UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

November 13, 2020

CBCA 6928-RELO

In the Matter of CHRISTINA U.

Christina U., Claimant.

Tracey Z. Taylor, Assistant Center Counsel, Humphreys Engineer Support Activity, United States Army Corps of Engineers, Alexandria, VA, appearing for Department of the Army.

SOMERS, Board Judge (Chair).

Claimant, Christina U., a civil engineer in the United States Army Corps of Engineers (the agency), contests the per diem rate applied to her relocation reimbursement, a claimed $1050.00 difference. The agency argues that claimant is an employee covered by a collective bargaining agreement, which would govern this relocation expense dispute, thereby depriving the Board of authority to resolve the claim. Claimant disputes that the collective bargaining agreement prevents the Board from deciding her claim.

Article V, Section 5.2 of the collective bargaining agreement provides that it is the exclusive dispute resolution mechanism for complaints that are within its coverage. This is consistent with CBCA decisions in which the Board has held "if a matter is arguably entrusted to a collective bargaining agreement's grievance procedures, no review outside of those procedures may take place, unless the parties to the agreement have explicitly and unambiguously excluded that matter from the procedures." *Andrew Rector*, CBCA 5218-RELO, 17-1 BCA ¶ 36,619 (2016); *Robert Gamble*, CBCA 1854-TRAV, 11-1 BCA ¶ 34,655; *see also Dunklebarger v. Merit Systems Protection Board*, 130 F.3d 1476 (Fed. Cir. 1997).

Claimant argues that the CBCA has made past rulings for federal employees who either were or could have been covered by collective bargaining agreements. Because the CBCA has made such rulings in the past year, claimant argues that her claim should also be eligible to be heard by the Board. Claimant specifically references three recent cases to make her argument. *See Cady L. Tyron*, CBCA 6625-RELO, 20-1 BCA ¶ 37,600; *Michael P. Voich*, CBCA 6635-RELO, 20-1 BCA ¶ 37,595; *Scott T. Downey*, CBCA 6777-RELO, 20-1 BCA ¶ 37,621. Both *Cady L. Tyron* and *Michael P. Voich* also involved employees of the U.S. Army Corps of Engineers, while *Scott T. Downey* resolved a case with a similar claim to the type claimant has brought. None of the cited decisions references a collective bargaining agreement; rather, claimant only suspects that each case involved a collective bargaining agreement. Board relocation decisions are precedential, "which means that they are meant to be used as an example or a standard in resolving subsequent similar claims." *Willo D. Lockett*, GSBCA 16391-RELO, 04-2 BCA ¶ 32,722 (quoting *Edward W. Irish*, GSBCA 15968-RELO, 03-1 BCA ¶ 32,122 (2002); *see also Michael C. Biggs*, CBCA 928-TRAV, 2008 WL 1847279. However, precedent derives from findings that are recorded in decisions. Neither the Board nor the claimant is in a position to speculate as to the unmentioned facts of a case or rely on those alleged but unmentioned facts as precedent.

Claimant argues that her claim implicates a travel reimbursement entitlement that is specifically addressed by federal statute, and therefore might be within the Board's authority to resolve. "Some matters related to travel reimbursement are specifically addressed by federal statute, so they do not constitute conditions of employment." *Maxcy G. Hall*, GSBCA 15574-TRAV, 01-2 BCA ¶ 31,460. However, "[a]lthough federal statutes address . . . per diem allowances, they do not specifically provide any method that agencies must use to calculate constructive travel costs in order to determine how much to reimburse employees for travel expenses." *Id.*; *See also James R. Davison*, CBCA 5454-TRAV, 17-1 BCA ¶ 36,890. Accordingly, claimant's request for an increased per diem rate would not preempt the procedures of the collective bargaining agreement.

The Board is authorized to hear travel and relocation cases through the delegation of authority from the Administrator of General Services. 31 U.S.C. § 3702(a)(3). "[T]he Board is charged only with interpreting and applying the pertinent regulations; if a particular expense is simply not authorized by law, the Board has no more authority than the agency to permit its reimbursement." *Michael C. Biggs*, CBCA 928-TRAV, 2008 WL 1847279. Here, the Civil Service Reform Act states that collective bargaining agreements provide the "exclusive administrative procedures for resolving grievances which fall within its coverage." 5 U.S.C. § 7121(a)(1). In accordance with the statute, CBCA cases have consistently found collective bargaining agreements to be an exclusive process of relief and outside of Board authority to decide. *See Robert Gamble*, CBCA 1854-TRAV, 11-1 BCA ¶ 34,655; *James R. Davison*, CBCA 5454-TRAV, 17-1 BCA ¶ 36,890; *Rodney S. Bath*,

CBCA 6702-RELO, 20-1 BCA ¶ 37,523. The Board cannot confer dispute authority where Congress has not done so. *Dunklebarger*, 130 F.3d at 1480; *Cady L. Tyron*, CBCA 6625-RELO, 20-1 BCA ¶ 37,600 (citing *Andre G. Chritton*, CBCA 3080-TRAV, 13 BCA ¶ 35,229). Thus, the Board does not have authority to hear this claim.

Decision

The claim is dismissed.

Jeri Kaylene Somers
JERI KAYLENE SOMERS
Board Judge