



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

December 18, 2008

CBCA 1364-RELO, 1365-RELO

In the Matter of DONALD WAYNE LeGRAND

Donald Wayne LeGrand, Loudon, TN, Claimant.

Jennifer L. Grace, Office of the General Counsel, Tennessee Valley Authority, Knoxville, TN, appearing for Tennessee Valley Authority.

WALTERS, Board Judge.

Claimant, Donald Wayne LeGrand, an employee of the respondent, Tennessee Valley Authority (TVA), has sought the Board's review of TVA's positions regarding two relocation claim items. Under CBCA 1364-RELO, in connection with his initial hiring by TVA and his June 2006 move from Delaware to Tennessee, he challenges TVA's assessment of \$13,958 against him by reason of his relocated household goods having exceeded the 18,000 pound statutory limitation by some 13,890 pounds. Under CBCA 1365-RELO, claimant seeks the \$4107.50 balance of monies allegedly promised by TVA as "an additional temporary living expense" incentive to remain with TVA in January 2007, rather than taking employment with another utility. Although the Board disagrees with TVA's contention that we have no jurisdiction generally to review relocation claims of TVA employees, we do agree that, in these two instances, the Board cannot grant the recovery being sought by claimant.

Factual Background

Claimant relates that he currently is a permanent employee of TVA and is stationed at the Watts Bar Nuclear Plant at Watts Bar, Tennessee. With respect to his first claim (under CBCA 1364-RELO), he states that, as part of his initial hiring by TVA in June 2006, his household goods were to be moved from Delaware to Tennessee at TVA's expense.

Claimant acknowledges that the move was subject to the statutory weight limitation of 18,000 pounds. The move was arranged by TVA directly with a private moving company and, based on weight tickets provided by that company, the actual weight of household goods transported was 31,890 pounds -- representing a weight overage of 13,890 pounds beyond the statutory limitation. TVA paid the moving company a total of \$41,288.39 on claimant's behalf for transportation, fuel surcharge, insurance, auxiliary services, drayage, storage, and warehouse handling. Because of the weight overage, TVA assessed against claimant \$13,958, the exact derivation of which amount is unclear.¹

As of the date of claimant's initial submission to the Board (September 20, 2008), he states, TVA had withheld from his bi-weekly pay checks a total of \$6100. Claimant maintains that the assessment and withholdings are unreasonable. First, he says, all arrangements had been made by TVA without his input, and he had not been made aware of the weight overage until long after delivery, when he was notified that amounts were being withheld from his salary checks. Further in this regard, he was not informed in advance of the move "of the potential costs [of] exceeding the 18,000 pound limit." Second, he states, he was never allowed an opportunity to adjust the amounts of goods being shipped in order to avert the "exorbitant" financial obligation the overage created. Finally, he advises, when the goods were being delivered, he was in the hospital and thus could not inventory the goods being delivered and had no control over which goods were either delivered or put into storage. In this latter regard, his wife was left on her own to deal with the delivery.

As to the second claim (under CBCA 1365-RELO), claimant says, in January 2007, he had been offered a position with a utility company that had agreed, in that connection, to purchase his "house located in the northeast." Claimant further states that it "was taking an extended period to sell" that house while he was at the Watts Bar Nuclear Plant and that TVA's site president and human resources manager, as an incentive for him not to leave TVA for the other position, both promised him "additional living expenses for five months at the rate of \$1,550.00 per month, with 33% gross-up for taxes to help with the costs of maintaining two residences." This promise, he says, amounted to a commitment to reimburse him for a total of \$10,307.50. Of this amount, claimant states, he received a total

¹ A proportional (13,890/31,890) share of the \$41,288.39 attributable to the weight overage would be \$17,983.56. Claimant indicates that three government bills of lading account for the total assessment of \$13,958: (1) \$4554.07 on May 14, 2007; (2) \$6713.77 on July 23, 2007; and (3) \$2690.16 on March 3, 2008. He further states that, on the day of the move, part of the goods were returned to storage and were delivered at a later time and that TVA accepted responsibility for "some of the cost on the redelivery."

of \$6200 -- \$4000 in April 2007 without a tax gross-up; and \$2200 in April 2008 (inclusive of a tax gross-up). This latter amount, claimant relates, was obtained by him through the TVA ombudsman, after he had sought assistance from the TVA inspector general. He now seeks the remaining \$4107.50 (\$10,307.50 less \$6200).

