

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

January 30, 2001

GSBCA 15255-RELO

In the Matter of GREGORY E. FERBY

Gregory E. Ferby, Syracuse, NY, Claimant.

Edgar Aviles, Travel Team Leader, Accounting Services Division, United States Customs Service, Indianapolis, IN, appearing for Department of the Treasury.

NEILL, Board Judge.

Claimant, Mr. Gregory E. Ferby, a former employee of the United States Customs Service, asks that we review his agency's denial of a claim he submitted for temporary quarters subsistence expenses (TQSE) and miscellaneous expenses incurred in connection with his relocation to a new permanent duty station.

Background

Effective December 31, 1990, Mr. Ferby was transferred from Buffalo, New York, to Champlain, New York. This transfer came about as a result of an arbitrator's ruling in November 1990 that Mr. Ferby's earlier transfer to Buffalo was improper.

Prior to Mr. Ferby's transfer to Buffalo, he was assigned to Montreal, Canada. Shortly after being assigned to Montreal, Mr. Ferby and his family, on March 19, 1986, moved into a residence in Roxboro, Quebec, approximately eighteen miles west of Montreal.

After his transfer from Buffalo to Champlain, Mr. Ferby returned to this residence in Roxboro and commuted approximately forty-five miles from there to his new permanent duty station in Champlain.

The agency's paperwork regarding Mr. Ferby's transfer lagged behind his actual reporting date of December 31, 1990. Not until late March 1991 did he receive a formal travel authorization for his transfer from Buffalo to Champlain. These orders authorized sixty days of TQSE. Upon receipt of the orders, Mr. Ferby contacted the program officer assigned to the agency's north central region regarding authorization to move his family from Roxboro. On May 30, 1991, the program officer telefaxed to Mr. Ferby a copy of additional orders, which authorized Mr. Ferby to move his family from Roxboro. These orders also provided for payment of TQSE.

Upon receipt of these travel authorizations, Mr. Ferby arranged for the transport and temporary storage of his household goods. In anticipation of his relocation, Mr. Ferby was given a travel advance of \$4282.25 for TQSE. On June 25, 1991, after closing on the sale of his residence in Roxboro, Mr. Ferby and his family vacated their former residence and moved to temporary quarters in Plattsburgh, New York, approximately twenty-two miles south of Champlain. There, he and his wife undertook a search for permanent quarters. They were, however, unable to find adequate quarters near medical care facilities that could provide care for their son, Jordan, who has sickle cell anemia. Finally, on August 3, 1991, they abandoned their search for permanent quarters in Plattsburgh and chose instead to purchase permanent quarters anew at Roxboro, Quebec.

On August 23, 1991, Mr. Ferby submitted a claim of \$5952.58 for TQSE covering the period during which he was in temporary quarters at Plattsburgh. By letter dated January 7, 1992, Mr. Ferby was advised by his agency that his claim was rejected in its entirety. Mr. Ferby asked the agency to reconsider its denial. In submitting this request for reconsideration, Mr. Ferby also amended his initial claim to include a claim of \$700 for miscellaneous expenses encountered in connection with his move from Roxboro to Plattsburgh, thus increasing his claim from \$5952.58 to \$6652.58.

The agency denied Mr. Ferby's amended claim and request for reconsideration by letter dated November 24, 1993. In denying Mr. Ferby's request for reconsideration, the agency advised him that he could seek administrative review of his claim by writing directly to the Comptroller General. By letter dated January 27, 1994, an attorney employed by the National Treasury Employees Union (NTEU), of which Mr. Ferby was a member, acting on his behalf, sought administrative review of the agency's ruling by the Comptroller General. On subsequent inquiry to the General Accounting Office (GAO), it was determined that the Comptroller General had no record of ever having received the NTEU submission. By letter dated August 22, 1995, the union provided GAO with a copy of its original submission.

By letter dated June 3, 1996, the GAO declined to consider or comment on Mr. Ferby's request for administrative review of the agency's denial of his claim. The GAO letter explained that the Comptroller General lacked jurisdiction to decide the case owing to a collective bargaining agreement previously entered into by Mr. Ferby's union and his agency. The letter went on to explain that, by law, the grievance procedures provided for under that agreement constituted the exclusive administrative procedure for resolving a dispute such as that presented in Mr. Ferby's appeal. Included with the letter was a copy of a prior decision of the Comptroller General which explained in greater detail precisely why the GAO declined to review claims such as that presented by Mr. Ferby. See Cecil E. Riggs, 71 Comp. Gen. 374 (1992).

Notwithstanding the reply and explanation offered to Mr. Ferby by the GAO, he did not at that time elect to file a grievance pursuant to the applicable provisions of the NTEU agreement with his agency.

