



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 24, 2009

CBCA 1613-RELO

In the Matter of WILLIAM CARR

William Carr, Marietta, GA, Claimant.

Jonathan D. Stowers, Office of Assistant Chief Counsel, Customs and Border Protection, Indianapolis, IN, appearing for Department of Homeland Security.

DANIELS, Board Judge (Chairman).

William Carr, an employee of the Department of Homeland Security's Customs and Border Protection (CBP), asks us to settle a claim he made in connection with his transfer from Hamilton, Bermuda, to Atlanta, Georgia. The claim involves temporary quarters subsistence expenses and real estate transaction expenses. We dismiss the case because we have no authority to resolve it.

Mr. Carr is a member of the bargaining unit which is covered by the collective bargaining agreement between the former National Immigration and Naturalization Service Council of the American Federation of Government Employees and the former Immigration and Naturalization Service (INS). (INS employees were transferred to the CBP upon the creation of the latter entity in 2003; the agreement remains in effect.) This agreement includes a grievance procedure which "shall be the exclusive procedure available to . . . employees in the unit for resolving grievances which come within its coverage." "Any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment" may be the subject of a grievable complaint unless it involves a stated exception, and none of those exceptions is applicable here.

The collective bargaining agreement's statement that its grievance procedure is the "exclusive procedure" for resolving grievances is consistent with the statutory command that

the grievance procedures in any collective bargaining agreement involving federal employees be “the exclusive administrative procedures for resolving grievances which fall within [their] coverage.” 5 U.S.C. § 7121(a)(1) (2006). This case alleges misapplication of regulations, and the collective bargaining agreement’s grievance procedure is the exclusive procedure for resolving such issues. Review by this Board is not part of that procedure. Consequently, we must dismiss this case. *Thomas F. Cadwallader*, CBCA 1442-RELO, 09-1 BCA ¶ 34,077; *Michael F. McGowan*, CBCA 1290-RELO, 09-1 BCA ¶ 34,056; *Rafal Filipczyk*, CBCA 1122-TRAV, 08-2 BCA ¶ 33,886, *aff’d on reconsideration*, 08-2 BCA ¶ 33,953.

We understand why Mr. Carr asked us to settle his claim -- a CBP official told him that we could do so. The fact that an agency representative provided erroneous advice, however, cannot vest us with jurisdiction where statute plainly does not confer it. *Robert Stanislaw*, CBCA 1503-RELO (July 13, 2009).

STEPHEN M. DANIELS
Board Judge