ROBERT C. HICKMAN, .

Grievant, .

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v. . Docket Number: 94-PSC-610

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WEST VIRGINIA PUBLIC SERVICE .

COMMISSION, .

Respondent. .

DECISION

Robert Hickman (hereinafter Grievant) filed this grievance pursuant to the provisions of West Virginia Code §§29-6A-1 et seq., on August 17, 1994, claiming reimbursement for travel expenses he had incurred while attending a United States Department of Transportation Pipeline Safety class at the Transportation Safety Institute in Oklahoma City, Oklahoma, and which had been denied by his employer, the West Virginia Public Service Commission (hereinafter PSC). His claim was denied at the lower three levels of the grievance procedure and he appealed to level four on October 29, 1994. (See footnote 1) An evidentiary hearing was held at the Grievance Board's Charleston office on November 28, 1994, and the case became mature for decision on that date.

The following findings of fact have been properly deduced from the evidentiary record developed in the case.

Findings of Fact

1. Grievant has been employed by the PSC as a Utility Inspector since 1985 and has been assigned to the Gas Pipeline Safety Section since 1993.

2. From July 18 through 22, 1994, Grievant was scheduled to attend a pipeline safety inspection training session sponsored by the United States Department of Labor at its Transportation Safety Institute (TSI) in Oklahoma City, Oklahoma.

3. By letter of June 2, 1994, Grievant's enrollment in this conference was confirmed by the U. S. Department of Transportation. Within this confirmation letter it was noted that "[B]us service is not available from the Oklahoma City lodging locations to the TSI Lab Building. It is recommended that students be reimbursed for rental cars until such time that bus service is made available."

4. Darrell McKown is the Manager of the Gas Pipeline Safety Section of the PSC. By memorandum dated June 29, 1994, Mr. McKown requested of Boyce Griffith, PSC's Chairman, that students attending the TSI training session be reimbursed for rental car expenses.

5. Mr. Griffith asked his secretary to verify whether the hotel Grievant was registered with, the Lexington Hotel Suites and Inns, had a shuttle bus to transport Grievant to his dailey classes. Mr. Griffith's secretary called the hotel and was told that a shuttle was available. Thereafter, Mr. Griffith informed Mr. McKown that the request for a rental car was not approved.

6. Grievant was issued $150.00 in advance for use on his trip.

7. On or about July 13, 1994, Grievant called TSI in Oklahoma in an attempt to verify whether transportation was going to be available to him upon arrival and he was told that it would not be available. Grievant attempted to contact Mr. Griffith concerning this information but was unable to speak to him because he (Mr. Griffith) was out-of-town.

8. On July 15, 1994, Grievant spoke with Mr. McKown concerning the availability of transportation while in Oklahoma. Mr. McKown told Grievant to rent a car in Oklahoma if it was absolutely necessary.

9. Grievant left for Oklahoma on July 16, 1994. Upon his arrival, he inquired of the hotel whether transportation was going to be provided to his seminar and he was told that it was not. Grievant then made arrangements to obtain a rental car.

10. Grievant incurred the expense of $252.70 for the rental car he obtained in Oklahoma. His total expenses incurred for the trip, which he charged on his American Express credit card, were

$1362.30. On July 25, 1994, Grievant submitted a travelreimbursement form to Mr. Griffith requesting this amount less the $150.00 advance.

11. On July 27, 1994, Grievant made airline reservations for a second training class scheduled for August 15 through 19, 1994. The cost of this second flight was $393.50.

12. On or about August 3, 1994, Grievant was informed that his travel reimbursement request for the rental car was denied. At this time, Grievant was not reimbursed for his other expenses.

13. Grievant cancelled his reservation for the August training session because he was afraid that he would not be able to charge the expenses he would need to incur because his credit card payment for July was overdue based upon his July expenses.

14. Grievant's airline ticket for the August training session was not refundable but is valid for one year from the date of purchase.