Discussion

As part of its response to both claims, TVA asserts that this Board is without jurisdiction to review relocation claims of TVA employees. This Board's jurisdiction over federal employee relocation claims stems from the jurisdiction conferred by Congress on the Administrator of General Services under 31 U.S.C. § 3702(a) (2000), which reads, in pertinent part:

(a) Except as provided in this chapter or another law, all claims of or against the United States Government shall be settled as follows:

. . . .

(3) The Administrator of General Services shall settle claims involving expenses incurred by Federal civilian employees for official travel and transportation, and for relocation expenses incident to transfers of official duty station.

Under Title 5 of the United States Code, Chapter 57, the term “employee” is defined as meaning “an individual employed in or under an agency.” 5 U.S.C. § 5721(2) (2000). An “agency” is defined to include, *inter alia*: “(A) an Executive agency” *Id.* § 5721(1). An “Executive agency,” in turn, is generally defined under Title 5 as meaning “an Executive department, **a Government corporation**, and an independent establishment.” 5 U.S.C. § 105 (emphasis added); *see also* 31 U.S.C. § 3701(a)(4) (The term “executive, judicial, or legislative agency” is broadly defined to mean “a department, agency court administrative office, or instrumentality in the executive, judicial, or legislative branch of Government, **including government corporations.**”). TVA is a government corporation. 31 U.S.C. § 9101(3)(N). Consequently, its employees are federal civilian employees.

As support for its argument that relocation claims of its employees are beyond this Board's jurisdiction, TVA relies on the exception language set out in 31 U.S.C. § 3702(a), i.e., “Except as provided in this chapter or another law” TVA points to the decision of our predecessor board in deciding these matters, the General Services Administration Board of Contract Appeals (GSBCA), in *Charles A. Miller*, GSBCA 13679-RELO, et. al., 97-1 BCA ¶ 28,865. Although that decision did, indeed, hold a claim for damage to shipped

household goods to be outside the Board's purview, the Board made plain that settlement of the claim at issue there was to be considered "a claim for a tort, not a claim for an expense incident to a transfer of official duty station." Further, the GSBCA underscored that settlement of such a claim was provided for under a separate statute, the Military Personnel and Civilian Employees' Claims Act, and noted specifically that that statute called for such settlement by a military agency head to be the employee's "exclusive remedy" and that the agency head's settlement determination was to be "final and conclusive." *Id.* at 143,997-98; *see* 31 U.S.C. § 3721(k).

In contrast, here, although the Tennessee Valley Authority Act does vest TVA with authority to sue and be sued and to arrange by means of bilateral agreement for "final settlement" of claims and litigation lodged against it, 16 U.S.C. §§ 831c(b), 831h(c) (2000), it does not indicate that such settlement authority is to be a TVA employee's "exclusive remedy" for relocation claims. Rather, that Act itself indicates that, in the absence of its arranging for such a bilateral settlement, TVA is to comply with the requirements of 31 U.S.C. § 3702(a) for "rendition of accounts for adjustment and settlement" -- in the case of relocation claims, to refer them to the Administrator of General Services (i.e., to this Board as the Administrator's delegatee) for settlement through adjudication:

