

Board of Contract Appeals
General Services Administration
Washington, D.C. 20405

August 12, 2004

GSBCA 16387-RELO

In the Matter of MARILYN E. VANNE

Marilyn E. Vanne, Dearing, GA, Claimant.

Janet S. Rankin, Regional Commissioner, Bureau of Labor Statistics, Department of Labor, Atlanta, GA, appearing for Department of Labor.

NEILL, Board Judge.

Claimant, Ms. Marilyn E. Vanne, a field economist for the Bureau of Labor Statistics (BLS), seeks to recover various expenses incurred in conjunction with her move from Atlanta, Georgia, to Greenville, South Carolina. Her agency has denied Ms. Vanne's claim on the ground that her move was nothing more than an interstation transfer for the employee's convenience. At the claimant's request, the agency has forwarded its denial of the claim for our review. For the reasons set out below, we grant the claim.

Background

On November 5, 2001, the Assistant Regional Commissioner for BLS in Atlanta, Georgia, sent the following e-mail message to employees:

We are planning on establish [sic] one duty station in either North Carolina or South Carolina and one in Florida. Based on discussions with our NCFLL [National Council of Field Labor Locals] stewards, we are soliciting volunteers for reassignment from all current NCS [National Compensation Survey] professional staff. Selections will be made based on length of service with the Department.

Later in the same day, the Assistant Regional Commissioner sent a follow-up message which read:

Please give an indication of which cities you would prefer. Tampa is not an option, we have enough folks there. It should be an area where there is work available to keep you busy year round. I will hand out the listing of initiation work available by area in the meeting tomorrow.

The following day, Ms. Vanne applied for several locations.

Sixteen days later, the Assistant Regional Commissioner sent to BLS employees another e-mail message which read:

We, in coordination with our Union Stewards, have made the following selections for duty stations from those requesting a change in duty station: Marilyn Vanne - South Carolina - Greenville area
Robert Bailey - Florida - Orlando

On January 22, 2002, the Assistant Regional Commissioner advised both Ms. Vanne and Mr. Bailey that their transfers would have an effective date of February 10. Ms. Vanne thereupon reminded the Assistant Regional Commissioner of a conversation they had had a few weeks before regarding the time of the transfer. It was Ms. Vanne's recollection that the Assistant Regional Commissioner was disposed to delay the transfer until the spring in order to afford Ms. Vanne additional time to sell her home. The Assistant Regional Commissioner replied that she had delayed matters somewhat but that she could not delay beyond February 10.

Subsequent to his transfer to Orlando, Florida, Mr. Bailey submitted a claim for travel and moving expenses. The claim was rejected by BLS on the ground that the transfer was primarily for the convenience and benefit of the employee. Mr. Bailey appealed the agency's determination to this Board. We concluded that the agency's characterization of the move was clearly erroneous and that Mr. Bailey was entitled to relocation benefits. Robert Bailey, GSBCA 15935-RELO, 03-1 BCA ¶ 32,232, reconsideration denied, 04-1 BCA ¶ 32,453 (2003).

Not surprisingly, Ms. Vanne followed with interest the efforts of Mr. Bailey to recover expenses incurred in conjunction with his transfer to Orlando. As the other BLS employee selected at the same time Mr. Bailey was selected, she too contends that she is entitled to relocation benefits. She deferred submitting a claim, however, preferring instead to await the outcome of Mr. Bailey's appeal.

Once the Board denied the agency's request for reconsideration of the decision rendered in favor of Mr. Bailey, Ms. Vanne submitted her own claim to BLS. The claim was denied on the same ground used to deny Mr. Bailey's claim, namely, the transfer was deemed to be for the convenience of the employee. Arguing that the circumstances of her transfer were identical to those of Mr. Bailey's transfer, Ms. Vanne asked the agency to reconsider its denial. The agency refused to do so. Then, at Ms. Vanne's request, BLS forwarded this case to us for review.