In early 1997, the agency advised Mr. Ferby of its intention to collect, by salary offset, the travel advance of \$4282.25 previously given to him on the occasion of his family's relocating from Roxboro to Plattsburgh. An NTEU attorney then asked that the

agency's claim for a return of Mr. Ferby's travel advance be resolved using new dispute resolution procedures. The agency replied that, in view of Mr. Ferby's failure to file a grievance in a timely fashion regarding the earlier denial of his TQSE claim, the matter of the underlying debt should now be considered settled. Nevertheless, the agency agreed to enter into negotiations regarding the method of repaying that debt. Pursuant to this agreement, a dispute resolution panel was convened in mid-August 1997. The panel, however, did not limit its inquiry to the appropriate manner for repaying the earlier travel advance, but rather addressed the underlying issue of whether repayment was justified in view of the agency's earlier denial of Mr. Ferby's claim for TQSE. The panel critically questioned the agency's reasons for rejecting Mr. Ferby's claim and recommended instead that the agency again reexamine its earlier denial of his claim. The panel also recommended that the agency stay all collection actions pending this review.

Following the issuance of the panel's recommendations, the parties engaged in some further negotiations but to no avail. The next step would have been to invoke arbitration. The step was not taken, however, since Mr. Ferby subsequently resigned from the Customs Service. In May 1998, the agency again sought payment of the travel advance from Mr. Ferby. In replying to the agency's notice, Mr. Ferby reminded the agency official issuing the demand that the dispute resolution panel had previously recommended that the agency review its earlier denials of his original claim and that collection efforts be suspended pending this review. By letter dated August 24, 1998, the agency official assured Mr. Ferby that the matter was again under review and that, in the meantime, no collection action would be taken.

After a prolonged period of agency silence on this matter, Mr. Ferby inquired regarding the status of his claim. By letter dated February 16, 2000, an agency official advised him that in July 1999, the matter had been forwarded to this Board for review. On inquiry, however, Mr. Ferby determined that the Board had no record of any such request from his agency. By letter dated February 23, 2000, therefore, Mr. Ferby submitted his own request for a review of the agency's denial of his amended claim. It is that claim which is before us now.

Discussion

In opposing Mr. Ferby's claim, his agency contends that this Board has no jurisdiction over his case. It argues that the claimant was advised in clear terms by the GAO in 1996 that the exclusive remedy for the resolution of his dispute with the agency regarding his claim for TQSE lay with the grievance procedures set out in the NTEU agreement with the agency. Under the agreement in effect at the time, such grievances were to be filed within twenty-one days from the date of a disputed agency action or the date the allegedly aggrieved employee became aware of the matter or incident from which the grievance arose. Given Mr. Ferby's failure to pursue this exclusive remedy in a timely fashion, the agency contends that the issue of the underlying debt supporting its claim for return of the original travel advance should be deemed closed.

When confronted with Mr. Ferby's claim, our reaction is similar to that of the GAO. Since acceding to the authority previously exercised by GAO to settle disputed travel and

relocation claims of civilian employees of the Federal government, we have consistently followed the position of the GAO as set out in the Riggs decision. Where claimants are covered by a collective bargaining agreement that mandates the use of a grievance procedure for the resolution of disputes between the employee and the agency, we have taken the position that we lack the authority to resolve the employee's claim unless the agreement explicitly and clearly excludes the claim from its procedures. Bernadette Hastak, GSBCA 13938-TRAV, et al., 97-2 BCA ¶ 29,091; accord Carla Dee Gallegos, GSBCA 14609-RELO, 99-1 BCA ¶ 30,300; Harold S. Rubinstein, GSBCA 14667-RELO, 99-1 BCA ¶ 30,113; Bernard F. Anderson, GSBCA 14438-TRAV, 98-2 BCA ¶ 29,924; William A. Rogers, GSBCA 14327-TRAV (Feb. 12, 1998); Claudia J. Fleming-Howlett, GSBCA 14236-RELO, 98-1 BCA ¶ 29,534; Larry D. Morrill, GSBCA 13925-TRAV, 98-1 BCA ¶ 29,528; True Carter, GSBCA 14131-TRAV, et al., 98-1 BCA ¶ 29,530; Brian S. Brame, GSBCA 14333-TRAV (Jan. 8, 1998); Henry E. Carroll, Jr., GSBCA 14206-TRAV (Dec. 29, 1997); William A. Watkins, GSBCA 13970-TRAV, 97-2 BCA ¶ 29,222.

From the record, it is clear that Mr. Ferby is covered by the NTEU's collective bargaining agreement with his agency. The agency has provided us with a copy of Article 31 of the agreement in effect at the time Mr. Ferby relocated from Roxboro to Plattsburgh. This section of the agreement deals with the subject of grievances. We have examined it and conclude that Mr. Ferby's disputed claim is not one excluded from coverage under the agreement and that such a claim can only be resolved through use of the grievance procedures described therein.

We, therefore, make no comment on the merits of Mr. Ferby's claim or on the processing of this claim pursuant to the applicable collective bargaining agreement. Rather, we dismiss the claim as one which we simply do not have the authority to settle.

EDWIN B. NEILL
Board Judge