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William Haubert
Civ.Pers.

DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-187405 DATE: March 22, 1977

MATTER OF: Dwight L. Crumpacker - Arbitration Award of storage expenses

DIGEST: Arbitrator found that agency clearly intended to transfer employee but that travel orders were not executed since agency selected employee for another position prior to intended transfer. Employee may be reimbursed storage expenses incurred in anticipation of transfer based upon arbitrator's determination that expenses were incurred at time agency clearly intended to transfer employee and that transfer was not effected only because agency selected employee for another position.

The Department of Transportation, by letter of September 10, 1976, and the Federal Labor Relations Council, by letter of January 7, 1977, have requested an advance decision on the legality of a payment ordered by an arbitrator in the matter of Professional Air Traffic Controllers Organization and Federal Aviation Administration, Department of Transportation (Walsh, Arbitrator), FLRC NO. 75A-98. The award in question directed the Federal Aviation Administration (FAA) to pay to Mr. Dwight L. Crumpacker, an FAA employee, the sum of $250.41, representing the temporary storage costs of his household goods for 60 days. The case is before the Council as the result of a petition for review filed by the Department of Transportation alleging that the arbitrator's award violated applicable laws and regulations. The Department's letter to us alleges that the payment of the award of temporary storage costs may not be made under the pertinent provisions of the Federal Travel Regulations because the grievant was not transferred from one duty station to another.

In considering this matter, our review shall be limited to the legality of the arbitration award insofar as it concerns the interpretation and application of pertinent laws and regulations. We will not rule on any other issue pending before the Federal Labor Relations Council.

The facts as found by the arbitrator are as follows. Mr. Crumpacker entered on duty with the FAA on March 16, 1975,

as a Flight Service Station Specialist. Prior to being employed, Mr. Crumpacker and his family lived in Auburn, Washington, but he maintained a post office box at Chugiak, Alaska, and he was considered locally hired. His first duty station was the Anchorage Flight Service Station, Anchorage, Alaska, where he was assigned for a period of approximately 7 weeks of initial training in the Flight Service Station (FSS) option. He moved his family and household goods to Chugiak at his own expense and has not claimed those expenses. He was then assigned for further training at the Academy Flight Service School in Oklahoma City, Oklahoma.

The arbitrator determined that both the FAA and the employees in the FSS option, including the grievant, clearly anticipated that upon completion of their training, the employees would be assigned to the remote area of Alaska known as the "bush." For that reason, the FAA gave a briefing to the grievant and three other trainees on April 21, 1975, and disseminated to them information concerning their rights and entitlements upon transfer. Among the matters discussed were the difference between a permanent change of station and temporary duty travel, and an employee's entitlement to 60 days temporary storage of his household goods incident to a permanent change of station. In anticipation of his ultimate assignment to the remote area, Mr. Crumpacker placed his household goods in temporary storage.

While receiving training in Oklahoma City, Mr. Crumpacker received a letter dated May 12, 1975, from the Chief, Anchorage Air Route Traffic Control Center (ARTCC), stating that, if he wished to do so, Mr. Crumpacker could apply as a candidate for the "enroute option" at the Anchorage ARTCC. The letter explained that, if accepted into the enroute option, Mr. Crumpacker would receive training as a developmental air traffic controller. On May 17, 1975, because he wanted to become an air traffic controller, Mr. Crumpacker sent a written notice to the Anchorage ARTCC applying for the position. He knew at the time that, if selected, he would be stationed in Anchorage and not sent to the bush. He was ultimately selected for the enroute option, and on July 7, 1975, he reported for duty at the Anchorage ARTCC. No travel orders were ever issued transferring him to another location.

The Chief of the Anchorage ARTCC testified that he had written to the grievant and the other FSS trainees explaining the enroute

option to them and inviting bids. He said he did so because "the Center had not been getting bidders from those in the Flight Service option * * *."

Mr. Crumpacker's claim for storage expenses was denied by FAA on the ground that he was incligible for relocation expenses under the applicable regulations and Comptroller General's rulings because he had not transferred to a duty station outside Anchorage. In addition, the claim was denied on the ground that under para. 2-6.5a of the Federal Travel Regulations (FPMR 101-7) (May 1973), temporary storage of household goods at Government expense may only be allowed when such storage is incident to their transportation at Government expense, and that no such transportation was provided in this case. Mr. Crumpacker then filed a grievance and the matter was submitted to arbitration under the labor agreement.

