

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

May 9, 2002

GSBCA 15820-TRAV

In the Matter of JAMES C. HENZIE

James C. Henzie, Livingston, MT, Claimant.

Franklin C. Walker, Assistant Superintendent, National Park Service, Department of the Interior, Yellowstone National Park, WY, appearing for Department of the Interior.

DeGRAFF, Board Judge.

James C. Henzie is an employee of the Department of the Interior at Yellowstone National Park. During the past several years, Mr. Henzie performed temporary duty assignments within Yellowstone National Park, and Interior paid him per diem allowances at rates less than the maximum per diem rate prescribed in the Federal Travel Regulation (FTR). Interior pays reduced per diem rates to employees who perform temporary duty at locations where lodging and meal preparation facilities are provided by Interior.

Wage grade employees of Yellowstone National Park, including Mr. Henzie, are members of a collective bargaining unit that is represented by an employee union. The union and Interior reached an agreement regarding the amount of some reduced per diem rates for at least part of the time that Mr. Henzie performed his temporary duty assignments. Mr. Henzie does not want to accept the terms of that agreement and does not think that the union adequately represents his interests. Mr. Henzie does not believe either that his temporary duty locations warranted reduced per diem rates, or that his per diem rates should have been reduced as much as they were. He submitted a claim to Interior for per diem allowances in excess of the reduced rates he was paid during the past six years. When Interior did not pay his claim, he asked us to review Interior's decision.

The employee union and agency management at Yellowstone National Park entered into a collective bargaining agreement which provides that with certain specified exceptions not relevant here, the agreement's procedure is the exclusive procedure available to a bargaining unit employee for the resolution of a grievance. The agreement explains that a grievance includes a complaint by an employee concerning the violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment. Labor-Management Agreement between Yellowstone National Park and Local Union No. 322, International Brotherhood of Electrical Workers (IBEW) AFL-CIO, Article VII. Even

though Mr. Henzie is not a member of the union, he is a bargaining unit employee and the terms of the collective bargaining agreement apply to him. 5 U.S.C. § 7114(a)(1) (2000); American Federation of Government Employees, Local 2000, AFL-CIO and William R. Massengale, 14 F.L.R.A. 617 (1984); Labor-Management Agreement between Yellowstone National Park and Local Union No. 322, International Brotherhood of Electrical Workers (IBEW) AFL-CIO, Article I, section 2.

Mr. Henzie's claim is a grievance that is subject to resolution under the terms of the collective bargaining agreement's procedures. Although a grievance does not include a matter that is specifically provided for by Federal statute, 5 U.S.C. § 7103(1)(14), no statute specifically provides the per diem rate that must be paid when an agency makes lodging and meal preparation facilities available at a temporary duty location. The FTR gives an agency the discretion to pay a reduced per diem rate when it determines in advance of the temporary duty that lodging and/or meal costs will be lower than the maximum per diem rate. But, the FTR does not establish the amount of such a reduced rate. 41 CFR 301-11.200 (2001).

On numerous occasions, we have recognized that if a claim is subject to resolution under the terms of a grievance procedure mandated by a collective bargaining agreement, we lack the authority to settle the claim using our administrative procedures. Ervin T. Upchurch, GSBCA 15459-TRAV (May 4, 2001) (citing cases). Because the disagreement between Mr. Henzie and Interior is a grievance that must be resolved by using the collective bargaining agreement's grievance procedure, the Board cannot resolve this claim. The collective bargaining agreement's grievance procedure is the exclusive means available to Mr. Henzie for resolving his disagreement with Interior.

The claim is dismissed.

MARTHA H. DeGRAFF
Board Judge