Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

October 27, 2004

GSBCA 16493-RELO

In the Matter of KENNETH P. WILKES

Kenneth P. Wilkes, Hilliard, FL, Claimant.

Michael J. Upton, Program Director, Office of Financial Services, Federal Aviation Administration, Oklahoma City, OK, appearing for Department of Transportation.

DANIELS, Board Judge (Chairman).

The Federal Aviation Administration (FAA) has its own travel policy, which applies to that agency's employees. James S. Hartley, GSBCA 16390-RELO (July 22, 2004); Ronald Majtyka, GSBCA 16120-TRAV, 03-2 BCA ¶ 32,388; James W. Respess, GSBCA 15532-RELO, 01-2 BCA ¶ 31,450. One of the unusual aspects of that policy is that the agency may pay relocation benefits in two different ways: as reimbursement of actual expenses incurred (a form similar to that prescribed by the Federal Travel Regulation for most federal civilian employees) or in a "flat rate" amount. In this case, the FAA was confused as to when the two methods should be used and improperly directed an employee to repay benefits which had been permissibly paid to him years earlier. We grant the employee's claim, thereby precluding the agency from recouping the payment.

Background

On August 16, 2000, the FAA issued a vacancy announcement for a supervisory airway transportation system specialist in Jacksonville, Florida. With regard to relocation benefits, the announcement contained only this brief statement: "PCS [permanent change of station]: Relocation/moving expenses will be paid per applicable regulations."

The FAA Travel Policy (FAATP), as in effect at the time relevant to this case,[1] allowed for two different ways to pay an employee's relocation expenses. First, a "relocation

[1]Under the FAATP, "[t]he provisions in effect on [an employee's] effective date of transfer or appointment govern [the employee's] relocation allowances and entitlements." FAATP 302-2.7 (Oct. 15, 1998).

[could] be authorized at Government expense" "when it is in the interest of the Government." FAATP 302-2.2. The FAA was supposed to show that it considered a relocation to be in the interest of the Government by so stating, "on the vacancy announcement if the relocation is related to a MPP [merit placement program] placement, or on the offer letter if the relocation is related to an IPP [internal placement program] placement. The vacancy announcement, or offer letter, will state that full PCS benefits will be paid." Id. 302-2.3. Second, if an employee was to be relocated to a new official station, of "some benefit" to but not primarily in the interest of the Government, the FAA could pay a fixed amount to the employee. Id. 302-2.4. The agency was supposed to show that it had determined that it would derive a benefit from a relocation not in the interest of the Government by so stating on the vacancy announcement or offer letter. "The vacancy announcement, or offer letter, will state the amount of the benefit [the FAA] will pay." Id. 302-2.5.

Early in 2001, the FAA selected Kenneth P. Wilkes for the position described in the vacancy announcement. At the time, Mr. Wilkes states without contradiction by the FAA, "it was not unusual for the agency field organizations to interpret the phraseology 'PCS to be paid per applicable regulations' as allowing for 'Flat Rate' or full PCS since both were covered by the FAA Travel Policy." The FAA gave Mr. Wilkes a choice between accepting reimbursement of actual relocation expenses or receiving a payment in the fixed amount of $25,000. Mr. Wilkes requested the latter. He was then issued orders to relocate from Hampton, Georgia, to Jacksonville. The orders stated, "This is a flat rate PCS for $25,000.00."

Mr. Wilkes reported for work at his new duty station in Jacksonville on February 12, 2001. On or about that date, the FAA paid him the specified amount of $25,000.