The arbitrator awarded the grievant the full amount of his claim based upon a determination that the FAA had violated the collective bargaining agreement with the Professional Air Traffic Controllers Organization. In particular, the arbitrator determined that, by failing to inform Mr. Crumpacker that his temporary storage charges would not be paid if he returned to Anchorage, the FAA breached Article 19, Section 5, of the agreement which required it to provide to transferred employees "all pertinent directives" concerning reimbursement of relocation expenses. The arbitrator also concluded that Article 19, Section 1 of the agreement was violated by the FAA's failure to pay the grievant's "moving expenses." He, therefore, awarded temporary storage costs to the grievant.

We hold, for the reasons stated below, that the arbitrator's award is consistent with applicable law and regulations.

The arbitrator specifically found that the Federal Aviation Administration definitely intended to transfer Mr. Crumpacker and the other trainees to a remote area upon completion of their training. They were given an extensive briefing on their transfer entitlements, and Mr. Crumpacker was advised that it would be advantageous for him to place his household goods in temporary storage pending the transfer. The intended transfer was not effected because the FAA selected Mr. Crumpacker for a position as an air traffic control specialist in Anchorage. Because that selection occurred prior to the execution of the intended transfer, formal

travel orders authorizing a transfer to a remote station were not issued. Thus, the transfer--which was clearly intended by the agency, anticipated by the employee, and resulted in his incurring expenses for temporary storage--was not effected because of the agency's action in selecting the employee for another position in the same city as his prior duty station.

FAA does not dispute the arbitrator's finding that it definitely intended to transfer the grievant to another location upon his return from training. In fact the FAA's post hearing brief submitted to the arbitrator concedes that if the grievant had remained in the ISS option, "he would have been entitled to a PCS travel order with all related benefits." (brief, p. 13) However, FAA contends that Mr. Crumpacker voluntarily applied for and accepted the new position in Anchorage for reasons to his personal benefit. We disagree because the agency solicited applications from the trainees in order to broaden its recruitment program and then selected Mr. Crumpacker for the position. Thus, his selection and appointment to the new position were made in the best interests of the agency. His voluntary acceptance of the agency's offer does not preclude reimbursement of his storage expenses.

We now turn to the FAA's argument that the award may not be paid because the grievant was not transferred to a remote duty station. We have held that, where a transfer has been cancelled and certain expenses would have been reimbursable had the transfer been effected, an employee may be reimbursed for expenses incurred in anticipation of the transfer and prior to its cancellation. B-177439, February 1, 1973. Further, when by reason of the cancellation, the employee's duty station is not changed, we have treated the employee for reimbursement purposes, as if the transfer had been consumated and he had been retransferred to his former station. B-177898, April 16, 1973; B-170259, September 15, 1970. The expenses which have been held reimbursable under these decisions include temporary storage of household goods and personal effects. B-177439, supra.

The operative factors governing our decisions concerning reimbursement of expenses incurred incident to cancelled transfers are the agency's clear intention to effect the transfer, the communication of that intention to the employee, and the employee's good faith actions taken in reliance on the communicated agency intention. Although the Federal Travel Regulations do not expressly

state what constitutes the authorization of a transfer, travel orders are generally recognized as being the authorizing document. 54 Comp. Gen. 993, 998 (1975). Thus, in the ordinary case, the agency's intention to authorize a transfer is objectively manifested by the execution of travel orders. However, the absence of travel orders is not fatal if there is other objective evidence of the intention to make a transfer. B-173460, August 17, 1971.

In the present case, no travel orders were issued, but the arbitrator specifically found that the FAA clearly intended to transfer the grievant to a remote duty station upon completion of his training, and the FAA concedes such intention. We accept the arbitrator's uncontroverted determination that the agency clearly intended to effect the transfer as constituting the requisite objective evidence of agency intent which is manifested by travel orders in the ordinary case.

Accordingly, in view of the arbitrator's determination that the FAA clearly intended to transfer Mr. Crumpacker to a remote duty station, that the intended transfer was not effected by reason of his selection for and acceptance of another position offered to him by the FAA in Anchorage, and that the expenses were incurred in good faith at a time when the agency's intentions were clearly expressed, we hold that the grievant's storage charges may be reimbursed. B-177439, supra.

Accordingly, if otherwise proper, the arbitration award may lawfully be implemented.

Deputy Comptroller General
of the United States