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

October 24, 2003

GSBCA 16117-TRAV

In the Matter of JULIO GAGOT-MANGUAL

Joseph Deliz Hernandez, Bayamon, PR, appearing for Claimant.

William Latimer, Office of the Staff Judge Advocate, Department of the Army, Fort Buchanan, PR, appearing for Department of the Army.

NEILL, Board Judge.

Claimant in this case, Mr. Julio Gagot-Mangual, asks that we review a denial by the Department of the Army (the Army) of his eligibility for renewal agreement travel. For the reasons stated below, we affirm the Army's denial.

Background

In 1990, while employed at San Bruno, California, as an electrical engineer for the Department of the Navy (the Navy), Mr. Gagot-Mangual accepted a position at the Roosevelt Road Naval Station in Ceiba, Puerto Rico. The transfer involved a downgrade from a GS-12 position to a GS-9 position with potential for promotion to a GS-11. The claimant explains that he was willing to accept the transfer at the lower grade because it enabled him to care for his mother, who lived near his new permanent duty station and was legally blind and ill at the time.

As part of his transfer, claimant, on October 23, 1990, signed the Navy's rotation agreement for employees recruited for assignment in a non-foreign overseas area. Under the agreement, the employee was to be subject to the Navy's overseas rotation policy for the first five years of employment in the non-foreign overseas area. Claimant's initial tour was set at thirty-six months. That tour could, according to the agreement, be extended by management with the concurrence of the employee. Any extension beyond five years, however, would automatically release the employee from the Navy's rotation program. In the absence of any extension, the employee agreed to exercise his return rights upon completion of his tour or, if eligible, to register in the priority placement program of the Department of Defense (DoD) for return placement.

Another provision of the rotation agreement claimant signed with the Navy stated that the agreement would be void if, before completion of the overseas tour, the employee

transferred to a federal agency outside the Navy or were to be voluntarily or involuntarily separated. The agreement went on to state that, if claimant were to transfer to another component within DoD, he would be subject to that component's rotational program rather than to the Navy's.

In addition to the Navy's rotation agreement, Mr. Gagot-Mangual also signed, on October 23, 1990, a transportation agreement. This agreement, which was set out on a DoD standard form 1617, is used for overseas civilian employees of the department who are assigned to locations outside the contiguous forty-eight states and the District of Columbia. Under the terms of this agreement, the employee recognizes and agrees that, until he or she completes the prescribed tour specified in the agreement (in this case thirty-six months), he or she will not be eligible for return travel and transportation allowances at government expense for self, dependents, or household effects for purposes of separation from service. The transportation agreement also contained the standard provision that this limitation would not apply if the earlier return were for causes beyond the employee's control and acceptable to the employee's agency. The transportation agreement signed by Mr. Gagot-Mangual also provided that if the employee did not remain in government service for a minimum of twelve months he would be liable for the costs incurred by the Government in connection with his being relocated to his new assignment.

Claimant began his tour of duty at his new assignment in Puerto Rico on or about November 19, 1990. He did not remain at his new post, however, for a full twelve months. Instead, in May 1991, he left his post with the Navy and accepted a GS-11 position as an electrical engineer with the Army at Fort Buchanan -- also in Puerto Rico. In assuming his new position with the Army, Mr. Gagot-Mangual did not sign a rotation agreement with the Army or a transportation agreement such as that signed with the Navy before his transfer to Roosevelt Road Naval Station. Nevertheless, a note in the "remarks" section of a standard personnel form 52-B, prepared by the Army on the occasion of the transfer, states that claimant had return rights through the DoD priority placement program, that he was on a thirty-six month tour with thirty months remaining, and that he was entitled to accrue annual leave and home leave.

In early November 1993, anticipating the expiration of his original tour, claimant requested a twelve month extension. He was apparently under the impression that if his tour and his original agreements with the Navy were not extended, he would forfeit any right to return to his actual residence in California. Coupled with this concern over return travel was an apparent belief that, as long as his tour and agreements were extended, he retained some legal or quasi-legal right to return to a position and grade similar to that which he held when he left the continental United States (CONUS) to accept a position with the Navy in Puerto Rico.

At the same time he was seeking to extend his tour and agreements in November 1993, Mr. Gagot-Mangual wrote two letters, one to the Office of the Staff Judge Advocate at Fort Buchanan and one to his command's personnel office. The stated purpose of both letters was to clarify his position and status now that his original tour was reaching a conclusion. In both letters he freely admitted that he no longer had return rights to his former

position with the Navy but was of the opinion that, with the expiration of his three-year tour, the Army should honor any agreement he originally had with the Navy.

The claimant did not receive a reply to either of the two letters he sent to Army officials in an effort to clarify his position. His request for an extension of his tour, however, was granted. The tour was ultimately extended for 180 days.