On July 16, 2004, the FAA demanded that Mr. Wilkes repay the $25,000. Mr. Wilkes asked the agency to reconsider its decision, and also to waive its demand for repayment. On July 30, the FAA told him, "Your request for waiver is denied because the job announcement authorized 'full' PCS (actual expenses) and you were not entitled or allowed to 'elect' the $25,000.00 fixed rate PCS." On September 16, the FAA made clear that it had not reconsidered its determination that Mr. Wilkes repay the amount. The agency explained, "When a fixed rate PCS is authorized, the job announcement must specifically state 'A fixed relocation payment in the amount of $X will be paid.' It must state the exact dollar amount of the relocation payment." Additionally, the agency maintained, "the employee is not allowed the opportunity to 'elect or choose' whether [he] will receive full PCS or fixed PCS."

Mr. Wilkes asks the Board to set aside the FAA's demand that he repay the money in question. He contends that in issuing travel orders to him, the agency's management interpreted the FAATP to allow the payment. He also says that he relocated to Jacksonville in accordance with the orders. According to Mr. Wilkes, the agency's current demand is "punitive in nature."

Discussion

The vacancy announcement for the job for which Mr. Wilkes was selected contained only a cryptic statement regarding relocation benefits: "PCS [permanent change of station]: Relocation/moving expenses will be paid per applicable regulations." This announcement

did not state that the FAA considered an employee's relocation to take this job to be in the interest of the Government, as it might have in compliance with FAATP 302-2.3. It did not, as the FAA maintains, "authorize[] 'full' PCS (actual expenses)." Nor did the announcement state that the agency considered such a relocation to be not in the interest of the Government, but of some benefit, so that payment of a specific fixed amount to the transferee would be made, as might have been done in compliance with FAATP 302-2.5.

Simply saying that benefits would be paid "per applicable regulations" allowed payment of either reimbursement of expenses or a fixed amount payment, since both are permitted by the applicable regulations – the FAATP. Agency practice in February 2001, when Mr. Wilkes moved from Hampton, Georgia, to Jacksonville to assume his new position, was consistent with this understanding. Although the FAA is correct in maintaining that the regulations did not permit an employee to elect one form of benefits or the other, the FAATP did permit agency management to select one form or the other. The fact that management selected the particular variety of benefits which Mr. Wilkes preferred is unimportant to a resolution of this case. The selection was permissible, and having made it – and not questioned it for more than three years – the FAA must live with it. David S. Reinhold, GSBCA 16334-RELO, 04-1 BCA ¶ 32,576; Linda M. Conaway, GSBCA 15342-TRAV, 00-2 BCA ¶ 31,133; Bart J. Dubinsky, GSBCA 14546-RELO, 98-2 BCA ¶ 29,840; John Patrick Pede, GSBCA 13862-RELO, 97-2 BCA ¶ 29,023.

In addition to its misguided belief that Mr. Wilkes must repay the $25,000 because the vacancy announcement to which he responded mandated a different form of relocation benefits, the FAA advances an alternative justification for demanding repayment of the money. This is that "the employee reestablished his original residence, which is not allowed pursuant to FAATP 302-8.6 and 302-8.16." This alternative basis fails for two separate reasons. First, there is no evidence that in assuming the position in Jacksonville, Mr. Wilkes reestablished a residence he had had previously. The agency may be confusing this move with another which the same employee had made earlier. In March 2000, Mr. Wilkes was paid $25,000 in conjunction with a permanent change of station to Hampton, Georgia, but then complied with the FAA's demand that he repay the money because he could not prove that he had actually moved to the Hampton area from Panama City, Florida. The agency has not suggested that Mr. Wilkes' residence remained in Panama City when he took the job in Jacksonville. (Mr. Wilkes, to the contrary, asserts that while he continues to own resort property in Panama City, he now lives in the Jacksonville area.) Second, as we point out in Keith L. Miller, GSBCA 16513-RELO, also being issued today, the FAATP provisions on which the FAA relies did not exist at the time Mr. Wilkes relocated to Jacksonville and therefore do not govern his relocation benefits.

Decision

The FAA may not recoup from Mr. Wilkes the $25,000 payment it made to him on the occasion of his reassignment from Hampton, Georgia, to Jacksonville, Florida.

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STEPHEN M. DANIELS
Board Judge