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

March 22, 2005

GSBCA 16612-RELO

In the Matter of NANCY C. JOHNSON

Nancy C. Johnson, Accokeek, MD, Claimant.

Richard B. Schiff, Office of General Counsel, Counterintelligence Field Activity, Department of Defense, Arlington, VA, appearing for Department of Defense.

PARKER, Board Judge.

Background

In June 2004, Dr. Nancy C. Johnson, an employee of the Department of Defense (DoD) Polygraph Institute in South Carolina, was selected for the position of Dean of Academics at DoD's Counterintelligence Field Activity (CIFA) in Arlington, Virginia. CIFA agreed to pay Dr. Johnson's relocation expenses. Arlington is in the Washington, D.C., area.

In connection with her relocation, Dr. Johnson entered into a service agreement that stated, in pertinent part:

> I understand and agree that:
>
> a. I will remain in government service for a minimum of 12 months beginning with the date I report for duty at my new or first PDS [permanent duty station], unless I am separated for reasons beyond my control that are acceptable to the agency concerned.

The agreement went on to state that if Dr. Johnson failed to serve the required minimum period of time, she would be obligated to repay the Government the amount it spent on her relocation.

During this time, Dr. Johnson was also looking for other employment in the Washington, D.C., area. On July 22, as the movers were loading her household goods into a van, Dr. Johnson received a telephone call from the United States Capitol Police offering her the position of Dean of Educational Programs in Washington, D.C.. She told the caller that she would think about it. The Capitol Police position did not include relocation expenses.

On July 28, the day after her household goods were delivered to her new residence, Dr. Johnson received a written offer of employment from the Capitol Police. She accepted the job two days later and told her boss at CIFA that she would be leaving. Dr. Johnson transferred from CIFA to the Capitol Police on August 6, 2004.

Discussion

CIFA has asked the Board whether, under circumstances it considers to involve something less than full disclosure and good faith, the agency is obligated to pay for Dr. Johnson's relocation. The answer, which is mandated by statute, is yes.

Under 5 U.S.C. § 5724(i) (2000), an agency may pay relocation allowances when an employee is transferred within the continental United States only after the employee agrees in writing to remain in government service for twelve months after his transfer, unless separated for reasons beyond his control that are acceptable to the agency concerned. If the employee violates the agreement, the money spent by the Government for the allowances is recoverable from the employee as a debt due the Government.

As CIFA recognizes, both the statute and the service agreement require only that Dr. Johnson remain in government service for twelve months after her transfer, and that Dr. Johnson's transfer to the Capitol Police does not violate either the statute or the express terms of the agreement. *Finn v. United States*, 428 F.2d 828 (Ct. Cl. 1970). CIFA, however, is understandably upset at having to pay Dr. Johnson's relocation expenses and questions whether Dr. Johnson's alleged failure to fully inform the agency of her actions could provide a basis under contract law for voiding the agreement.

Even assuming that Dr. Johnson was less than forthcoming as to her employment plans -- in fairness to Dr. Johnson, she states that her supervisors at CIFA were aware that she had been looking for other jobs during the same period -- there is no basis for voiding the agreement. The courts have consistently held that there is a "well-established principle that, absent specific legislation, federal employees derive the benefits and emoluments of their positions from appointment rather than from any contractual or quasi-contractual relationship with the government." *Chu v. United States*, 773 F.2d 1226, 1229 (Fed. Cir. 1985). In other words, "public employment does not . . . give rise to a contractual relationship in the conventional sense." *Shaw v. United States*, 640 F.2d 1254, 1260 (Ct. Cl. 1981) (quoting *Urbina v. United States*, 428 F.2d 1280, 1284 (Ct. Cl. 1970)). In *Finn*, the United States Court of Claims said specifically with regard to 5 U.S.C. § 5724(i):

> There is no provision in the statute to delegate discriminatory implementation or administration by an agency. The statute is clear and unambiguous on its face[.]

428 F.2d at 831; *see Jenny L. W. Jones*, GSBCA 15808-RELO, 02-2 BCA ¶ 31,894, at 157,588 ("[i]nvocation of a contract theory [in connection with a service agreement] is not helpful, for the relationship between Government agencies and their employees is governed by statutes and regulations, not contracts"); *Dr. William Post, Jr.*, B-196795 (June 5, 1980) (service agreement is not contractual, but is a statutory condition precedent to the payment of travel and transportation expenses). Accordingly, because the conditions under which the Government may recover relocation costs are specifically provided by statute, arguments the agency might make in connection with a matter governed solely by the terms of a contract are unavailing.

Decision

The agency should pay the claimed expenses.

ROBERT W. PARKER
Board Judge