In May 1994, claimant requested a further extension of six months. In response to this request, the base commander, by letter dated May 26, 1994, assured Mr. Gagot-Mangual that he would be retained in his position as an electrical engineer at the GS-11 level based on his current transportation agreement until such time as he received a valid offer of employment through the DoD priority placement program or until he exceeded the maximum of five years of service outside CONUS. As to the claimant's opinion that he should be restored to his original GS-12 grade, the commander advised Mr. Gagot-Mangual in the same letter that he had no acquired right to such a position either at Fort Buchanan or elsewhere.

Claimant contends that the base commander's letter of May 26, 1994, "extended my transportation agreement forever." It is not altogether clear from the record what precisely transpired following Mr. Gagot-Mangual's receipt of this letter from the base commander. A letter in the record to claimant from his command's Civilian Personnel Directorate, however, shows that, by December 1994, Mr. Gagot-Mangual was registered in DoD's priority placement program. The claimant, himself, contends that, during the years which followed, he attempted to claim his return rights under the allegedly extended transportation agreement but that the Army continued to deny the existence of such an agreement.

Several years later, in a letter dated June 7, 2001, claimant advised the Base Operations Manager at Fort Buchanan that, as a result of this unwarranted and unlimited extension of his transportation agreement in May 1994, he and his family were eligible for extended paid vacations every two years to California. In response to this assertion, the director of the base civilian personnel office provided claimant with printed information regarding an overseas employee's rights to home leave pursuant to 5 U.S.C. § 6305(a) and to renewal agreement travel pursuant to 5 U.S.C. § 5728(a). The instructions regarding renewal agreement travel explain that, as a pre-requisite to this travel, the employee is to sign a "new written agreement" before departing from the post of duty at the conclusion of his or her prior tour.

In answer to the letter from the civilian personnel office and to the materials provided in that letter, claimant, in a memorandum dated December 10, 2001, indicated a willingness to sign another transportation agreement, if necessary, but insisted that the problems under the active transportation agreement should be solved first.

In October of the following year, claimant wrote to the base commander complaining that he continued to be unfairly deprived of various rights which were his pursuant to his transportation agreement. He asked that the commander assist him to resolve these matters. This memorandum was referred to the director of the civilian personnel office. This time, in response to the claimant's complaints, the director asked for documentation in support of the contention that a transportation agreement between claimant and the Army actually existed. In addition, claimant was asked to document the contention that his requests for

leave in CONUS pursuant to the alleged agreement had been continually denied over a seven-year period.

In early February 2003, claimant submitted a documented reply to the civilian personnel office. On review of this submission, the Office Director concluded that Mr. Gagot-Mangual was not eligible for renewal agreement travel. He advised the claimant of this fact by letter dated March 7, 2003. It is this determination which the claimant asks us to review.

We note in passing that the claimant's submittal to which the director of the base civilian personnel office replied touched on far more than renewal agreement travel. Claimant wrote of his efforts to exercise return rights to a position in CONUS with pay equivalent to that he had received in his former position. He complained that his position in the priority placement program was not upgraded to reflect the grade to which he allegedly would be entitled upon return to CONUS. He also contended that his position in the priority placement program was jeopardized by an unduly severe performance evaluation. These, of course, are all matters which lie well outside the limits of our delegated authority. However, as noted, the agency's reply of March 7, 2003, to claimant addresses only renewal agreement travel. Furthermore, it is manifestly clear from the formal complaint claimant's counsel has filed in this case that it is the agency's denial of the alleged entitlement to renewal agreement travel which we have been asked to review.

Discussion

We turn first to the agency's contention that we lack the authority to settle this claim. Counsel argues that, in this case, claimant is not seeking "reimbursement" of expenses incurred while on official temporary duty travel or in connection with relocation to a new duty station. The agency apparently believes that our authority with regard to the settlement of travel claims is limited solely to those cases where a claimant seeks reimbursement of actual expenses incurred while on official temporary duty travel. We disagree.

In Executive Order 11609 (July 22, 1971), the President delegated to the Administrator of General Services the authority to issue regulations implementing various statutes relating to travel and transportation of civilian employees of the Federal Government. That authorization was later replaced by a specific statute which assigns to the Administrator of General Services the responsibility of implementing chapter 57 of title 5 of the United States Code, regarding travel, transportation, and subsistence expenses of federal civilian employees. 5 U.S.C. § 5707(a) (2000).

