Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

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November 2, 2004

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GSBCA 16396-RELO

In the Matter of TIMOTHY PETER BAKER

Timothy Peter Baker, Raleigh, NC, Claimant.

Edward T. Nasalik, Executive Director, Heartland Finance Center, General Services Administration, Kansas City, MO, appearing for General Services Administration.

HYATT, Board Judge.

In general, if a relocating employee's travel orders do not specify what method of shipment has been authorized for transportation and temporary storage of household goods, the employee may seek recovery based on the commuted rate, but must provide the documentation required by regulation.

Background

In July 2003, claimant, Timothy Peter Baker, accepted a transfer with the Federal Protective Service (FPS), requiring him to relocate from Gautier, Mississippi, to Raleigh, North Carolina. Although FPS became part of the Department of Homeland Security in March 2003, the travel voucher for this move was processed by the General Services Administration (GSA), where FPS was formerly assigned.[1]

The transfer included relocation benefits. The principal relocation benefit in issue is Mr. Baker's entitlement to the costs of transportation and temporary storage of his household goods incident to the transfer. To facilitate the moving process, Mr. Baker filled out GSA's "Employee Relocation Fact Sheet." This sheet identified him as a new hire (although he

[1] By agreement, following the transfer of FPS to the Department of Homeland Security, GSA continued to perform finance functions for the FPS through September 30, 2004. As such, GSA was the paying office for travel and relocation claims submitted by FPS during that period. Part of this function included the review of travel vouchers to ensure conformity with the requirements of the Federal Travel Regulation (FTR).

qualified this as a "reinstatement" in parentheses next to the "new hire" box). He estimated the weight of his household goods to be 15,000 pounds. In a section titled "Remarks/Notes" Mr. Baker requested "use of [a] rental truck and vehicle trailer [for] 15 days, purchased in advance, in lieu of moving contractor, to expedite the move."

On July 22, 2003, FPS issued official travel orders (GSA Form 87), stating that the relocation was "in the interest of the Government" and authorizing claimant's relocation to Raleigh. The second page of the orders, GSA Form 87A, authorizes the transportation and temporary storage of household goods. The estimated cost of moving the household goods from Mississippi to North Carolina (box 12b) is $9010 and the estimated cost of temporary storage (box 12c) is $5096. Box 12a provides for the type of shipment. The three options listed in this box for shipment of household goods are "commuted rate system," "actual expense method," and "outside continental United States." None of these boxes is checked on this form.

Mr. Baker made his own arrangements for moving his household goods. After arriving in North Carolina, he submitted a travel voucher for the costs incurred in traveling to his new duty station and for transporting and temporarily storing his household goods there as well. The voucher was approved by the appropriate FPS officials and forwarded to GSA. The voucher seeks payment for the transportation of 15,900 pounds of household goods for 784 miles, at the commuted rate. The total amount claimed is $4508.52. After reviewing the voucher, GSA determined that the actual expense method had been authorized and required receipts for the cost of moving and storing claimant's household goods. Subsequently, Mr. Baker paid a local moving company to move his household goods from temporary storage to his new residence. Receipts for these costs are provided. The total cost for temporary storage ($631) and delivery of the household goods to his home ($425) came to $1056. Claimant disagrees with GSA's insistence upon receipts, asserting that his voucher was approved by FPS, that he is entitled to payment under the commuted rate system, and that he should not have to furnish the requested receipts.

GSA contends that prior to the move it performed a cost comparison to determine whether the commuted rate or the actual expense method was more economical. This comparison revealed that movement under the actual expense method, or by Government bill of lading (GBL), would cost approximately $9010, whereas shipment under the commuted rate system would come to $19,587.87. Thus, GSA maintains, the GBL method is what was authorized in claimant's travel orders. GSA believes this was communicated to Mr. Baker because the estimated cost of transporting his household goods was set at $9010 in the travel orders and he was counseled accordingly. Mr. Baker disputes this assertion, stating that he received no counseling concerning his moving options.

Discussion

Although Mr. Baker refutes GSA's statement that he is a new hire, the record does not reflect that he was a federal employee at the time he entered into the employ of the FPS. He characterizes his hire as a "reinstatement." This suggests that there was a break-in-service from federal employment. Under the Federal Travel Regulation (FTR), unless he was returning to the Government within one year after separation as a result of a reduction in force or transfer of functions, he is considered to be a new appointee. 41 CFR 302-3.1(b)

(2003); see Patricia G. Smith, GSBCA 16417-RELO, 04-2 BCA ¶ 32,703. In the absence of any information that Mr. Baker meets the requirement that his break-in-service be attributable to a reduction in force or transfer of functions and that he was re-employed within one year of his separation, we conclude that, for purposes of eligibility for relocation benefits, he was properly deemed to be a new appointee.

One of the relocation benefits for which a new appointee is eligible is transportation and temporary storage of household goods. 41 CFR 302-3.2 tbl. A; Charles M. Russell, GSBCA 16000-RELO, 03-1 BCA ¶ 32,176. The FTR specifies two available means of transporting the relocating employee's household goods. 41 CFR 302-7.13. Under the commuted rate method, the employee arranges for shipment, pays the carrier directly if one is utilized, and is reimbursed by the Government in accordance with rate schedules of commuted rates published by GSA. Under the actual expense method, the Government assumes responsibility for making all shipping arrangements, ships the goods under a GBL, and pays the carrier directly. In the event the employee declines to have goods moved by the Government, he or she may make different arrangements for shipment and be paid the actual costs incurred, not to exceed what would have been paid had the goods been shipped by the Government under a GBL. 41 CFR 302-7.15; see Elizabeth G. Jackson, GSBCA 15653-RELO, 02-2 BCA ¶ 31,953; David L. Foster, GSBCA 15641-RELO, 02-1 BCA ¶ 31,756.

