

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

April 17, 2003

GSBCA 16028-RELO

In the Matter of NICHOLAS A. CARLSON

Nicholas A. Carlson, Moscow, Russia, Claimant.

Helen O. Sherman, Director, Office of Finance & Accounting Policy, Washington, DC, appearing for Department of Energy.

DANIELS, Board Judge (Chairman).

The Government may not reimburse a new appointee whom it sends abroad for property management service fees he incurs in renting his United States residence.

Background

Nicholas A. Carlson was hired by the Department of Energy (DOE) in August 2000, to serve as the representative of that agency's National Nuclear Security Administration in Moscow, Russia. The agency sent him to Russia in the following month.

When DOE offered this position to Mr. Carlson, it said that it would pay the property management service fees he incurred in renting his United States residence while he was serving abroad. Two weeks later, evidently after someone in authority had read the Federal Travel Regulation (FTR), DOE retracted this commitment. DOE would like to fulfill its promise but believes that the FTR precludes it from doing so.

Mr. Carlson has been serving in Russia since joining the agency. Upon the expiration of his initial two-year tour of duty, he agreed to stay on for another year.

Mr. Carlson acknowledges that the relevant FTR provision prevents DOE from paying his property management fees. He questions why the regulation is written as it is, however. In particular, he questions why the agency should be prevented from paying these fees after he extended his overseas assignment. He notes that by remaining in Russia, he has saved the Government the expenses of sending him home and sending another individual to Russia to replace him.

Discussion

Property management services are defined by the FTR as –

programs provided by private companies for a fee, which help an employee to manage his/her residence at the old official station as a rental property. These services typically include, but are not limited to, obtaining a tenant, negotiating the lease, inspecting the property regularly, managing repairs and maintenance, enforcing lease terms, collecting the rent, paying the mortgage and other carrying expenses from rental proceeds and/or funds of the employee, and accounting for the transactions and providing periodic reports to the employee.

41 CFR 302-15.1 (2000).

As the parties to this case both recognize, the FTR states very clearly:

Who is not eligible for payment for property management services?

New appointees . . . are not eligible.

41 CFR 302-15.4.

Prior to March 1997, agencies lacked authority to reimburse any employees for property management service fees. In the National Defense Authorization Act for Fiscal Year 1997, however, Congress allowed agencies to pay these fees for "an employee who transfers in the interest of the Government," as long as the employee is at a post of duty outside the United States to which he has been transferred. Pub. L. No. 104-201, § 1714(2), 110 Stat. 2422, 2755 (1996). The amendment affected 5 U.S.C. § 5724a, a provision dealing with benefits for employees who are relocated by the Government. See 5 U.S.C. § 5724a(e) (2000). The amendment did not impact 5 U.S.C. § 5722, which deals with benefits for new appointees. That section has never authorized payment of property management service fees.

We conclude that the FTR faithfully implements the relevant statutes by permitting agencies to reimburse some employees for property management service fees they incur, but expressly forbidding such reimbursement to new appointees. Unfortunately for Mr. Carlson, when he was hired to work in Russia in 2000, he was a new appointee, and when he extended his tour of duty there in 2002, he was not transferred to that post. He is ineligible for receipt of property management fees.

The fact that DOE promised to reimburse Mr. Carlson for those fees does not change the outcome of this case. In similar situations of advice by agency representatives which is contrary to law, we have consistently followed the Supreme Court's direction that the Government cannot be held to its representatives' promises; subjecting the Government to estoppel in these circumstances would allow it to spend money in ways which have been forbidden by Congress. E.g., Louise C. Mâsse, GSBCA 15684-RELO, 02-1 BCA ¶ 31,694

(2001) (citing Office of Personnel Management v. Richmond, 496 U.S. 414 (1990); Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947)).

Mr. Carlson is surely correct in observing that the amount of property management services fees he incurs in one year is far less than the amount DOE would have to pay to send him home and send a replacement to Russia. Whether an agency should be permitted to pay the fees, as a cost-saving measure, for similarly-situated employees in the future is a policy matter which the Congress may wish consider. Our authority is limited, however, to enforcing the rules which the legislature has established in the past. Under those rules, Mr. Carlson's claim must be denied.

STEPHEN M. DANIELS
Board Judge