

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

March 14, 2003

GSBCA 16060-TRAV

In the Matter of DONALD S. BROCKSMITH

Donald S. Brocksmith, Marquette Heights, IL, Claimant.

Bradley T. Gross, Chief, Finance Branch, Federal Bureau of Prisons, Department of Justice, Washington, DC, appearing for Department of Justice.

NEILL, Board Judge.

Claimant, Mr. Donald S. Brocksmith, is an employee of the Federal Bureau of Prisons. He disagrees with his agency's calculation of his constructive travel costs in conjunction with the processing of a travel voucher he submitted after completing a temporary duty (TDY) assignment in early November 2002. Specifically, Mr. Brocksmith contends that the agency incorrectly determined that the constructive cost of his airfare should be no more than \$332. Mr. Brocksmith argues that the proper figure is \$992. For the reasons stated below, we find that the agency's use of the lower figure is correct. We, therefore, deny Mr. Brocksmith's claim.

Background

In early September 2002, Mr. Brocksmith, a human resource specialist working at the Federal Correctional Institution (FCI) in Pekin, Illinois, was authorized to attend a five-day training course in Aurora, Colorado. Earlier in the year, he had attended two other training courses at the same training center. Each time, because of his concern with airline security, he had sought and received permission to travel by personally owned vehicle (POV) rather than by air.

This time, Mr. Brocksmith again conferred with the FCI's financial manager on the feasibility of traveling by POV. As she had told him in the past, the financial manager replied that this would be possible provided Mr. Brocksmith had the permission of the local warden and provided he understood that reimbursement of expenses would be limited to that which the Government would be charged if he used the approved mode of transportation.

By memorandum dated September 12, Mr. Brocksmith sought permission from the warden to make the trip with his POV rather than take a commercial flight. The request was approved. On October 10, 2002, the agency issued a travel authorization to Mr. Brocksmith.

The authorization provided for transportation by common carrier. The estimated cost of transportation listed on the travel authorization was \$346. The dates of departure and return were listed respectively as "10/27/02" and "11/01/02."

In processing travel expense vouchers for Mr. Brocksmith's two previous TDY assignments to the training center in Colorado, the agency had calculated a constructive cost for the travel using a round-trip airfare of \$346. On the occasion of this third trip, Mr. Brocksmith, for reasons not clear from the record, contacted the Financial Management Office to ask about the methods used to calculate his reimbursement. An accounting technician in the office allegedly told him to call the approved government travel agent to determine the cost of a round-trip airline ticket from claimant's local airport in Peoria, Illinois, to Denver, Colorado, on the dates indicated on the travel authorization. Mr. Brocksmith did so and states that he was quoted a price of \$992. He also states that he passed this information on to the accounting technician in the Financial Management Office, with whom he had spoken earlier.

On October 26, Mr. Brocksmith, traveling in his POV, left his home for Aurora, Colorado. On or about November 3, he returned from his TDY assignment. Within a week of his return, he submitted a claim for his travel expenses. According to Mr. Brocksmith, once his claim was filed, a question promptly arose over the proper airfare to use in determining the constructive cost of his TDY travel. It was suggested to Mr. Brocksmith that, rather than use the fare for a direct non-stop flight from Peoria to Denver, a \$332 airfare from Peoria to Denver using a connecting flight from Chicago should be used. Mr. Brocksmith states that he protested the use of this latter figure and asked the accounting technician to investigate the matter further. He apparently prevailed. On November 12, Mr. Brocksmith's claim was certified for payment and, thereafter, was paid based upon a constructive cost which included a round-trip airfare of \$997.

By memorandum dated January 13, 2003, however, Mr. Brocksmith was notified that an error had been made in the calculation of the travel settlement for his TDY travel to Colorado. The memorandum explained that the round-trip fare of \$997 should not have been used in calculating the constructive cost of his travel. Instead, the proper figure was said to be \$332. Based upon a recalculation of the constructive cost using this fare, the agency demanded that Mr. Brocksmith return \$296.87 of the amount previously paid to him in settlement of his travel claim.

Claimant contends that he may retain the amount now being sought by the agency. He strongly objects to the agency's use of the \$332 figure in calculating the constructive cost of his TDY travel to Colorado. He states that use of this lower figure is improper in that it constitutes an unwritten and unspoken requirement to travel on TDY during other than regularly scheduled work hours and by means that are other than direct.

