41 CFR § 301-11.21(a). If the “[agency’s] approving official has considered a matter and exercised his or her discretion reasonably, the Board will not disturb [the official’s decision] absent a showing that it was arbitrary, capricious or clearly erroneous.” *Trevor E. Strand*, CBCA 5406-TRAV, 17-1 BCA ¶ 36,712, at 178,766 n.3. Here, the record shows that, prior to Mr. Mullins’ travels, his supervisor completed a cost comparison and found that the authorized two-trip option saved the Government approximately \$1000. Given the agency’s effort to undertake this comparison, we cannot find that the agency’s travel authorization determination was arbitrary, capricious, or clearly erroneous.

Finally, travel orders, like the authorizations at issue in this claim, establish “the conditions, in writing, under which official travel and transportation are authorized at government expense, and [provide] a notice and record of the employee’s instructions and

entitlements.” *Todd E. Johanesen*, CBCA 3124-TRAV, 14-1 BCA ¶ 35,539, at 174,163 (quoting *Jack J. Pagano*, CBCA 1838-TRAV, 10-1 BCA ¶ 34,408). “The travel authorization is a record of vested travel entitlements and may not be administratively altered after the fact to increase or decrease benefits in the absence of clear error.” *William T. Cowan, Jr.*, GSBCA 16525-TRAV, 05-1 BCA ¶ 32,906, at 163,033. Here, Mr. Mullins would have the agency reconstruct his two authorizations ostensibly to increase his travel reimbursement absent any indication that, at least from the current record, the authorizations actually contain errors. Based on the Board’s controlling precedent, such action as seemingly urged by Mr. Mullins is impermissible.

B. Disputed Expenses

1. Air Fare for Boston Trip

For the Boston TDY assignment, Mr. Mullins’ itinerary and costs deviated from that authorized. Instead of flying round-trip from SFO to Boston, Mr. Mullins flew from Palm Springs to Boston, took a train to New York, and eventually flew from Newark to SFO. For the assignment, the agency authorized \$432.40 in transportation costs. Mr. Mullins incurred \$1125.50 due to taking the alternate route.

Mr. Mullins argues that the constructive cost of his air fare should be based not on the flights that were authorized, but instead on higher air fares from an airport that he considers more convenient to him. Mr. Mullins’ argument is unpersuasive because he deviated from the travel authorized by the agency for personal, not business, reasons. The agency is not responsible for reimbursement of additional travel costs attributable to Mr. Mullins’ decision to return to San Francisco by a route of his own choosing and for his own benefit. *Lewis T. Moore*, GSBCA 14885-TRAV, 99-1 BCA ¶ 30,374, at 150,153.

2. Per Diem Over the Weekend of April 21-22 While in Palm Springs

Mr. Mullins argues that he is entitled to reimbursement of per diem expenses incurred on April 21-22, the weekend period between the Los Angeles and Boston TDY assignments. In support of this reimbursement request, Mr. Mullins relies on *Jack W. Tucker*, GSBCA 16929-TRAV, 06-2 BCA ¶ 33,432, which provides, “[I]f an agency interrupts an employee’s leave by directing him to perform temporary duty, the agency is responsible for the expenses incurred by the employee in traveling to the location at which the duty is performed.” *Id.* at 165,742. We find that Mr. Mullins is not entitled to per diem for any work performed over the April 21-22 weekend.

In its response to Mr. Mullins' claim, the agency noted that Mr. Mullins did not request authorization to remain in travel status during the weekend period at issue. The agency added that the work performed by Mr. Mullins during the weekend was done by telework; and Mr. Mullins' telework location is his home. The agency explained that the nature of the work did not require that it be performed in Palm Springs. Under the FTR, agencies are to limit payment of travel costs to those which are necessary to accomplish the agency's mission in the most economical and efficient manner and in accordance with the rules stated throughout the FTR. 41 CFR 301-2.2, -70.1. Mr. Mullins' decision to work from Palm Springs was a personal one, and thus, any travel expenses resulting from that decision cannot be reasonably deemed as "necessary to accomplish the mission" of the agency.

