

Ballard

DECISION



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

15256

FILE: B-199264

Request For DATE: October 22, 1980

MATTER OF: Dr. Geoffrey Taylor - ~~Reimbursement to visit-
ing scientist of costs for ocean transporta-
tion of household goods~~

DIGEST:

1. Rule authorizing reimbursement to employees for costs of transporting household goods from overseas to conterminous United States on actual expense basis, without limitation by Government's cost had shipment been made on Government bill of lading, does not apply to ocean freight charges where transportation performed on foreign flag ship. B-183053, March 12, 1975, distinguished.
2. Where allowable household goods are shipped on foreign flag vessel by agent of visiting scientist, at time when American ships were available, and in absence of showing of necessity, section 901 of the Merchant Marine Act of 1936, 46 U.S.C. 1241(a) (1976) precludes Comptroller General from making allowance for any expenses incurred through use of foreign ship.

This decision concerns Dr. Geoffrey Taylor's appeal from our Claims Division's settlement of February 22, 1980. The Center for Disease Control, Public Health Service, Department of Health, Education, and Welfare, by letter of June 3, 1977, forwarded Dr. Taylor's voucher of March 15, 1977, for \$2,994.90 to our Claims Division, which disallowed the claim (file Z-2744143) and returned it to the Public Health Service with instructions to collect \$2,999.04 of the \$3,757.60 that had already been paid to the claimant.

The voucher had been presented to the Public Health Service as a reclaim for \$2,994.90, that had been disallowed by the agency when it considered Dr. Taylor's original voucher of July 21, 1976, for \$8,186.06. That voucher was presented for reimbursement of expenses incurred in connection with travel and transportation from Cheshire, England, to Morgantown, West Virginia.

By letter of January 22, 1976, the National Institute for Occupational Safety and Health, Center for

012575 113611

Disease Control, Department of Health, Education, and Welfare, Morgantown, West Virginia (NIOSH), [offered Dr. Taylor a two-year appointment,] beginning July 1, 1976, [as a visiting scientist under the provisions of 42 U.S.C. 209(g) and 210(f) (1976) for a manpower shortage position.] In accordance with the offer of appointment, the [NIOSH] issued Travel Order No. HSM-036897, dated March 3, 1976, [authorizing travel for Dr. Taylor and his dependents, and the transportation of his household goods and personal effects from Cheshire, England, to Morgantown, West Virginia.]

In its letter of February 24, 1976, [the agency approved Dr. Taylor's plan to arrange for his own travel and transportation, and the arrangements he made with a British household goods forwarder, which provided for the through transportation, including packing and crating services at origin, the inland transportation from origin to port, ocean transportation from Southampton, England, to Baltimore, Maryland, on the Dart America, and for inland transportation from Baltimore to destination by a United States carrier.] For these services, performed between June 23 and 27, 1976, Dr. Taylor paid the British forwarder 3,500 pounds, plus 150 pounds and 5 shillings, respectively, for transit insurance and stamp duty. [This payment was the basis for Dr. Taylor's claim] of \$6,752.50 on the original voucher. [In addition the voucher also included amounts for car rental, air fare and per diem. The agency allowed and paid \$3,757.60 as reimbursement] for payment of the freight charges, (plus \$1,209.73 on the other items), [leaving a balance] of \$2,994.90 (\$6,752.50 less \$3,757.60), [the amount reclaimed, and the subject of our Claims Division's settlement.]

[The Claims Division disallowed the freight charges] (except for \$658.92) [on the basis of section 901 of the Merchant Marine Act of 1936,] 46 U.S.C. § 1241(a) (1976). [The amount allowed for the inland portion of transportation from Baltimore to destination,] \$658.92 (plus \$99.64 to correct a mathematical error in the agency's allowance for travel and per diem) [reduced the amount of the overpayment from \$3,757.60 to \$2,999.04. And the Center for Disease Control was requested to take appropriate administrative action to recover] \$2,999.04.

