Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

April 8, 2003

GSBCA 15976-RELO

In the Matter of GEORGE S. DaBAI

George S. DaBai, Springfield, VA, Claimant.

Vickie Smith, Travel Supervisor, National Business Center, Bureau of Land Management, Denver, CO, appearing for Department of the Interior.

DANIELS, Board Judge (Chairman).

George S. DaBai, an employee of the Department of the Interior's Bureau of Land Management (BLM), believes that his agency has inadequately reimbursed him for the costs of transporting his household goods to his new permanent duty station. We agree with Mr. DaBai that BLM has misconstrued the law regarding this matter. Because the employee has not provided any documentation of costs he allegedly incurred, however, we cannot direct the agency to make any additional payments to him. To the contrary, on the basis of the record presented, we conclude that the agency has made some payments without justification.

Background

In August 1999, BLM transferred Mr. DaBai from California to Washington, D.C. A year earlier, Mr. DaBai had completed an assignment in Alabama, and he had left household goods in storage there. His orders provided, "Shipment of household goods and personal effects shipped via GBL [Government bill of lading]," and specified that the goods could be moved from Alabama, rather than California, to the Washington area.

At about the time it issued these orders, BLM analyzed the costs of shipment of 10,000 pounds of household goods from Madison, Alabama, to Washington, D.C. It compared the costs of shipment by the two methods authorized by regulation for transporting a transferred employee's goods, the commuted rate method and the actual expense method.[1]

[1]Under the actual expense method, the Government assumes responsibility for awarding contracts and for other negotiations with carriers. It selects the carrier, arranges for carrier (continued...)

Under the commuted rate method, BLM found, the cost would be $11,808.58. Under the actual expense method, if the agency were to issue a GBL to a common carrier it selected, the line-haul charge for the shipment would be $5313.87.

Nearly two years later, the goods were still in storage in Alabama. Mr. DaBai asked BLM whether he could have them transported to the Washington area by "student movers." An agency travel supervisor orally told him that he could do so and asked him to provide "weight tickets and receipts as part of the voucher documentation." Mr. DaBai says that the goods arrived in the Washington area in August 2001.

Mr. DaBai submitted a voucher asking BLM to pay him $4460.07 for the transport of the goods. Later, he submitted another voucher asking the agency to pay him instead $8268.16, an amount he calculated on a "cents per pound-mile" basis. The only documentation in our record regarding the shipment shows that the goods weighed 5620 pounds.

Initially, BLM paid Mr. DaBai $900.49, which both parties agree was the cost the employee incurred in renting a truck and fueling it with gasoline for the trip from Alabama to the Washington area. After the employee complained that this amount was insufficient, the agency agreed to pay him an additional $2085.98, for a total of $2986.47. The agency calculated this total amount in the following manner: The line-haul charge for moving 10,000 pounds of household goods from Alabama to Washington under a GBL in August 1999 would have been $5313.87. Mr. DaBai's goods weighed 5620 pounds, or 56.2 percent of 10,000 pounds. Therefore, he should be paid 56.2 percent of $5313.87.[2]

Discussion

Mr. DaBai makes three arguments in the alternative to justify his claim for additional funds. First, BLM's oral authorization of the use of student movers constituted an authorization to be reimbursed under the commuted rate method, rather than the actual expense method, for moving his household goods. Second, the agency did not perform a

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(...continued)
services and for packing and crating, prepares a Government bill of lading, pays charges incurred, and processes and pays any loss and damage claims. If the actual expense method is used, the employee may choose his own carrier, or use a rental truck or his own vehicle to transport his goods, but if he does so, the Government reimburses him only for expenses he incurs, not to exceed the costs the Government would have incurred if it had selected the carrier. Under the commuted rate method, the employee is required to make his own arrangements for the move. He selects and pays a carrier or transports his goods himself and is responsible for costs resulting from loss or damage in shipment. He is reimbursed by the Government in accordance with published schedules of commuted rates. 41 CFR 101-40.202-2, -3; 302-8.3(a), (b) (1999) (these provisions, in restated form, now appear at 41 CFR 102-117.240, 302-7.13, -7.15, -7.100, -7.200 (2002)); Steven J. Coker, GSBCA 15489-RELO, 02-1 BCA ¶ 31,743 (2001).

[2]The amount paid is actually eight cents more than 56.2 percent of $5313.87.

proper cost comparison between the two methods before it issued his travel orders, so he should be paid at the commuted rate. Third, even if payment should be made under the actual expense method, the limitation on payment should be far higher than the one the agency set, and he should be paid as much as the higher limitation.