15. Grievant seeks reimbursement for $1560.56, plus any interest accumulated on his credit card stemming from the July trip he made.

Discussion

Grievant claims that he is entitled to be reimbursed for the expenses he has incurred with relation to the July and August seminars held in Oklahoma City, Oklahoma. The PSC does not deny that Grievant is entitled to reimbursement for the expenses he incurred relative to the July seminar except for the rental car expense. It argues that Grievant should have utilized a taxi-cab while in Oklahoma pursuant to the provisions of the State's TravelRegulations; therefore, it contends that he is only entitled to $120.00, which represents the reasonable fare which would have been charged for taxi service for the seven days he was in Oklahoma. Further, it contends that it should not be required to reimburse Grievant for the airline ticket he purchased in August because he may still use that ticket, and also because he has never formally requested reimbursement for that expense.

The Travel Management Office of the Department of Administration administers the Governor's Travel Regulations. These regulations state with regard to travel expense reimbursement that

> All travel arrangements should be designed to incur the minimum expense required for the successful completion of the mission. It shall be the responsibility of:

. . .

> State employees and other travelers to properly apply these regulations to their travel, comply with all requirements of these regulations, and exercise the same care in incurring travel related expenses for the State of West Virginia as would a prudent person traveling at personal expense;

Further, under the heading "Transportation," the regulations state

> The traveler should use the most economical mode of public transportation that is consistent with the purpose of the trip. Commercial air transportation shall be the standard by which transportation expenses are evaluated both in terms of costs and travel time.

Finally, the section of these regulations which address reimbursement for rental car expenses reads, in pertinent part,

> A Commercial Rental Vehicle should be used for in- or out-of-state travel <u>only when a State Owned or Privately Owned Vehicle is not available</u> and when:
>
> there are multiple state employees or other authorized business travelers sharing the rental instead of public transportation; and
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> all related expenses are less than or are competitive with available public transportation.

It is now obvious that Chairman Griffith acted upon incorrect information when he denied Grievant's request to use a rental car on his trip. Further, Mr. Griffith's office was again acting under incorrect information when Grievant contacted the office upon his arrival in Oklahoma and again stated that no shuttle service was available. The only agent of the employer who did act upon correct information was Mr. McKown who specifically, and with apparent if not actual authority to do so, told Grievant to rent a car while in Oklahoma if it was necessary to do so in order to fulfill the mission of the trip. An employee of any business should not have to personally absorb costs related to activities which are of a business nature and which would not have been incurred had the individual not been an employee; state employees should be no different.

Further, the Travel Regulations relied upon by the PSC for the proposition that Grievant's use of a rental car was not a prudent or reasonable use of the State's funds is not persuasive in this case. As cited, these regulations require that travelers act prudently in incurring expenses and that rental cars should only be used when the price is **competitive** with that of publictransportation. (See footnote 2) The PSC is operating on an assumption that Grievant would have had to use a taxi only twelve times, twice for transportation to and from the airport and twice each day to and from the class. Further, it only assumes that the cost for each tax use would be $10.00 dollars. The PSC presented no credible evidence based upon personnel knowledge to support any of these figures and neither did Grievant.

Grievant was in Oklahoma for seven days and stayed in a hotel which had rooms containing a kitchenette. It is gleaned from the record that his hotel offered transportation to a nearby grocery two days during each week at 6:45 p.m. and a complimentary shuttle to and from restaurants within a five-mile radius for groups of five or more. There is no restaurant at the hotel. Grievant testified that he must strictly control his diet because he is a diabetic and that most, if not all, of the eating establishments where he would prefer to eat are located more than five miles from the hotel. In any event, it is determined that Grievant would have had to have utilized a taxi more than the twelve times assumed by the PSC. In all probability, it is determined that Grievant's use of a rental car was prudent given the circumstances and, more than likely, the cost would have been competitive with that of public transportation. In any event, there is no credible evidence tending to support either side's estimate which is therefore, not binding on the Undersigned.