In fulfillment of the President's earlier delegation and the subsequent statutory authorization, the Administrator has issued the Federal Travel Regulation (FTR), which is currently found at 41 CFR chs.300-304 (2002) (FTR chs. 300-304). In view of the Administrator's unique role in the area of travel regulation, statute now also assigns to the Administrator the responsibility of settling claims of or against the United States involving expenses incurred by federal civilian employees for official travel and transportation, and for relocation expenses incident to transfers of official duty stations. 31 U.S.C. § 3702(a)(3). The Administrator, in turn, has issued to this Board a formal delegation under the terms of which the Board:

> [r]esolves claims made under 31 U.S.C. [§] 3702 for reimbursement of expenses incurred by Federal civilian employees while on official temporary duty travel or in connection with relocation to a new duty station. The Board's decisions constitute final administrative action on these claims, not subject to review within the agency.

Delegation ADM P 5450.39C CHGE 78 (Mar. 21, 2002).

We find the agency's reading of the Administrator's statutory authorization to settle disputes relating to travel and relocation expenses unduly restrictive. We believe it highly unlikely that Congress, in designating the Administrator as arbiter of these disputes, intended to limit that authority solely to disputes involving *actually* incurred expenses. A review of this Board's decisions and decisions of the Comptroller General, our predecessor in resolving disputes concerning travel and relocation expenses, reveals that, among the disputes resolved, are those which involve potentially as well as actually incurred expenses. E.g., Armando G. Solis, GSBCA 15713-RELO, 02-2 BCA ¶ 31,870; Patrick R. Gillen, 15748-RELO, 02-2 BCA ¶ 31,869; Estelle C. Maldonado, 62 Comp. Gen. 545 (1983). In either case, the fundamental decision which must always be made concerns first and foremost the claimant's entitlement to what is or may eventually become a quantified claim.

In this case, the claimant remains convinced that any expense incurred in conjunction with renewal agreement travel which he might undertake should be reimbursable. The agency, for the reasons stated, disagrees. It makes little sense that Congress, in authorizing the Administrator to resolve a dispute such as this, would expect the claimant to actually incur the expenses in question before the Administrator would be empowered to address the substance of the dispute. In the past, we have declined to exercise our claim settlement jurisdiction when the issue is purely hypothetical or academic. John R. Durant, GSBCA 15726-TRAV, 02-1 BCA ¶ 31,827. Nevertheless, we will not hesitate to address disputes such as the present one where the claimant has a definite and concrete intention to incur expenses if authorized to do so. George R. Saulsbery, GSBCA 16027-RELO, 03-1 BCA ¶ 32,179.

An issue not raised by the agency but which also concerns our authority to resolve this case is the claimant's status as a member of a collective bargaining unit. In reviewing the record for this case, we found references suggesting that the claimant might be a union member. 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 using our administrative procedures unless the agreement explicitly and clearly excludes the claim from its procedures. See James C. Henzie, GSBCA 15820-TRAV (May 4, 2001). We, therefore, sought to determine if Mr. Gagot-Mangual was a member of a bargaining unit.

Counsel for claimant has confirmed that his client is a union member. Counsel has also provided us, however, with the text of the union's collective bargaining agreement with Fort Buchanan. Article 16 of the agreement, Negotiated Grievance Procedure, states that the parties agree that the article is to provide "an orderly and sole procedure for the processing and settlement of grievances." Section two of the same article lists specific exclusions to the procedure. Among these is the following: "any other matter for which a statutory or

regulatory appeals procedure exists, except as provided in Section 3 below." (The exception mentioned concerns removal or reduction-in-grade actions which the employee may, at his or her option, appeal to the Merit Systems Protection Board.)

Because the Board's review of an agency's denial of travel and relocation claims filed by civilian employees of the Federal Government is conducted pursuant to a specific statutory authorization to the Administrator of General Services and in accordance with published regulations (48 CFR pt. 6104), we conclude that a case such as this is explicitly and clearly excluded from the grievance procedure of the applicable collective bargaining agreement. We, therefore, are prepared to address the claim on its merits. See Lawrence M. Cason, GSBCA 15246-RELO, 00-1 BCA ¶ 30,883; John B. Courtnay, GSBCA 14508-TRAV, 98-2 BCA ¶ 29,791.

The renewal agreement travel to which the claimant believes he is entitled is, as we have already noted, based upon a provision appearing in chapter 57 of title 5 of the United States Code. The pertinent language of the statute was essentially the same at the time Mr. Gagot-Mangual began his tour in 1990 as it is today. It reads:

> [A]n agency shall pay . . . the expenses of round-trip travel of an employee and the transportation of his immediate family, but not household goods, from his post of duty outside the continental United States, Alaska, and Hawaii to the place of his actual residence at the time of appointment or transfer to the post of duty, after he has satisfactorily completed an agreed period of service outside the continental United States, Alaska, and Hawaii and is returning to his actual place of residence to take leave before serving another tour of duty at the same or another post of duty outside the continental United States, Alaska, and Hawaii under a new written agreement made before departing from the post of duty.