Under the regulations, for transfers taking place within the continental United States, the commuted rate system is preferred unless the agency has determined that the actual expense method is more economical. 41 CFR 302-7.301. Here, although GSA apparently determined that the actual expense method would be more economical than the commuted rate, the travel authorization did not explicitly specify actual expense method or any other particular means of transport, nor did it expressly limit the cost of the move to the estimated amount of $9010. Ordinarily, under these circumstances, the commuted rate system becomes the default system. Steven J. Coker, GSBCA 15489-RELO, 02-1 BCA ¶ 31,743 (2001) (citing cases).

GSA's argument is that the employee should have known that he was limited to the actual expense method because the travel orders specified that the cost of transporting his household goods would be around $9010. Since his relocation fact sheet discussed a self-move, GSA does not believe that Mr. Baker ever expected to be recompensed under the commuted rate system. GSA also suggests that he could have learned which method had been approved by inquiring beforehand. For his part, Mr. Baker says that while he may have referred to a self-move in filling out paperwork, he did not understand his travel orders to limit his options, since they did not specify what type of move was authorized. Thus, he contends that he is entitled to claim compensation under the commuted rate system.

Resolution of this claim is complicated by the fact that the travel orders did not specifically authorize a particular method for transportation of household goods. Nor is there any language expressly limiting the payment to $9010, or to the amount the Government would spend in a GBL move. Additionally, although Mr. Baker has provided receipts for the cost of moving his goods from storage to his permanent residence in North Carolina, it is not clear what forms the basis for his claim for the "commuted rate" in connection with the transportation of household goods from Mississippi to North Carolina. His voucher seeks

reimbursement of $4508.52, based on the movement of 15,900 pounds for 784 miles, but neither the weight nor the distance is verified with backup documentation.[2]

To address the issue raised by claimant and GSA, under Board precedent, it is not enough that the agency considered the alternatives and concluded that the actual expense method would be more economical. It is the agency's responsibility both to select a method of transportation and to identify that method on the travel orders. Here, the employee's travel authorization itself is ambiguous. It does not clearly indicate which method of transportation is authorized. It does, however, provide an estimate of the cost of transportation that tracks the estimated amount of an actual expense move. When the travel orders are unclear on their face, it is the Board's responsibility to review all of the evidence presented, especially the information available on the travel orders, to determine what the employee reasonably could have understood his authorization to be. Jackson. Absent a preponderance of evidence showing that Mr. Baker had reason to understand that he was limited to the actual expense method, and would not be permitted to use the commuted rate system, we cannot conclude that the orders limited Mr. Baker to the amount it would cost to move under the actual expense method.

This does not end the matter, however. The regulations further specify that in order to receive the commuted rate, the employee must still provide documentation showing the weight and origin and destination of the goods transported:

> When claiming reimbursement under the commuted rate, you must provide:
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> (a) A receipted copy of the bill of lading . . . including any attached weight certificate copies if issued; or
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> (b) Other evidence showing points of origin and destination and the weight of your [household goods], if no bill of lading was issued, or
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> (c) If a commercial [household goods] carrier is not used, you are responsible for establishing the weight of the [household goods] and temporary storage by obtaining proper certified weight certificates. Certified weight certificates include the gross and tare weights. This is required because payment at commuted rates on the basis of constructive weight usually is not possible.

41 CFR 302-7.104. To date, based on the file provided to the Board, it does not appear that claimant has produced the evidence required by this provision. If he has done so, or does so now, based on the travel orders, he should be reimbursed according to the commuted rate

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[2] In any event, if this is an accurate measure of the cost under the commuted rate system, it should be noted that the cost of moving the household goods, together with storage costs, is still less than the $9010 estimated under the actual expense, or GBL, method, giving rise to some doubt as to which method was in fact, the more economical.

schedules. If he cannot produce the appropriate documentation to qualify for reimbursement under the commuted rate schedules, he should be reimbursed for his actual expenses to the extent he can produce receipts, up to the maximum amount he could receive under the commuted rate.

Finally, we note that Mr. Baker has questioned GSA's authority to review the voucher substantively and has asserted that he should be reimbursed, from GSA funds, the amount of $3661.20, which represents the hotel costs he incurred in North Carolina upon reporting to his new duty station and prior to moving into permanent quarters. He recognizes that he is not entitled to these benefits, which cannot be authorized for someone who has the status of a "new appointee" for relocation purposes. Russell. Nonetheless, claimant urges that this would be an appropriate means to compensate him for GSA's recalcitrance in paying his voucher.

In response to this contention, we note first that the Board has no authority to impose a penalty upon GSA, or otherwise to authorize compensation of this nature. See Coker (our only authority is to settle claims pursuant to 31 U.S.C. § 3702(a)(3) (2000)). In addition, since GSA, by agreement with the Department of Homeland Security, temporarily retained the responsibility for performing the financial review function for FPS, it was the certifying authority for the disbursement of these funds. As such, GSA's actions in questioning the voucher were appropriate. Further, we have not found that GSA's concerns were entirely without foundation. The main problem here was the misfocus on what method of transportation had been authorized rather than on the process for substantiating the claim. Claimant still needs to provide supporting documentation, regardless of whether he is seeking compensation based on the commuted rate system or on his actual expenses.

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CATHERINE B. HYATT
Board Judge