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DECISION



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

FILE: B-195409

DATE: July 7, 1980

MATTER OF: Henry J. Kaiser - *Claim for* Travel Expenses to Attend FAA Board of Review

DIGEST: Prior to effective date of Civil Service Reform Act of 1978, an employee of the Federal Aviation Administration incurred travel expenses while attending a board of review at the request of another employee. The employee is not entitled to reimbursement for his travel expenses since neither Executive Order 11491 nor the agreement between the agency and the union authorizes reimbursement for travel expenses under these circumstances.

This decision is in response to a request dated July 9, 1979, from the Professional Air Traffic Controllers Organization (PATCO) for a ruling whether Mr. Henry J. Kaiser may be reimbursed travel expenses incurred while attending a board of review at the request of another employee.

A board of review was held on November 16, 1978, in Washington, D.C., for the purpose of deciding the operational certification of Mr. Francis Christian, an employee of the Federal Aviation Administration (FAA), pursuant to FAA procedures. The board of review consists of three members and according to FAA procedures, Mr. Christian was entitled to select one person to represent him as a member of the board of review. He selected Mr. David Trick an officer of PATCO, who would have been reimbursed for his travel expenses under FAA procedures if he had been an employee of the FAA. Mr. Christian also had an attorney representing him at the hearing and Mr. Christian asked Mr. Henry Kaiser, an employee of the FAA in Atlanta, Georgia, to attend the board of review. Before attending, Mr. Kaiser was advised by the FAA that he would not be reimbursed for expenses related to attending the meeting.

Mr. Kaiser incurred an expense of \$111.75 for round-trip travel from Atlanta to Washington. Mr. Kaiser submitted a request for payment through the FAA and his claim was denied. Mr. Kaiser then submitted a grievance on the matter and this was also denied. Since the issue raised is whether the FAA may pay the claim, the PATCO submitted the case to the Comptroller General for a decision. For the following reasons, we uphold the denial by the FAA.

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In supporting this claim, the PATCO has raised two arguments. First, the FAA was represented by two employees of the Atlanta Regional Office who were placed in official travel status and reimbursed for expenses incurred. Mr. Kaiser claims since he otherwise would have been on a duty status, he should be treated the same way. Second, since the appeal of Mr. Christian was upheld, Mr. Christian resumed his duties and the Government was saved the expense of replacing him.

The effective date of the Civil Service Reform Act of 1978, Public Law No. 95-454, was ninety days after October 13, 1978, the date of its passage. See 92 Stat. 1227. Since Mr. Kaiser incurred the travel expenses in question on November 16, 1978, the Civil Service Reform Act does not apply to those expenses. Instead the provisions of Executive Order 11491, as amended, apply. We find nothing in the Executive Order which would require FAA to reimburse an employee for travel expenses for attending a board of review at the request of the employee.

The PATCO argues, in support of Mr. Kaiser, that the PATCO/FAA agreement, Article 11, Section 1, Article 18, Section 4, and Article 42, Section 1, authorize reimbursement for his travel expenses. However, FAA disagrees with the PATCO interpretation and an examination of the contract supports the FAA's determination.

Article 11 is entitled "Employee Rights" and sets forth various employee rights including a clause that employees shall have the protection of their rights under the United States Constitution. PATCO and FAA Agreement, Article 11, Section 1 (1978). This Article, however, says nothing about who will bear the costs, including transportation, of having a representative present at an agency hearing. Therefore, Article 11 does not give employee representatives the right to be reimbursed for such representation.

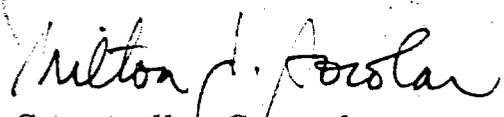
Article 18 of the contract is entitled "Travel and Per Diem". Section 4 states that employees who are required by the employer to be present at the same national or regional meeting with the employer shall be paid the same per diem as the employer. The key word is "required" and the agency argues, and we agree, that Mr. Kaiser was not required to attend the hearing. Therefore, Article 18 of the contract does not allow reimbursement for Mr. Kaiser's travel expenses.

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Article 42, Section 1, is a repeat of Section 12(a) of Executive Order 11491, as amended, and states that in the administration of the agreement, officials and employees are governed by applicable laws and regulations. We have found no provision in the governing law, Public Law 92-297, or the implementing regulation, FAA Order 3410.11A, that provides for travel expenses for representatives before a board of review, nor has the PATCO referred us to any such provision. We know of no other law or regulation which requires an agency to reimburse an employee representative for attending a board of review.

Finally, the fact that Mr. Christian prevailed at the hearing and that agency representatives were given travel expenses has no bearing on whether Mr. Kaiser is entitled to be reimbursed for travel expenses. The entitlement to the travel expenses in question is dependent on Executive Order 11491, the union agreement, or the applicable law and regulations. As shown above, none of these contains a provision authorizing the payment of such expenses. Also, as stated above, the FAA pays travel expenses for the employee representative on the board of review if such representative is an employee of the FAA. In this case, the representative was not an employee of FAA and was not entitled to reimbursement for travel expenses. Mr. Kaiser attended the meeting at the request of Mr. Christian and Mr. Kaiser was informed that he would not be reimbursed for his expenses.

Accordingly, FAA's decision not to reimburse Mr. Kaiser is upheld.


Acting Comptroller General
of the United States