Pursuant to 42 U.S.C. 210(f) (1976), the Public Health Service issued regulations, 42 C.F.R. 61.37, under which [visiting scientists are entitled to travel and transportation allowances as authorized by law and the Federal Travel Regulations,] FPMR 101-7, May 1973 (FTR), for other civilian employees of the Public Health Service. See B-197635, June 6, 1980.

We have held that employees recruited outside the conterminous United States for manpower shortage positions in the conterminous United States as their first duty station are entitled to reimbursement of transportation costs for shipping household goods on an actual expense basis and without limitation based on Government's cost if the shipment had been by Government bill of lading, where an agency official instructed the employees to select their own carrier. See B-183053, March 12, 1975. However, section 901 of the Merchant Marine Act of 1936, 49 Stat. 2015, 46 U.S.C. 1241, provides, in pertinent part:

"(a) Any officer or employee of the United States traveling on official business overseas or to or from any of the possessions of the United States shall travel and transport his personal effects on ships registered under the laws of the United States where such ships are available unless the necessity of his mission requires the use of a ship under a foreign flag: Provided, That the Comptroller General of the United States shall not credit any allowance for travel or shipping expenses incurred on a foreign ship in the absence of satisfactory proof of the necessity therefor."

The mandate of section 901 of the Merchant Marine Act of 1936 is reflected in pertinent provisions of the FTR. Whether the agency selects the means of transportation, as provided in paragraph 2-8.4d(1) of the FTR, or the employee elects to have his household goods moved by means other than those selected by the Government and agrees to pay the excess, as provided in paragraph 2-8.4e(1), any ocean transportation, to be considered "allowable," must be made on ships registered under the laws of the United States whenever such ships are available. Thus, as here, where the agency, in effect, selected the means of transportation, the rule in B-183053, March 12, 1975, would apply only to the extent of the non-ocean transportation.

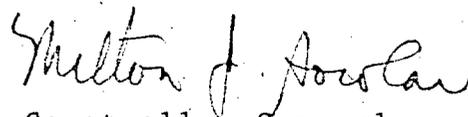
On inquiry the Federal Maritime Commission verified that the Dart America, was of British registry. The record does not contain a certificate or proof as to the unavailability of an American flag ship at the time of movement. See B-183385, April 28, 1976, and B-181635, November 17, 1975. On the contrary, there is substantial evidence that American flag ships were available. See B-194940, July 18, 1979. For example, United States Lines reported that three of its vessels departed the United Kingdom and arrived in Baltimore during the period from May 28, 1976, to July 2, 1976. In

the absence of satisfactory proof of the necessity for the use of a foreign flag ship the Comptroller General is precluded by law from crediting or making any allowance for shipping expenses incurred through the use of a foreign ship. B-181635, supra; B-180861, June 7, 1974; B-179595, November 13, 1973.

The prohibition applies only to the ocean freight charges, while the allowance of costs for transportation of household goods from outside the conterminous United States is on an actual expense basis which includes packing, crating, unpacking and other necessary accessorial charges, in addition to transportation. See B-179595, May 29, 1974, and paragraph 2-8.4c(1) of the FTR. We have considered an allowance of through charges less the ocean freight on the foreign ship upon evidence of the ocean freight paid, B-188186, September 5, 1979, and upon receipt of invoices for parts of the transportation charges incurred other than ocean freight charges. See B-179595, supra.

The allowance of \$658.92 for the inland transportation from Baltimore to destination was correct because an invoice in the record supports this amount. We believe, however, that the packing, crating and inland transportation at origin can also be reasonably ascertained from the record without danger of reimbursing Dr. Taylor for any part of the ocean freight charges.)

The agency's memorandum of November 2, 1976, states that the costs from origin to Southampton were \$668.83. This amount, however, included the cost of excess valuation or insurance which the claimant is required to assume under paragraph 2-8.4e(3) of the FTR. Accordingly, the settlement should be revised reducing the indebtedness of Dr. Taylor for the cost of packing, crating and inland transportation but including the cost of excess valuation.



For the Comptroller General
of the United States