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Clyde Huyck-Entitlement to Tour Renewal Agreement Travel-EEOC Order

Number: B-259632

Date: 1995-06-12

Matter of: Clyde Huyck-Entitlement to Tour Renewal Agreement Travel-EEOC Order
File: B-259632 Date: June 12, 1995

A Department of Defense employee assigned to a post in Cuba was terminated from employment and returned to the United States after 1 year's service. He filed a complaint with the Equal Employment Opportunity Commission (EEOC) which issued an order directing his reinstatement and granting all benefits as if he had not been terminated during the 3-year interim period. The agency interpreted the EEOC order as not requiring payment for tour renewal agreement travel that the employee would have been eligible for if he had remained in Cuba rather than being returned to the United States, nor to allow transfer of entitlement to such travel to a subsequent tour of duty in England for which such travel is otherwise available upon completion of 2 years of service. GAO finds the agency's interpretation justified since after his return to the United States the employee did not have any reason to perform travel between Cuba and the U.S. for which he must be made whole under the EEOC order, and in any event regulations do not permit transferring entitlement of such travel to a different post of duty. GAO will not challenge an EEOC interpretation of its own order should EEOC reach a different conclusion.

DECISION

This is in response to a request for an advance decision whether Mr. Clyde Huyck is entitled to reimbursement for travel from his post of duty in England to the United States and return in June 1994 as a result of an Order of the Equal Employment Opportunity Commission (EEOC) reinstating Mr. Huyck as an employee of the Department of Defense Dependents Schools (DoDDS). [1] We conclude that the agency's interpretation of the EEOC order as not requiring such reimbursement is justified.

Mr. Huyck was initially employed by DoDDS as a teacher in Guantanamo Bay, Cuba, in September 1989 but his employment was terminated effective June 14, 1990, during his trial period, and he was returned to his home of record in the United States at government expense. Mr. Huyck filed a complaint with the EEOC, challenging his termination. After a hearing, the EEOC recommended that Mr. Huyck be reinstated as a teacher with backpay and receive "all other benefits, including step increases, as if he had never been terminated." DoDDS adopted this recommendation, and reinstated Mr. Huyck effective August 1993, with all personnel actions, including within grade increases and differential pay determinations, processed as if Mr. Huyck had been in Cuba during the intervening period. However, he was not returned to a position in Cuba, but was reassigned to a position in England in September 1993.

The agency states that the tours of duty in England are 2 years, and therefore Mr. Huyck would not be eligible for tour renewal agreement travel under 5 U.S.C. Sec. 5728(a) on the basis of his assignment to England until he completed his first tour there in September 1995. As to his prior assignment in Cuba, they note that he actually was returned to the United States at government expense at the end of his year's tour in Cuba when his employment was terminated in 1990, and he remained in the United States until his reassignment to England in 1993.

Mr. Huyck, however, argues that since the tours of duty in Cuba are only 1 year, based on the EEOC order he should be credited for the cost of tour renewal agreement travel between Cuba and the United States each year from 1991 through 1993 as if he had not been terminated. Mr. Huyck returned from England to the United States with his family in June 1994 for a visit, and he believes that the credit he claims for the Cuba tour renewal agreement travel should be applied to cover the cost of the 1994 travel from England. DoDDS has declined to reimburse the cost of that travel, and referred the matter here for our decision. [2]

The purpose of an EEOC remedial order is to make the injured party whole. See EEOC regulations, 29 C.F.R. Sec. 1613.271(a)(4); and Appendix A to 29 C.F.R. Part 1613 (1994). This does not include simply providing a windfall. See e.g. Maksymchuk v. Frank, 987 F.2d 1072 (4th Cir. 1993).

The purpose of tour renewal agreement travel under 5 U.S.C. Sec. 5728(a) is to allow an employee who is stationed outside of the continental United States to return to the United States between tours of duty overseas. 53 Comp.Gen. 468 (1974). An employee stationed in the United States (other than in Alaska and Hawaii) is not eligible for tour renewal agreement travel. B-176933, Oct. 18, 1972.

If the purpose of the tour renewal agreement travel is to provide employees with a trip home to the United States during a break between tours of duty at overseas posts, its purpose is not met if not used by the employee at or close to the time of the actual break between successive tours of duty. Therefore, under the agency's regulations, as a general rule, it must be used at the time and from the location at which eligibility for it is earned, and may not be held over for use at a later date or from a different overseas location. Volume 2, Joint Travel Regulations, para. C4157. Thus, in our view, the tour renewal agreement travel the employee might have earned had he remained employed in Cuba would have been limited for his use between Cuba and the U.S., and is not a benefit that may be "put in the bank" and used at a later time from a different post. Nor may it be translated into a dollar equivalent and claimed as such, in lieu of having performed the travel.

Mr. Huyck was in fact returned to the United States in the summer of 1990 where he apparently remained until being assigned to England in 1993. While the EEOC order provided that he was to be reinstated with all benefits as if he had never been terminated, it does not specifically address tour renewal agreement travel. Since Mr. Huyck was in the United States during the 1990-1993 period, and he did not perform nor incur the costs of travel between Cuba and the United States during that period, there is no underlying reason for him to be paid for it as a matter of making him whole. A different conclusion might be required had Mr. Huyck, for example, remained in Cuba in some other capacity during the 1990-1993 period and performed vacation travel at his own expense between Cuba and his home of record in the United States. If that were the case he might well have a valid argument that he should be reimbursed for such travel since had his

employment not been wrongfully terminated, the agency would have provided similar travel at government expense. As noted, however, that is not the case. Also, as explained above, we believe the agency acted appropriately in declining to transfer the entitlement to his subsequent tour of duty in England, for which such travel is available independently on the basis of the tour of duty in England, but only after 2 years of service there.

Accordingly, we believe in these circumstances that the agency is justified in disallowing Mr. Huyck's claim for tour renewal agreement travel pursuant to the EEOC order. We add, however, that should the matter again be brought before the EEOC for interpretation and should the EEOC interpret its order to reach a contrary conclusion, we would not question a payment made in accordance with the EEOC's determination. See Owen F. Beeder, 69 Comp.Gen. 134 (1989).

1. The matter was submitted by DoDDS through, and assigned control number 94-03 by, the Department of Defense Per Diem, Travel and Transportation Allowance Committee.

2. In view of the authority granted the EEOC by statute, we do not render decisions on the merits of, or conduct investigation into, allegations of discrimination in employment in other agencies, nor do we render decisions on the propriety of final orders of the EEOC. See Albert D. Parker, 64 Comp.Gen. 349, 351 (1985); and Owen F. Beeder, 69 Comp.Gen. 134 (1989). In response to an authorized agency official's request, however, pursuant to 31 U.S.C. Sec. 3529, we may provide a decision on the payment required to be made to comply with an EEOC order. See eg. Lujuana Butts, 63 Comp. Gen. 20 (1983).