Discussion

In his first submission to the Board, Mr. Brocksmith wrote that he was providing us with details regarding only his claim for reimbursement of expenses incurred during his TDY assignment which concluded in early November 2002. He explained that his current

disagreement with the agency concerns only that claim. He makes no secret, however, that he now disagrees with the manner in which the agency calculated the constructive cost of two prior trips he took earlier in the year to the same training center in Colorado.

Claimant argues that when official travel is undertaken on days other than regularly scheduled workdays, the agency has no right to insist that an employee travel "indirectly from point A to point B merely for cost-saving reasons." Assuming that this is correct, then any calculation of the constructive cost of round-trip travel between Peoria and Denver would, of necessity, have to use the cost of direct non-stop flights. We disagree with Mr. Brocksmith's initial assumptions.

The agency report furnished in this case informs us that the path to the particular training center in Aurora, Colorado, from the FCI in Pekin is well trod. During fiscal year 2002, this FCI authorized forty-two separate TDY travels to that training center. Of the forty-two authorizations, thirty-three were completed with airfare travel from Peoria to Denver using a connecting flight. The remaining nine involved constructive travel vouchers using the lower connecting flight costs in the cost comparison. In no case was a direct flight from Peoria to Denver used.

The Federal Travel Regulation (FTR) contains the following provision:

How does my agency select the method of transportation to be used?

Your agency must select the method most advantageous to the Government, when cost and other factors are considered. Under 5 U.S.C. 5733, travel must be by the most expeditious means of transportation practicable and commensurate with the nature and purpose of your duties.

41 CFR 301-10.4 (2002) (FTR 301-10.4).

The agency's determination in this case that flights between Peoria and Denver should be via a connecting flight in Chicago is clearly in compliance with the spirit and the letter of this requirement. The agency recognizes that there is an increase of two hours in travel time using this routing but has concluded that the increase in time is justified by the overall savings in fare.

Does this routing of travel between Peoria and Denver run afoul of another requirement in the FTR regarding direct travel? We think not. It is true, of course, that the FTR does speak of "direct" and "indirect" travel. For example, an employee who for personal convenience travels by an "indirect route" or interrupts travel by a "direct route," will be limited in reimbursement to the cost of travel by a direct route or on an uninterrupted basis. FTR 301-10.8. Nevertheless, it would be incorrect to conclude that, in speaking of "direct route," the FTR here or elsewhere has in mind a direct non-stop routing. Rather, "direct route" should be understood as the "usually traveled route" as that phrase is used in the provision immediately preceding FTR 301-10.8, namely:

How should I route my travel?

You must travel to your destination by the *usually traveled route* unless your agency authorizes or approves a different route as officially necessary.

FTR 301-10.7 (emphasis added).

Claimant is of the opinion that, when traveling on official business on other than regularly scheduled work days, he is not obliged to travel via the usually traveled route. He gives no reason, however, for what would be an exception to the regulation quoted immediately above. The agency quite properly asks why it cannot insist on use of the usual routing when, as in this case, it is paying the employee overtime to travel on non-scheduled work days. We see no reason why the agency, under these circumstances, cannot require this of its employee.

Mr. Brocksmith complains that, in calculating the constructive cost of his TDY travel, the agency is enforcing an unwritten and unspoken requirement. We find instead that the agency is acting in accordance with applicable published regulations with which Mr. Brocksmith should be familiar. He states that, at the time he went on TDY to Colorado in late October 2002, he was an inexperienced traveler and unfamiliar with travel regulations and policy. We find this puzzling in view of his previous TDY assignments earlier in the year. In any event, it is well established that federal employees are charged with a knowledge of those regulations which bear on their activities. E.g., Mark Hummel, GSBCA 15205-RELO, 00-1 BCA ¶ 30,901; Jacqueline Williams, GSBCA 15026-RELO, 99-1 BCA ¶ 30,528.

It is regrettable that the error in settling the claimant's travel voucher in November 2002 was not discovered until after he had been paid. Nevertheless, we cannot fault the agency for attempting to correct its error once it became apparent that one had been made. We also question the reasonableness of claimant's alleged reliance on the correctness of the \$992 estimate he received before departing for Denver in late October. As already noted, this was not Mr. Brocksmith's first TDY assignment to the training center in Aurora. Two travel vouchers from prior months had already been settled based upon a constructive travel cost which used the lower fare. In addition, his travel authorization for his October TDY listed an estimated transportation cost of \$346. One wonders, therefore, why the claimant did not challenge earlier the use of the lower fare in settling his prior travel vouchers or even its apparent use in estimating the cost of his October TDY.

Decision

Mr. Brocksmith's claim that he is entitled to retain the agency's overpayment of \$296.87 is denied.

EDWIN B. NEILL
Board Judge