Nothing in this chapter shall be construed to relieve the Treasurer or other accountable officers or employees of the Corporation [i.e., TVA] from compliance with the provisions of existing law requiring the rendition of accounts for adjustment and settlement pursuant to sections 3526(a) and 3702(a) of Title 31, and accounts for all receipts and disbursements by or for the Corporation shall be rendered accordingly: *Provided*, That, subject only to the provisions of this chapter, the Corporation is authorized to . . . enter into such contracts, agreements, and arrangements, upon such terms and conditions and in such manner as it may deem necessary, including the final settlement of all claims and litigation by or against the Corporation

16 U.S.C. § 831h(c).

TVA correctly observes that the Board's authority, which it inherited from the GSBCA, previously had been vested in the General Accounting Office (currently the Government Accountability Office) (GAO). TVA includes, as part of its responses here, copies of a letter to a Mr. Bruce E. Conant (apparently a TVA employee) issued by a GAO senior adjudicator bearing GAO number Z-2861626 and dated October 24, 1989. In that letter, the senior adjudicator opined that the GAO's claim settlement authority for relocation

expenses did not “extend to a government corporation where the corporation has the authority to sue and be sued and to settle claims by or against it.”

In this regard, it should be noted that, although the GSBCA had frequently looked to the reasoning of relocation-related decisions of the GAO when exercising its own jurisdiction in this area, those decisions were not themselves binding on the GSBCA, nor are they on this Board. *See, e.g., Kenneth A. Hack*, GSBCA 15758-RELO, 02-2 BCA ¶ 31,296 at 157,739 n.2. Moreover, in terms of the GAO letter that TVA presents here, it is not at all clear that the GAO senior adjudicator had accurately characterized prior GAO precedent regarding GAO’s authority for settlement of federal civilian employee relocation claims. The letter cites to a single Comptroller General decision, B-209585 (Jan. 26, 1983). That 1983 decision, which itself did not involve or address GAO’s jurisdiction for settling relocation expense claims, in turn cites to two earlier Comptroller General decisions. The first of these two earlier decisions, 53 Comp. Gen. 377 (1973), similarly does not appear to have any bearing on this issue. The case there did not involve any aspect of GAO claim settlement authority, nor did it involve a government corporation of any sort. Rather, the case involved questions pertaining to the operations of a Marine Corps Junior Reserve Officers’ Training Corps unit at an American Indian high school funded by the Federal Government.

The second of the earlier Comptroller General decisions, 27 Comp. Gen. 429 (1948), was issued in response to various questions posed by the Public Housing Commissioner regarding the GAO’s role with respect to the Public Housing Administration (formerly the United States Housing Authority), a wholly-owned government corporation. The language of the decision regarding the only question posed that arguably bears on the jurisdictional issue in our case read as follows:

(6) The General Regulations of the General Accounting Office require the submission of certain types of claims to the Claims Division of the General Accounting Office for settlement. Included in this type of submission are such things as death claims, claims against tenants (particularly vacated tenants) for unpaid rents, etc., claims against employees no longer employed by the Public Housing Administration and reports of irregularities which might result in a claim against an employee.

. . . .

It was not intended under the [General Accounting Office] Regulations to require the submission to this Office of claims against Government corporations. In fact, such a requirement would appear to be inconsistent with the statutory authority given to the various corporations generally (1) to sue and to be sued in their own names and (2) to settle their own claims or to have their financial transactions treated as final and conclusive, and, also, to be inappropriate in any case where such submission was not directed by specific provision of law. However, neither was it intended to deprive any corporation of recourse to this Office for the purpose of obtaining decisions concerning the propriety of payment in doubtful cases, particularly where the use of appropriated funds subject to accounting under the Budget and Accounting Act of 1921, and related laws, might be involved. Hence, although decisions may be obtained upon request therefor prior to payment, claims against funds of the Public Housing Administration need no longer be submitted here for settlement. Of course, it will be noted that certain types of claims required to be settled by the General Accounting Office, under provisions of law such as are contained in the "Stale Check Act" of July 11, 1947, 61 Stat. 308, are not properly to be regarded as claims against the Corporation.

Id. at 431-32.