5 U.S.C. § 5728(a) (1988).

The requirement that the employee sign a new written agreement to serve another tour prior to leaving his post of duty at the conclusion of his first tour, therefore, is a precondition to entitlement which is expressly set out in the text of the statute itself. Implementing regulations in the FTR and DoD's Joint Travel Regulations (JTR), to which the claimant is subject as a DoD employee, reaffirm this fundamental requirement. FTR 302-3.212; JTR C4151. The Board likewise, in its own decisions regarding renewal agreement travel, has frequently noted the existence of this requirement. E.g., Jacqueline G. Sablan, GSBCA 15961-TRAV, 03-2 BCA ¶ 32,309; Joe E. Masters, GSBCA 15908-TRAV, 03-1 BCA ¶ 32,229; Donald E. Guenther, GSBCA 14154-TRAV, 98-1 BCA ¶ 29,394.

We find nothing in the record for this case indicating that the claimant ever signed or was precluded by the agency from signing an agreement to serve another tour of duty in Puerto Rico. Although he indicated a willingness to sign a new agreement when told that it was required, he nonetheless insisted that the problems under the active transportation agreement should be solved first.

Mr. Gagot-Mangual dwells at some length upon the alleged extension or renewal of his initial "transportation agreement."[1] The Army, on the other hand, insists that no transportation agreement was entered into after claimant left his position with the Navy for one with the Army at Fort Buchanan. In the final analysis, however, the continued existence of an initial transportation agreement relating to the claimant's original tour or any new agreement regarding that portion of the original tour which still remained at the time claimant was given a position with the Army is irrelevant to the question of whether claimant is entitled to renewal agreement travel. As seen, what is required as a condition for this entitlement is a *subsequent* service agreement pursuant to which the employee, at the conclusion of one tour of duty, agrees to undertake a new tour upon returning from home leave in CONUS. None of the transportation agreements claimant cites to us reveal such an intent. They cannot, therefore, render him eligible for renewal agreement travel.

Indeed, the documentation provided by claimant convinces us that neither claimant nor the Army intended that he should sign-up for a new tour in Puerto Rico once his first tour had expired. Mr. Gagot-Mangual was intent on extending his tour because he believed that, in doing so, he would preserve his return rights to CONUS under his original transportation agreement. It is also clear that he hoped to be able to return to CONUS by participating in DoD's priority placement program. The local commander, for his part, recognized the claimant's desire to return to CONUS but, at the same time, assured him that he could remain gainfully employed at the GS-11 level at Fort Buchanan until such time as he received a valid offer of employment through the DoD priority placement program or until he exceeded the maximum of five years of service outside CONUS.

We find particularly significant the expectations of Mr. Gagot-Mangual and the Army regarding the use of the Department's priority placement program as a vehicle to ensure his return to CONUS. We have in the past held that registration for this program is itself ample evidence that an employee does not really intend to serve a new tour -- even if that employee has signed the requisite new agreement. In such a case we have upheld the agency's cancellation of previously authorized renewal agreement travel. Ralph J. Mulder, GSBCA 14562-TRAV, 99-1 BCA ¶ 30,202. In this case, where there has been no such agreement and

[1] When claimant speaks of his "transportation agreement," it is not altogether clear to us which agreement he has in mind. The only agreement actually labeled "transportation agreement" is the DoD standard form 1617. However, this agreement deals solely with return transportation and travel allowances for purposes of separation from the service. Certainly, one seeking to vindicate a right to return agreement travel would hardly look to this agreement as support for his claim. We assume, therefore, that claimant, when speaking of the "transportation agreement," intends to refer instead to the rotation agreement he signed with the Navy. Reliance on this agreement, however, as support for a claimed right to renewal agreement travel, is equally as questionable. By its very terms, the agreement was to become void if, before completion of his overseas tour, the claimant transferred to a federal agency outside the Navy. It is incontrovertible that Mr. Gagot-Mangual did, in fact, leave the Navy's employment for that of the Army only a few months after arriving in Puerto Rico.

no intent to enter into one, the outcome is even more obvious. Any claim for return agreement travel must fail.

It is clear, from a review of the claimant's submission to the base personnel office in February 2003, that he is dissatisfied with treatment received at Fort Buchanan over the last seven years. As noted, many of the issues he raised in that submission are not within our authority to resolve. On the one which does fall within our jurisdiction, however, and on which claimant has specifically asked us to rule, we find the Army's determination is correct. Mr. Gagot-Mangual is not eligible for renewal agreement travel. We, therefore, affirm the agency's determination.

Decision

The claim is denied.

EDWIN B. NEILL
Board Judge