Also, under IRM 1.32.11, applicable to Mr. Mullins, an employee who is required to travel on consecutive weeks, as Mr. Mullins was required to do so here, may (a) return home between the trips, (b) remain at the TDY location, (c) proceed to the second TDY, or (d) divide the intervening days between the two TDY locations. Mr. Mullins did not exercise any of these authorized options but, instead, proceeded to Palm Springs at the conclusion of the Los Angeles TDY assignment. Thus, under his agency's travel policies, Mr. Mullins is not entitled to reimbursement of travel expenses for the April 21-22 weekend period.

3. Per Diem While in New York on April 28-29

Mr. Mullins requests per diem for April 28-29 while in New York. Mr. Mullins bears the burden of proving that expenses incurred after April 27, the date after his official travel to Boston was scheduled to end, were for official purposes. *Michael R. Denney*, CBCA 3842-TRAV, 14-1 BCA ¶ 35,650, at 174,556. He has not met this burden.

The agency asserts that Mr. Mullins' approved official travel and performance of official duties for the Boston TDY assignment ended on April 27th, and his extension of his travel beyond that date was taken purely for personal reasons. We do not have any persuasive evidence before us supporting a contrary position. Specifically, we have no modified travel authorization or other official record showing that the agency extended Mr. Mullins' official travel to April 29 for the purpose of having him travel from Boston to New York for any work-related purpose. Thus, we find that Mr. Mullins' travel to New York was "unnecessary or unjustified in the performance of official business." *Terris King*, CBCA 1899-TRAV, 10-2 BCA ¶ 34,520, at 170,250 (quoting 41 CFR 301-2.4).

4. Train Travel from Boston to New York

Mr. Mullins argues that he is entitled to \$155 in reimbursement for a train ticket from Boston to New York where he traveled prior to returning to SFO. Mr. Mullins' request for reimbursement of expenses for his train travel is denied for the same reason as his request for per diem while in New York. An agency is not responsible for any additional expenses related to an employee's travel using a circuitous route unnecessary for the performance of official duties. 41 CFR 301-2.4. Mr. Mullins' trip to New York was not required for authorized, work-related reasons. Therefore, his claim for reimbursement of the expense of his train travel from Boston to New York is denied.

5. Parking Expenses While in Palm Springs and New York

Mr. Mullins requests reimbursement for parking expenses incurred on April 20-22, and 27-28. The agency concedes that Mr. Mullins is entitled to reimbursement for parking costs for April 20 and 27 concluding that he was on official travel status on these days. However, the agency asserts that Mr. Mullins is not entitled to reimbursement of parking expenses incurred while in Palm Springs on April 21-22 and New York on April 28. We agree with the agency. As explained above, Mr. Mullins was not on official travel while in Palm Springs, and New York. Thus, he is not entitled to reimbursement of parking expenses incurred on these days. 41 CFR 301-2.4 (employee responsible for excess costs resulting from services unnecessary in the performance of official business).

6. ATM Expenses

Mr. Mullins requests reimbursement of ATM fees from use of his personal card. However, "ATM fees on personal cards are not reimbursable to civilian employees." *See Deborah E. Kenney*, CBCA 972-TRAV, 08-1 BCA ¶ 33,816, at 167,393. These fees are only reimbursable "when Government-issued cards are used because the Government wishes to encourage travelers to use them." *Daniel J. Granstrom*, GSBCA 13682-TRAV, 97-1 BCA ¶ 28,711, at 143,334 (1996). Therefore, Mr. Mullins is not entitled to reimbursement of the incurred ATM expenses from use of his personal card.