We have two observations concerning the above-quoted language. First, it again does not directly address GAO's earlier authority to settle claims for federal civilian employee travel and relocation. Second, it allows for the possibility that Congress, in calling for submission of certain claims to GAO for settlement, intended such claims to be treated as other than claims against a Government-owned corporation. Thus, the mere fact that TVA or any other Government corporation may have authority to sue and be sued and to settle its own claims by means of bilateral agreement may not preclude certain kinds of claims from being directed elsewhere for final settlement by means of adjudication. Relocation claims of federal employees are among the claims that Congress directed elsewhere for final resolution.

Interestingly, TVA fails to cite at least one other GAO case that specifically treated TVA as a federal executive agency for purposes of GAO's review of reimbursement of travel and relocation expenses. In *John T. Edwards III*, B-184041 (Mar. 2, 1976), an employee of TVA was erroneously appointed to a civil service position within the Bureau of Reclamation of the Department of the Interior (DOI) based on an erroneous understanding that he held competitive status under Civil Service Commission rules and regulations. In connection with

his transfer from TVA to DOI, the employee was given travel and relocation expense reimbursement. Among other things, GAO found the employee entitled to retain such expense reimbursement, since the transfer at issue was between two federal executive agencies, as defined under 5 U.S.C. § 105.² In short, we find that the Board, GAO's successor for review and settlement of claims involving travel and relocation, has jurisdiction to resolve the instant TVA employee claims to relocation expense reimbursement.

Turning to the merits of the claims, as to CBCA 1364-RELO, TVA argues correctly that there is no room for compromise when it comes to the statutory limitation of 18,000 pounds for the transport of household goods under 5 U.S.C. § 5724(a). The prohibition of the Government paying for more than 18,000 pounds is absolute. *David Stockwell*, CBCA 729-RELO, 07-2 BCA ¶ 33,637; *George W. Currie*, GSBICA 15199-RELO, 00-1 BCA ¶ 30,814; *Robert K. Boggs*, GSBICA 14948-RELO, 99-2 BCA ¶ 30,491; *Linda D. Brainard*, GSBICA 14598-RELO, 98-2 BCA ¶ 30,104; *Jayme A. Norris*, GSBICA 13663-RELO, 97-2 BCA ¶ 29,049; *Robert C. Berg*, GSBICA 13655-RELO, 97-1 BCA ¶ 28,939. The regulations clearly mandate that the employee reimburse the Government for the charges relating to any excess weight beyond the 18,000 pound maximum. 41 CFR 302-7.200 (2006). This result is not altered by any of the equitable arguments posed by claimant in this case. Further, in terms of the amount of overage being assessed against him, claimant has failed to demonstrate that TVA's assessment was erroneously calculated. Thus, we must affirm the agency's decision.

As to CBCA 1365-RELO, although we disagree that the Board lacks jurisdiction to review relocation expense claims for TVA employees, the claim at issue is not one for relocation expenses. Rather, as claimant has explained it, it is a claim for the balance of monies promised in January 2007, some six months after claimant's relocation to Tennessee, as an incentive for him to remain in TVA's employ instead of taking a position with another utility. Such a claim is clearly outside the scope of this Board's settlement jurisdiction under 31 U.S.C. § 3702(a).

² A 1980 GAO decision, *Stephen E. Goldberg*, B-197495 (Mar. 18, 1980), found *Edwards* distinguishable, and refused to permit an employee of the Federal Election Commission to retain reimbursed relocation expenses, because he had transferred from the Federal Reserve Bank of Boston, and the latter, unlike TVA, did not qualify as a federal agency as defined in 5 U.S.C. §§ 105 and 5721(1).

Decision

_____The Board has jurisdiction to review and settle relocation claims of TVA employees. The Board affirms TVA's decision with regard to the claim under CBCA 1364-RELO and finds itself without jurisdiction to provide relief for the claim presented under CBCA 1365-RELO.

RICHARD C. WALTERS
Board Judge
