



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

July 7, 2022

CBCA 7203-TRAV

In the Matter of JOHN G.

John G., Claimant.

Bonnie L. Petree, Lead Senior Accountant, Office of the Comptroller, Naval Air Warfare Center Aircraft Division, Department of the Navy, Patuxent River, MD, appearing for Department of the Navy.

GOODMAN, Board Judge.

John G. (employee) is a civilian employee of the Department of Defense (DoD or agency). The agency has asked this Board to review its request to the employee to pay back a portion of airfare arising from temporary duty (TDY) travel that the agency had previously reimbursed to the employee.

Background

The employee's permanent duty station (PDS) is in Maryland. The employee planned personal travel to New Orleans, Louisiana, on Friday, July 30, 2021 (his compacted work schedule's non-work day), to attend a funeral. He received approval for annual leave on Monday, August 2, for his planned return travel to his PDS. After the employee had arranged his personal travel, the agency determined that it was officially necessary for the employee to perform temporary duty (TDY) travel to attend conferences in California beginning Monday, August 2, at 8:00 a.m. Pacific Time. The employee therefore did not take his previously approved annual leave on Monday, August 2, to return to his PDS as planned, but rather, he was directed by the agency to originate TDY travel from New Orleans on Sunday, August 1, in order to timely arrive at the conference site on Monday morning.

The agency issued approved travel orders for the TDY travel, with the itinerary commencing at 12:00 p.m., Sunday, August 1, 2021, departing New Orleans via air non-stop to Los Angeles, California, and returning to the PDS on Friday, August 5, 2021. The travel orders further stated that “[t]he use of a Government Contracted Commercial Travel Office (CTO) to arrange official travel is mandatory.” The employee’s personal travel from his PDS to New Orleans was not included in the travel order itinerary. This was noted in Block 16–“Remarks” of the travel orders, which stated, “[Employee w]ill already be on travel to New Orleans for personal travel – asked to cover meeting in [California] so flying from New Orleans to LAX [Los Angeles Airport] . . . then returning [to the PDS].”

As directed in his travel orders, the employee purchased an airline ticket through the CTO at the government rate for the TDY itinerary. After he completed the TDY travel, the agency reimbursed the employee for the actual cost of the airline ticket. However, the agency now asserts that, based upon applicable provisions of the Joint Travel Regulations (JTR), which apply to civilian employees of DoD, the employee is only entitled to reimbursement for the cost of round-trip government airfare originating at and returning to the PDS. As the round-trip government airfare from the PDS to the TDY location would have been \$336.40 less than the government airfare for the itinerary in the travel orders originating in Louisiana, the agency has requested that the employee pay back that amount.

Discussion

By statute, the Government is required to reimburse employees for the actual and necessary costs incurred to travel on official business. 5 U.S.C. § 5702 (2018). Under the Federal Travel Regulation (FTR), agencies are directed to limit payment of travel costs to those which are necessary to accomplish the 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 (2021) (FTR 301-2.2, -70.1). In keeping with this policy, the 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.*” *Id.* 301-10.7 (emphasis added). The FTR does not specify when an agency may authorize or approve a different route as officially necessary instead of the usually traveled route. If an employee travels by an indirect route, or interrupts travel for his or her personal convenience, the employee’s reimbursement “will be limited to the cost of travel by a direct route or on an uninterrupted basis.” *Id.* 301-10.8. Additionally, the FTR states that an employee is “responsible for expenses over the reimbursement limits established in this chapter. Your 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.” *Id.* 301-2.4.

In this case, when the need for TDY travel arose, the agency's approving official understood that the employee had previously planned personal travel to New Orleans to attend a funeral during a non-workday and weekend and therefore would not be at his PDS immediately prior to the commencement of TDY travel. The approving official therefore authorized and approved as officially necessary the itinerary in the travel orders for TDY travel commencing in New Orleans the day before the employee had planned to return to his PDS from New Orleans.

The employee's travel from the PDS to New Orleans on non-workdays was personal travel, not official travel, and the employee's TDY official travel commenced when he departed from New Orleans on Sunday as directed in his travel orders itinerary. Once he commenced his TDY travel, he traveled directly, not circuitously, and without interruption to the TDY location and returned thereafter directly to his PDS. He did not incur any "excess costs resulting from circuitous routes, delays, or luxury accommodations or services unnecessary or unjustified in the performance of official business." As directed by his approved travel orders, he traveled the officially authorized itinerary and purchased the government airfare through the CTO. Pursuant to statute and the FTR, the employee was properly reimbursed the actual total costs of his airfare, as it was the government fare for the official itinerary that the agency approved and authorized as officially necessary, based upon the fact that the employee would not be at his PDS when TDY travel commenced.

The agency's contention that the employee must pay back the portion of the airfare which exceeds the round-trip airfare from the PDS to the TDY location is based upon provisions of the JTR that: 1) limit reimbursement of airfare when an employee is permitted to combine personal travel with TDY travel to the amount that would have been incurred had the travel originated from the PDS, JTR 033301-A, -B, tbl. 3-20 (July 2021); and 2) authorize alternate departure points only from places at or near the employee's PDS or residence. *Id.* 010203-B.