Discussion

In denying Ms. Vanne's claim, the BLS Regional Commissioner does not distinguish this case from that of Mr. Bailey. The Commissioner, however, relies on a provision of the collective bargaining agreement between the Department of Labor and NCFLL to demonstrate that Ms. Vanne's transfer was for her convenience and not primarily in the Government's interest. Article thirty-three of the collective bargaining agreement deals with interstation transfers.¹ Section four of this article reads:

¹ In our initial review of this claim, mention of a collective bargaining agreement prompted us to inquire of the agency whether that agreement explicitly and clearly excluded a claim, such as the one before us, from resolution pursuant to its grievance procedure.

Section 4 -- Interstation Transfer for Employee Convenience

Management will consider the request of an employee who, for personal convenience, asks to be transferred at his/her own expense to fill a vacant position within his/her Agency for which he/she is qualified and meets any special requirements.

Ms. Vanne freely admits that since her first interview with BLS officials in the summer of 1999, she has discussed with them at various times the possibility of being assigned to a duty station outside Atlanta. Her continued interest in a transfer was likewise apparent from her response to the agency's call in November 2001 for volunteers for reassignment. We cannot conclude, however, from these indications of interest, that, in November 2001, when the agency solicited volunteers for an interstation transfer, it had in mind an "interstation transfer for employee convenience" as contemplated in section four of article thirty-three.

The e-mail messages sent to the BLS employees in November 2001 by management, which ultimately led to the transfer of Mr. Bailey and Ms. Vanne, did indeed refer to union stewards. They did not, however, state that the agency was proceeding in accordance with section four of article thirty-three. Rather, they solicited volunteers to assist the agency to establish at that time two new duty stations outside of the Atlanta area. In Bailey, we concluded that any transfer to effect this end was undoubtedly in the Government's interest, even if some personal benefit did accrue to the employee as well. In the absence of an express reference in the e-mail messages to section four of article thirty-three, we conclude, therefore, that Ms. Vanne's transfer was likewise in the Government's interest. Furthermore, we note that paragraph C of section one of the same article of the collective bargaining agreement recognizes that employees are entitled to reimbursement of travel and transportation expenses incurred in an interstation transfer which is in the interest of the Government.

On the record before us, we can find nothing to distinguish the facts of this case from those underlying Mr. Bailey's claim. We agree with the claimant that the circumstances are virtually identical. Admittedly, in issuing a decision on an employee's travel or relocation claim, we settle that particular claim. 31 U.S.C. § 3702(a)(3) (2000). By publishing the decision, as well as issuing it, however, we do more than that. These decisions are intended to provide guidance which can and should be applied to future similar situations, thereby simplifying consideration of

On numerous occasions, the Board has recognized that, if a claim concerning travel or relocation expenses is subject to resolution under the terms of a grievance procedure mandated within a collective bargaining agreement, we lack authority to settle the claim. See Rhonda N. Smith, GSBCA 16387-RELO, 03-1 BCA ¶ 32,151 (citing cases). Indeed, the Board has also concluded that this is true even if the employee in question is not a member of the union. It is enough that the employee be a bargaining unit employee. See James C. Henzie, GSBCA 15820-TRAV, 02-2 BCA ¶ 31,900. Both the agency and the claimant have since provided us with copies of the agreement. We conclude that, pursuant to paragraph D of section two of article fifteen of the agreement, Ms. Vanne's claim is excluded from resolution under the agreement's grievance procedure. We, therefore, have the authority to settle this claim.

employees' vouchers, eliminating potential disputes, and saving time and resources of all concerned. Edward W. Irish, GSBCA 15968-RELO, 03-1 BCA ¶ 32,122 (2002). Our settlement of this claim, consequently, is the same as the one we made in Bailey. Ms. Vanne's claim should be paid in accordance with applicable regulations.

EDWIN B. NEILL
Board Judge