Under W. Va Code §29-6A-5, the administrative law judges employed by the Grievance Board have "the authority to provide appropriate remedies including, but not limited to, making the employee whole." Given the facts of this case, it is deemed equitable that Grievant be reimbursed the costs he incurred associated with the rental car. The evidence represents that he attempted in good faith in requesting a rental car on the basis of knowledge provided him from reliable sources, and that his request was denied based upon erroneous information. Further, once he provided his employer with verification of the information he had once provided, an agent of his employer told him to incur the expense in question in order to fulfil the purpose of his trip. Finally, there is no reliable evidence to indicate that Grievant's use of a rental car was actually more expensive than alternative transportation but the PSC relies upon information after-the-fact to support its original erroneously based denial. Therefore, it is determined that Grievant should be reimbursed for all of his travel

expenses related to the July trip, including the interest and penalties assessed to his credit card by American Express due to his inability to pay the expenses when they came due.

With regard to the cost of the airline ticket purchased for the August seminar in Oklahoma, Grievant stated that he was given approval for use of a rental car during that trip. However, he cancelled his reservation for the seminar after his expense request was denied and after he had received an overdue notice on his charge card. He testified that he was afraid that he would not beable to use his credit card in Oklahoma if he were to make the trip.

While Grievant's decision to cancel his seminar reservation may have turned out to be prudent, there is no evidence to substantiate that such was the case. Further, he was not told by the PSC to cancel the reservations. The PSC's refusal to pay Grievant's travel reimbursement request did not directly cause him to cancel his August reservations. Therefore, the PSC should not be required to pay for this non-refundable ticket when it is still valid and can be used for another purpose. Once Grievant uses the ticket for business, then he can be reimbursed for the cost, and the only cost he will have to incur is whatever interests charges are assessed on the ticket price by his credit card. Arguably, if the ticket is transferable and Grievant does not use the ticket, then the PSC will be required to reimburse him for the cost.

The foregoing discussion of the case is hereby supplemented by the following appropriately made conclusions of law.

Conclusions of Law

1. Grievant bears the burden of proving his case by a preponderance of the evidence. W. Va. Code §29-6A-1 et seq.

2. Grievant has established that he is entitled to be reimbursed for the cost of the rental car which he obtained while on business for the PSC in Oklahoma City, Oklahoma, based upon equitable grounds.

3. Grievant has not established that the PSC should be required to reimburse him for the cost of an airline ticket whichhe has purchased but not used. Any such claim for reimbursement at this time is not ripe.

Therefore, this grievance is hereby **GRANTED IN PART** and **DENIED IN PART**. The Public Service Commission is hereby **ORDERED** to reimburse Grievant for all of the costs incurred

associated with his July 16, 1994 trip to Oklahoma City, Oklahoma, including the cost of the rental car which Grievant obtained upon his arrival. The Public Service Commission is also responsible for reimbursing Grievant any interest and/or late fees assessed by American Express on the charges related to the July trip. The Public Service Commission is not required at this time to reimburse Grievant for the purchase price of the airline ticket which he purchased on July 27, 1994.

Any party or the West Virginia Division of Personnel may appeal this decision to the "circuit court of the county in which the grievance occurred," and such appeal must be filed within thirty (30) days of receipt of this decision. W. Va. Code §29-6A-7. Neither the West Virginia Education and State Employees Grievance Board nor any of its Administrative Law Judges is a party to such appeal and should not be so named. Any appealing party must advise this office of the intent to appeal and provide the civil action number so that the record can be prepared and transmitted to the appropriate court.

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ALBERT C. DUNN, JR.

Administrative Law Judge

March 2, 1995

Footnote: 1His grievance was denied by the grievance evaluators based upon their opinion that they did not have the authority to grant the claim, even though they agreed with his request.

Footnote: 2The Travel Regulations are not interpreted to stand for the rule that a rental car may not be used unless more than one business traveler requires such.