The JTR provisions relied upon by the agency dictate a different outcome from the FTR in the instant case. As this Board has repeatedly found, 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 prevails over the JTR. *Michael P. Strand*, CBCA 5776-TRAV, 18-1 BCA ¶ 36,993; *Ronald D. Aylor*, CBCA 4752-TRAV, 15-1 BCA ¶ 36,028. We therefore find that the outcome required by the FTR prevails in the instant case, and the employee was correctly reimbursed for the actual cost of airfare which he incurred as directed by the approved travel orders.

We will therefore no longer follow the holding in *Robert O. Jacob*, CBCA 471-TRAV, 07-1 BCA ¶ 33,530, *reconsideration denied*, 07-2 BCA ¶ 33,661, which in

similar circumstances failed to recognize the conflict between the provisions of the FTR and JTR and did not take into account a previous amendment to the FTR, as described below. The Board in *Jacob* instead relied on a 1983 travel decision from the Comptroller General, *Lawrence O. Hatch*, B-211701 (Nov. 29, 1983), that had strictly enforced then-existing travel regulation provisions precluding reimbursement of excess costs incurred traveling from a location other than the employee's PDS. *Jacob* cited, and chose not to follow, two previous decisions issued by one of our predecessor boards (*K. Wesley Davis*, GSBCA 15623-TRAV, 02-1 BCA ¶ 31,680 (2001); and *Delner Franklin-Thomas*, GSBCA 15905-TRAV, 03-1 BCA ¶ 32,126 (2002)), both of which properly applied the FTR and allowed the approving official the discretion to authorize full reimbursement in similar situations. *Jacob* then reviewed the prevailing JTR provisions, similar to the current JTR provisions cited by the agency in this case, and erroneously concluded that the "present provisions of the FTR" were "consistent with the provisions in effect when *Hatch* was decided" and found that the JTR "essentially echoes the reasoning" of the FTR. *Jacob*, 07-01 BCA at 166,110-11. This analysis led to the incorrect conclusion that the "[t]ravel approving officials do not possess the authority to authorize reimbursement of travel that is not the direct, usually traveled route from the employee's PDS to the TDY location and back, regardless of how compelling the personal circumstances of the employee may be." *Id.* at 166,111.

We now realize that *Jacob* did not take into account that the FTR provisions had been amended in 1989 to add the discretionary component of *official necessity*, which would allow travel by other than the usual route,¹ originating from other than the PDS. *Jacob*, therefore, should not have relied on *Hatch* and should have followed *Davis* and *Franklin-Thomas*. *Hatch's* support for stricter limitations on indirect travel reimbursement was based on the pre-1989 version of the FTR and its predecessor travel regulations that did not contain the discretionary "official necessity" language. This discretionary component, however, is included in the current regulation, 41 CFR 301-10.7, which was in effect when our predecessor board issued *Davis* and *Franklin-Thomas*. We therefore follow the holding of those decisions, consistent with the current FTR, that when an agency authorized and approved an itinerary commencing at a non-PDS location as officially necessary, and the employee traveled directly to the TDY location and returned to the PDS as the employee did

¹ In 1989, the FTR read as follows:

§ 301-2.5 Routing of Travel:

(a) *Official necessity*. All travel shall be by a usually traveled route. Travel by other routes may be allowed when the official necessity therefor is satisfactorily established.

in the instant case, the route was direct, and not indirect or circuitous.² Accordingly, the actual cost of the airfare was fully reimbursable, based upon the agency's issuance of authorized and approved travel orders. Once the travel is performed, the authorization cannot thereafter be withdrawn.

In the instant case, it is clear that the approving official determined that it was officially necessary for the employee's TDY travel to originate from the non-PDS location where the employee had planned to be before the need for TDY travel arose, and the agency authorized the TDY itinerary in approved written travel orders. The TDY route traveled was neither indirect nor circuitous. The TDY travel has been fully performed, and the authorization of the approved travel orders cannot be withdrawn. The airfare incurred is the actual and necessary cost of the employee's itinerary, to which the employee is entitled, by statute and the FTR, to reimbursement. The employee is not liable for the costs in excess of that which would have been incurred if the TDY travel originated at the PDS.

Decision

The employee is not liable to repay to the agency the costs which the agency seeks.

Allan H. Goodman

ALLAN H. GOODMAN
Board Judge

² In *Jacob*, the necessity for TDY travel was identified by the agency and travel orders had been issued for a round trip, originating from the PDS, *before* the employee's need to attend a funeral arose. The employee proposed the change of departure location so that he could take a week of leave, i.e., changing the route for personal reasons. In the instant case, as in *Davis* and *Franklin-Thomas*, the employee's personal travel and accompanying leave had been approved before the need for TDY was identified, and therefore there were no travel orders initially issued from the PDS that were changed to accommodate the traveler. Accordingly, in such cases the employee is not rerouting official travel for personal convenience. Rather, the agency is determining a route other than the usually traveled route as officially necessary.