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

____

May 18, 2004

____

GSBCA 16360-TRAV

In the Matter of GREGORY A. ANDREWS

Gregory A. Andrews, Des Moines, IA, Claimant.

JoAnn Waterfield, Deputy Administrator, Packers and Stockyards Programs, Department of Agriculture, Washington, DC, appearing for Department of Agriculture.

BORWICK, Board Judge.

Claimant used his privately-owned vehicle (POV), instead of the common carrier transportation the Department of Agriculture (agency) authorized, to travel on temporary duty (TDY). Under the applicable portion of the Federal Travel Regulation (FTR), claimant is entitled to reimbursement at the mileage rate specified in the FTR for the POV, up to the constructive cost of the common carrier transportation. The agency may not, as it did, limit the reimbursement based on the mileage rate stated elsewhere in the FTR for government vehicles. Claimant filed a claim at the Board contesting the agency's limitation of reimbursement. We grant the claim.

Background

The agency authorized claimant to travel by air on TDY from Des Moines, Iowa, to Indianapolis, Indiana. Claimant went on TDY from October 24 through October 27, 2002, but instead of using a common carrier for his transportation, claimant drove 948 miles in his POV.

Claimant submitted a voucher claiming reimbursement for his mileage at 36.5 cents per mile, for a total of $346.02. The agency determined that the constructive cost of travel by common carrier was $351.06. The agency denied the voucher and reimbursed claimant at the mileage rate of 10.5 cents, for a total of $99.54.

The agency explains that its regional office in Des Moines maintains a small fleet of government-owned vehicles. The FTR provides that when an employee is committed to use a government-owned vehicle for official travel, or would not be authorized to use a POV because of the availability of a government vehicle, and uses a POV instead, the employee will be reimbursed at a rate of 10.5 cents per mile, which is the cost of operating a government-owned vehicle. 41 CFR 301-10.310(b) (2002). The agency applied that rate in determining the amount of claimant's compensation for his TDY transportation because it believed that use of that rate was required by the FTR.

Discussion

The FTR in effect when claimant traveled (and that is in effect today) provided that employees who use their POV instead of the authorized common carrier mode of transportation:

> will be reimbursed on a mileage basis (see § 301-10.303), plus per diem, not to exceed the total constructive cost of the authorized method of transportation plus per diem.

41 CFR 301-10.309. Section 301-10.303 of the FTR provided reimbursement at a mileage rate of 36.5 cents per mile for a POV, as well as a reimbursement rate for privately-owned motorcycles and a reimbursement formula for privately-owned aircraft. 41 CFR 301-10.303 (2002).[1] The FTR at 301-10.303 did not mention mileage rates for government automobiles nor did the FTR limit application of the POV mileage rate by a rate for a government automobile. In short, when an employee used his or her POV instead of the authorized common carrier mode of transportation, the FTR allowed, as it does today, reimbursement based on the stated mileage rate for the POV not to exceed the constructive cost of the authorized method of transportation.

In construing an earlier but substantively similar version of the FTR, the General Accounting Office (GAO), our predecessor in handling these claims, held that an agency's use of the government vehicle cost to determine the constructive cost of transportation was improper. GAO's holding was based on the fact that the FTR then, as it did in 2002 and as it does today, did not include government vehicle costs for comparison purposes in arriving at the constructive cost of the transportation. Thomas L. Wingard-Philips, 64 Comp. Gen. 443 (1985).

Here, the agency simply applied the wrong section of the FTR. The FTR provision at 41 CFR 301-10.310(b) applies when an employee has been "committed" to use a government vehicle and uses his own POV instead.

Consequently, for claimant's transportation using his POV, claimant is entitled to be paid at the mileage rate of 36.5 cents up to the constructive cost of the authorized common carrier transportation between Des Moines, Iowa, and Indianapolis, Indiana. Since the agency's constructive cost of that transportation was $351.06, and claimant's POV reimbursement based upon the 36.5 cents mileage rate is less--$346.02--claimant is entitled to be reimbursed $346.02. The agency states that it has reimbursed claimant the $99.54 to which the agency determined claimant was entitled. That being the case, the agency owes claimant an additional $246.48.

____

[1] The 2003 version of the FTR states a POV mileage rate of 36 cents.

ANTHONY S. BORWICK
Board Judge