UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 27, 2008

CBCA 1122-TRAV

In the Matter of RAFAL FILIPCZYK

Rafal Filipczyk, Diamondhead, MS, Claimant.

Captain John Cousins, U. S. Navy, Commanding Officer, Naval Oceanographic Office, Stennis Space Center, MS, appearing for Department of the Navy.

DANIELS, Board Judge (Chairman).

In an earlier decision in this case, we held that because the subject matter of the dispute was amenable to resolution under provisions of a collective bargaining agreement, the Board had no jurisdiction to consider the merits. *Rafal Filipczyk*, CBCA 1122-TRAV (June 17, 2008). The claimant moves for reconsideration, focusing his attention on the Board's use of the term "on duty" when addressing the claimant's contention that a statute governs the issue of whether the Department of the Navy may refuse to pay expenses incurred by a civilian employee for lodging on land during the first forty-eight hours the ship on which the employee is performing duty is in port during a stopover.

The paragraph containing the term "on duty" reads as follows:

> The statute [to which the claimant had referred] does not resolve, however, whether a Navy oceanographer remains on duty, such that the mission of his cruise is enhanced, during the first forty-eight hours a ship is in port. That is the sort of matter which is addressed through a management determination or a collective bargaining agreement. The subject has been addressed here through the latter means. No statute makes impermissible the conclusion which has been reached. We therefore do not have authority to consider it.

Filipczyk, slip op. at 3 (citations omitted).

The term "on duty" is unnecessary to the Board's conclusion. The sentence in which the term is used might be better rewritten to say, "The statute does not resolve, however, whether the mission of a Navy cruise is enhanced by requiring civilian employees (including oceanographers) to remain on board during the first forty-eight hours a ship is in port." As the Navy points out, the Court of Appeals for the District of Columbia Circuit has held that this is the sort of matter which may properly be addressed, as the Board held earlier, through collective bargaining; the statutory impediment alleged by the claimant to preclude this means of resolution does not exist. *Department of the Treasury v. Federal Labor Relations Authority*, 873 F.2d 1473 (D.C. Cir. 1989).

We consequently grant the claimant's motion to the extent of rewriting one sentence in our earlier decision. The rewriting of the sentence has no impact on our reasoning or our conclusion.

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STEPHEN M. DANIELS
Board Judge