(1) Mr. DaBai's travel orders plainly authorized the movement of his goods by GBL – in other words, under the actual expense method. The agency travel supervisor's oral statement that Mr. DaBai could use "student movers" to transport the goods did not alter the written authorization. Nor could it have reasonably have been interpreted to alter that authorization. An employee may choose his own way of moving household goods under either the actual expense method or the commuted rate method, so specifically allowing a particular way of moving does not suggest a conclusion that one or the other method is being prescribed. Mr. DaBai believes that the travel supervisor's statement that he should provide "weight tickets and receipts as part of the voucher documentation" supports his inference that the agency had permitted use of the commuted rate method. The statement does not support that inference. The weight of the goods is a factor not only in reimbursement under the commuted rate method, but also in determining the cost of shipment under a GBL, which limits reimbursement to an employee who moves his own goods under the actual expense method.

(2) The Federal Travel Regulation expresses a preference for using the commuted rate method, but it also allows use of the actual expense method when an agency performs a cost comparison which demonstrates a real savings to the Government of at least $100 through use of this method. The cost comparison must include all anticipated costs – line-haul charges, accessorial and packing charges, administrative expenses of making all arrangements and payments, and paying any loss and damage claims which might arise. 41 CFR 302-8.3(c) (1999); Coker. BLM did perform a cost comparison when it issued Mr. DaBai's travel orders, but as the employee observes, that comparison was flawed in that it related the commuted rate cost to a single component of the actual expense cost (the line-haul charge).

Nevertheless, the travel orders were clear on their face in authorizing shipment by GBL, and Mr. DaBai did not question them for more than two years – not until after he had moved his goods. We have often held that when an agency leads an employee to believe that he will be reimbursed under the commuted rate method, or gives the employee the choice of being paid under that method, the commuted rate method must be used to calculate the amount due the employee for the shipment of his goods. Raymond W. Martin, GSBCA 15559-RELO, 01-2 BCA ¶ 31,505 (citing cases). But we have never held that when an employee moves under clear orders mandating shipment under the actual expense method, he may be paid under the commuted rate method if he later demonstrates error in a previously-made cost comparison. Just as we have not allowed an agency to mislead an employee into thinking that he will be paid under one method and then pay him under the other (see cases cited in Martin), we do not allow an employee to mislead an agency into thinking that he has accepted being paid under one method and then secure payment under the other. See Paul F. Hofmann, GSBCA 14348-RELO, 98-1 BCA ¶ 29,520 (1997). We will review fully claims based on allegations made before a move that the method of payment for shipment of household goods was incorrect because it was based on a faulty cost

comparison. Mr. DaBai's challenge to his orders comes much too late to be considered favorably, however.

(3) The costs that BLM would have incurred if it had had Mr. DaBai's goods shipped under a GBL in August 2001 are relevant not to a comparison of costs between commuted rate and actual expense methods, but rather to the establishment of a limitation on the agency's obligation to reimburse the employee for costs he actually incurred in moving those goods. There is no basis for concluding, as the agency did, that the limitation is 56.2 percent of the line-haul charges for moving 10,000 pounds of household goods in August 1999. The limitation must be calculated on the basis of real costs, for line-haul, accessorial, and packing services of a carrier and for administrative costs and loss and damage reserves of the agency.

We need not know what that limitation may be, though, in order to settle Mr. DaBai's claim. This is because the only costs which the employee has incurred, for which he has provided documentation, are the costs of renting and fueling the truck in which the goods moved from Alabama to the Washington area. Those costs ($900.49) clearly fall below the appropriate limitation. They have already been paid.

BLM has also paid Mr. DaBai an additional $2085.98, on the theory that he should receive as much as the limitation based on an assumed amount of line-haul charges alone. There is no justification for this or any other additional payment, since there is no documentation in the record of the employee's having actually incurred any additional costs to move his goods. We do not have, for example, copies of canceled checks showing payment to any student movers. If the agency has no such documentation, it may recoup the additional payment from the employee. On the other hand, if the agency has documentation that the employee incurred additional costs in moving his goods, it may pay them, up to the amount of a properly calculated limitation. In any event, the costs of packing and storing the goods in Alabama may not be paid by BLM because they are properly associated with Mr. DaBai's relocation from Alabama to California, not his relocation from California to Washington, D.C.

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STEPHEN M. DANIELS
Board Judge