

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

26964

FILE: B-213543**DATE:** December 7, 1983**MATTER OF:** Captain Roger L. Reasonover, Jr., USN

- DIGEST:**
1. Navy's assessment of excess weight charges based on weight tickets issued by a certified weighmaster is a valid basis for computing net weight of a member's household goods. That assessment cannot be changed based on the member's allegations that the scales were operated by the carrier's parent company; the driver refused to reweigh tare weight on independent scales; the carrier, subsequent to the move, was suspended from military traffic; and illegally increasing weight has been practiced by some in the moving industry.
 2. The General Accounting Office will not disturb the agency's determination of the net weight of a service member's household goods shipment in the absence of clear error or fraud. Where the cumulative effect of circumstantial evidence is insufficient to establish clear error or fraud, the claimant has not met his burden of proof so as to have his claim for excess weight charges collected from him allowed.
 3. The carrier's mere opportunity to fraudulently increase the weight of a household goods shipment and the carrier's suspension from traffic for reasons of poor service do not constitute sufficient evidence to establish that weight the carrier charged for on a particular shipment was erroneous or fraudulent when that weight is based on the required weight tickets.

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This reviews the disallowance¹ of a claim for refund of \$434.96, presented by Captain Roger L. Reasonover, Jr., USN, relating to the movement of his household goods incident to a permanent change of station. The amount was collected by the Navy as reimbursement for the payment of transportation and related charges on weight of the shipment that was in excess of his authorized weight allowance.

The validity of the weight tickets presented by the carrier is in issue because they were used to determine whether the net weight of the household goods exceeded the member's authorized weight allowance.² We sustain the Navy's determination that the weight tickets represent a valid basis for computing Captain Reasonover's net weight, and sustain the settlement action taken by our Claims Group in disallowing the claim.

Facts

The Navy issued a Government Bill of Lading to Quality Moving and Storage for the movement of Captain Reasonover's household goods from Washington, D.C., to Annapolis, Maryland. His authorized allowance was 13,500 pounds, net weight.

Prior to arriving at origin for loading on June 10, 1980, the carrier's driver obtained a weight ticket (No. 8430) on certified scales maintained by Arrow Transfer Company, Inc., apparently, Quality's parent company. That ticket recorded a tare weight³ of 28,100 pounds. After completion of loading, another ticket (No. 8459) was issued by Arrow's weighmaster. This recorded a gross weight of 46,820 pounds. Prior to

¹ The General Accounting Office's Claims Group disallowed the claim by Settlement Certificate, dated August 18, 1983; this review is made at the request of Captain Reasonover.

² See Table of Weight Allowances in 1 JTR M8003.

³ Since no other shipment was in the vehicle, the tare weight here is equivalent to its unladen or empty weight.

delivery on the following day, the shipper instructed the driver to have the loaded vehicle reweighed at an independent weighmaster's scales. The shipment was reweighed, and the weight ticket (No. 16242), issued by American Security Storage, Annapolis, Maryland, recorded a weight (gross) of 46,660 pounds. On completion of unloading, the shipper again instructed the driver to reweigh the vehicle at American's scale to obtain the vehicle's tare weight, but the driver, ignoring the instructions, weighed the unladen vehicle on Arrow's scales. That ticket (No. 8305) showed a tare weight of 27,900 pounds.⁴

The initial weight tickets (Nos. 8430 and 8459) produced a net weight of 18,720 pounds (46,820 gross, minus 28,100 tare), while the reweigh tickets resulted in a net weight of 18,760 pounds (46,660 gross, minus 27,900 tare).⁵ The lower net weight of 18,720 pounds was used as a basis for computing the excess weight.⁶ Captain Reasonover contends the actual weight was substantially lower.

It appears that subsequent to the move, Arrow's privilege of participating in military traffic was suspended because of the carrier's record of poor service. The record also contains an allegation that Arrow had been suspended previously and was using Quality to secure the traffic.

⁴ The Interstate Commerce Commission recognizes that differences in gross weights are common, and provide by regulation (49 C.F.R. § 1056.6(d)) that freight charges are based on the lower of two net weights.

⁵ An allegation is contained in the record that there was an error of 600 pounds in the gross weight, but the weight tickets, as observed by the Navy, do not support that allegation.

⁶ The actual excess weight upon which collection from Captain Reasonover was made was 2,590 pounds, rather than 5,220 pounds (18,720 net weight, minus 13,500 allowance). The lower weight reflects adjustments, such as deductions for the weight of professional books and packing. See 1 JTR M8002(2), M8004, and M8007.

Issue

The issue is whether the claimant satisfied the burden of proving that the weight tickets were fraudulent or clearly erroneous. Captain Reasonover points to various circumstances in support of his contention of fraud. He argues that since three of the four weight tickets were obtained from scales maintained by the carrier, and the driver refused to reweigh for tare weight on an independent scale, the carrier had an opportunity to falsify the weights. Two general sources are relied on to substantiate his contention. One is the transcript of a television broadcast⁷ and the other is an opinion by a Government transportation expert.

The television program demonstrated the practice, apparently existing in the household goods moving industry, of "weight bumping." This is the practice of illegally adding weight to the actual weight of a shipment. Among other things, the program indicated that investigations by the Interstate Commerce Commission show that the weights of 9 percent of interstate household goods shipments are "bumped." The expert stated that 1980 statistics prepared by the Military Traffic Management Command show that over 21 percent of reweighed shipments disclose errors. It was his opinion that in view of the few relative reweighs, the opportunity and encouragement to bump weight is very good because there is only a small chance that the carrier will be caught. He also stated that, on this shipment, it is impossible to determine with certainty what actually did occur.