7. Baggage Fees

Mr. Mullins asserts that he is entitled to reimbursement totaling \$120 for baggage expenses incurred during travel for the two TDY assignments – \$25 for the first checked bag and \$35 for the second for each trip. Mr. Mullins upgraded to first class at his own expense for his air transportation so his baggage costs were included in his airfare, not charged as separate expenses. In support of his reimbursement request, Mr. Mullins relies on the

Board's decision in *Robert B. Barnes*, CBCA 2073-TRAV, 10-2 BCA ¶ 34,555. In that case, the Board concluded that Mr. Barnes was entitled to reimbursement of baggage fees because the fees were subsumed in his upgraded first-class ticket for which he had paid using frequent flyer miles plus \$300 extra. *Id.* at 170,411. In *Barnes*, the Board noted that “[t]o conclude that no fees were actually incurred when claimant expended \$300 for a first-class ticket is not reasonable.” *Id.*

Here, the agency concedes that Mr. Mullins is entitled to reimbursement of expenses for the first checked bag for each trip, totaling \$50. However, the agency disputes that Mr. Mullins is entitled to reimbursement of fees for the second bag for the two TDY assignments. Pursuant to 41 CFR 301-12.2(d), an agency may reimburse an individual for “[a]ll fees pertaining to the first checked bag . . . [and] charges relating to the second and subsequent bags may be reimbursed when the agency determines those expenses are necessary and in the interest of the government.” Thus, the agency has discretion to authorize reimbursement for a second bag under 41 CFR 301-12.2(d). The record shows Mr. Mullins' second checked bag was a garment bag. Mr. Mullins fails to explain how the expense incurred for checking his second bag was necessary and furthered any government interest. Therefore, the Board finds that Mr. Mullins is only entitled to reimbursement of the \$50 conceded by the agency for baggage expenses.

8. Tips

Mr. Mullins argues that he is entitled to reimbursement of \$30 for tip expenses provided for holding and transporting his bags while on travel. An agency has discretion whether to reimburse an employee for “[c]harges or tips at transportation terminals for handling Government property carried by the traveler” and for “necessary charges for storage of baggage when such charges are the result of official business.” 41 CFR 301-12.2(c), (e). A claimant has the burden of demonstrating entitlement to reimbursement of baggage handling expenses; otherwise, the expenses are covered by the per diem allowance. *Darrell R. Ratliff*, GSBCA 4403-TRAV, 98-2 BCA ¶ 29,760, at 147,494; *see also* IRM 1.32.11.8.1.4.1.

Mr. Mullins asserts that his luggage contained government property, which included presentation materials and other sensitive but unclassified data. Mr. Mullins has provided no explanation on why he was unable to keep these particular items in his immediate possession other than inconvenience, nor provided any indication that the agency actually approved transporting and holding of the items in the manner used by Mr. Mullins. Therefore, we are unpersuaded that Mr. Mullins is entitled to any reimbursement of tip expenses in addition to his per diem allowance.

C. Claimant's Motion for Sanctions

Mr. Mullins has moved for sanctions against the agency pursuant to Rule 45 of the Federal Rules of Civil Procedure, requesting that the Board enter an order directing the agency to submit its declaration filed in support of the agency's position on Mr. Mullins' claim to the Treasury Inspector General for potential perjury and sealing the record due to "materially false statements" in the declaration.

The Board takes no action on Mr. Mullins' request for sanctions. The Board settles claims involving expenses incurred by federal civilian employees for official travel and transportation, and for relocation expenses incident to transfers of official duty station. *Robert D. Rahmes*, GSBCA 14220-TRAV, 98-2 BCA ¶ 29,796, at 147,609. We have no authority to impose sanctions against officials responsible for agency travel programs.¹ *Id.*

Decision

Mr. Mullins' travel claim is denied and his request for sanctions is dismissed.

Beverly M. Russell
BEVERLY M. RUSSELL
Board Judge

¹ Additionally, we note that CBCA decisions, like this one and those of any court, are public records and, as stated in Board Rule 406, are posted, in full on the Board's website.