In addition, the claimant states that the weight of his household goods on the previous movement into Washington, D.C., was far lower than the weights reflected on the weight tickets, and several items were removed before Quality arrived for the pick up.

⁷ CBS news broadcast, entitled "Moving," presented by "60 Minutes" on August 5, 1979.

Law

Section 406 of title 37, United States Code, provides for the transportation of household goods of members of the uniformed services to and from such places and within such weight allowances as may be prescribed by the Secretaries concerned; implementing regulations are contained in chapter 8, Volume 1, of the Joint Travel Regulations (1 JTR). Paragraph M8007-2 provides that the Government's maximum transportation obligation is the cost of a through household goods movement of the member's prescribed weight allowance in one lot; it further provides that the member will bear all transportation costs for weights in excess of the maximum allowance. B-189015, September 6, 1977. The uniformed services have the responsibility to determine when shipments involve excess costs and to take appropriate action to recover those amounts. 50 Comp. Gen. 705 (1971).

The question of whether and to what extent authorized weights have been exceeded is a question of fact primarily for administrative determination which ordinarily we will not question in the absence of fraud or clear error. Matter of Montalbano, B-197046, February 19, 1980. The question is resolved by the shipping documents of each particular shipment. Matter of Furey, B-193397, February 22, 1980. The burden of establishing fraud rests upon the party alleging it and must be proven by evidence sufficient to overcome the presumption in favor of honesty and fair dealing. 57 Comp. Gen. 664 (1978). Circumstantial evidence is competent if it offers a clear inference of fraud and amounts to more than a mere suspicion or conjecture. If, however, the circumstances are as consistent with honesty and fair dealing as with dishonesty, the inference of honesty is required to be drawn. Matter of Williams, B-207393, May 23, 1983.

A carrier is required by regulation to obtain the weight of household goods on a certified scale.⁸ The net weight is determined by the shipping documents of a particular shipment. The weight ticket is a valid basis for determining net weight of a shipment when it

⁸ See 49 C.F.R. § 1056.6(a), and Matter of Findlay, B-198337, May 30, 1980.

contains the shipper's name, the origin and destination of the shipment. Matter of Subotnik, B-206698, November 30, 1982. The Department of Defense Personal Property Traffic Management Regulation, DOD Regulation 4500.34R, May 1, 1971, which directs installation transportation officers to order reweighs under certain circumstances, is instructional only and does not apply to the administration or interpretation of entitlements. Matter of Brunton, B-190687, March 22, 1978. Therefore, the fact that a carrier may have failed to follow reweigh instructions does not operate to increase a member's entitlement. Matter of Newman, B-195256, November 15, 1979.

Approximate weight estimations, or evidence of the weight of household goods in a different move, are insufficient to establish error in scale weight certificates, except in highly unusual situations. Matter of Freeman, B-207806, August 24, 1982.⁹

Discussion

The record shows that the carrier (Quality) weighed the vehicle on certified scales and produced certified weight tickets showing the tare and gross weights of the shipment. As pointed out by the Navy, this procedure satisfies the law. Further, since the tickets contained the shipper's name and the origin and destination of the shipment, as well as the date of movement, they adequately identify the shipment. Therefore, the carrier is entitled to be paid based on the weight so obtained.

Only 160 pounds separate the gross weights certified by the weighmaster selected by the carrier (Arrow) and the weighmaster selected by the shipper (American). This difference is well within the tolerances anticipated by the reweigh regulations of the Interstate Commerce Commission.

⁹ Compare Matter of True, B-206951, July 12, 1982, where, in the light of the carrier's admission that the weight tickets were erroneous, estimates by experts based on visual inspections of the household goods, were accepted.

While the claimant would infer an intent to falsify weights from the driver's refusal to weigh the vehicle on an independent scale, and his preference to reweigh on Arrow's scale, these circumstances would, also, support the inference that the driver acted for the carrier's convenience. Thus, this is far too speculative a basis for inferring the commission of fraud. While we agree that Quality had a better opportunity, generally, to falsify the tickets by weighing the vehicle on Arrow's scales, the weights were certified, and we point out that carriers are not prohibited by law from weighing their vehicles on scales maintained by a parent or other related company. The bare opportunity to falsify weights here was not much different than the opportunities open to any carrier, if the television broadcast and expert opinion, concerning the widespread nature of weight bumping, is considered. Even if over 21 percent of reweighed shipments disclose errors in weight, this general fact does not support a conclusion that Quality intentionally increased the weights on the weight tickets in this case.

While Quality may have been suspended as a result of the movement of Captain Reasonover's shipment and its parent company, Arrow, may have been suspended previously, there is nothing in the record showing that Quality was suspended because it falsified the weight tickets here or that Quality and Arrow participated in weight bumping. The record suggests that the suspensions were the result of poor service and carelessness.

Conclusion

We conclude that the cumulative effect of the claimant's argument--160 pounds difference in scale weights, opportunity to falsify, poor service, and evidence of a practice of industry weight bumping--does not satisfy the burden of proof on the issue of fraud or clear error. As a result, we will not disturb the determination of net weight made by the Navy, and we sustain the disallowance of the claim by our Claims Group.

Milton J. Fowler
for Comptroller General
of the United States