

DECISION

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

111460
PK-II

27552

FILE: B-212335

DATE: February 28, 1984

MATTER OF: Rosemarie E. Naguski

DIGEST:

1. An employee assigned to long term training may receive temporary duty allowances or permanent change-of-station allowances but not both. When an employee is authorized only temporary duty allowances the issuance of a Government bill of lading for the transportation of an employee's household goods in itself does not provide a basis for finding the agency intended to authorize permanent change-of-station allowances contrary to the terms of the travel order.
2. In the absence of evidence that a Government bill of lading was issued by an official who did not have authority to issue such a document, or that the carrier acted in bad faith, the Comptroller General will not object to payment of a carrier's bill for transportation of an employee's household goods, even though the employee was not authorized to transport her household goods at Government expense in connection with her training assignment.
3. Where a certifying officer has doubt concerning the propriety of paying a carrier's transportation bills because there is a question as to whether the transportation services were performed as billed, the bill should be forwarded to the General Services Administration for handling under its doubtful claims procedures. Any certification for payment will then be made by the General Services Administration.
4. An employee who received per diem incident to a training assignment and, thus,

028150

could not have been authorized transportation of household goods for the same assignment, must reimburse the Government to the extent the General Services Administration certifies payment of a carrier's bills for transportation of her household goods performed under an erroneously issued Government bill of lading.

This action is in response to a request for an advance decision concerning transportation costs that were incurred by the Government in connection with a training assignment of Rosemarie E. Naguski, an employee of the Department of Health and Human Services.¹ We are asked (1) whether transportation of the employee's household goods at Government expense was authorized, (2) whether the carrier's bills for transportation services are allowable, and (3) to the extent the bills are allowable, whether that amount paid should be collected from the employee.

We find that Ms. Naguski was not authorized transportation of her household goods at Government expense and that the amounts payable to the carrier for that purpose are to be collected from her. However, the employee's ineligibility for that transportation allowance does not, itself, provide a valid basis for the agency to avoid the obligation to pay carrier bills upon presentation. Questions of fact or law relating to the carrier's bills, such as the validity of the packing charges, should be referred to the General Services Administration as a doubtful claim by the carrier.

Facts

A travel order, issued on or about August 5, 1982, authorized Ms. Naguski to travel from Seattle, Washington, to Los Angeles, California, and return for the purpose of completing an 8-month training assignment. The order authorized the payment of per diem, and per diem was in fact

¹ The request was made by the Director, Division of Accounting, Fiscal and Budget Services, Region X of the Department of Health and Human Services, in his letter of June 27, 1983 (reference MS/201).

paid to the employee for the period of training. Despite the absence of authority to pay for the transportation of her household goods, the authorized regional contracting officer issued a Government bill of lading on August 19, 1982, to procure the services of National Van Lines, Inc. for the transportation of Ms. Naguski's household goods.

The carrier performed the services and presented two bills, one for transportation and another for accessorial services, including packing. The certifying officer refused to certify the bills for payment primarily because of doubt that there was any intent to authorize the transportation of Ms. Naguski's household goods. He also points out that Ms. Naguski disputes the validity of the invoices. She alleged that the carrier did not perform some of the accessorial services for which it billed, and that the signature on the statement for packing services is not authentic. Because of doubt as to Ms. Naguski's entitlement and because of alleged irregularities in the carrier's billings, the certifying officer has refused to certify the bills for payment. He notes that under 41 C.F.R. § 101-41.401(c) (1982) there is no relief from responsibility for payment of transportation bills where the services are not authorized.

Analysis

Authorization of transportation allowances and authorization for payment of transportation bills are legally distinct considerations. The statute governing payment of training expenses, 5 U.S.C § 4109, provides an agency with discretion to pay temporary duty allowances including per diem or certain permanent change-of-station allowances, including transportation of household goods, but not both. Since per diem was authorized and paid to Ms. Naguski, there is no authority under 5 U.S.C. § 4109 by which the Government may pay for the transportation of her household goods as well. The agency's determination to deny a transportation allowance, but to authorize per diem reflects a proper exercise of discretionary authority to determine what part, if any, of the training expenses authorized in 5 U.S.C. § 4109 will be paid. The travel order issued to Ms. Naguski is consistent with the regulations and the law and there is no question that the agency intended to pay only a per diem allowance incident to that training assignment.

Clearly, the transportation allowance was not authorized. However, as stated above, the fact that Ms. Naguski was not authorized to transport her household goods is not a basis for determining that the carrier's bills should not be allowed.

Concerning the liability of certifying officers for payment of transportation bills, the regulation referred to by the certifying officer, 41 C.F.R. § 101-41.401(c), states that the relief provided in 31 U.S.C. § 82g (now 31 U.S.C. § 3528) from liability for overpayments made on transportation bills does not relieve accountable officers from responsibility for:

- "(1) Making an administrative determination that the transportation services for which payment is claimed were duly authorized [or], that such services represent a legal obligation under the appropriation or fund involved * * * "

Even though we reaffirmed these responsibilities of accountable officers generally, in Matter of Flynn, B-204818, July 13, 1982, there was no intention to change the long-standing interpretation of that language as it relates to the specific accountability question in this case. In our decision, B-190576, February 10, 1978, which was based on the practicalities of the transportation relationship between carrier and Government agents, we stated that accountable officers would satisfy the requirements, as contained in the regulations, by assuring themselves that the transportation agent who issued the Government bill of lading had the authority to procure transportation services and that there was an appropriation which apparently was available to pay for the services.

The accountable officer need not go beyond the Government transportation agent's authority to determine whether there was authority to pay for the transportation. Thus, we held that since the contracting officer had authority to issue Government bills of lading and the carrier had acted in good faith and without negligence, the carrier was entitled to payment even though the employee was not entitled to the transportation furnished at Government expense. Therefore, even where the underlying transportation allowance is

unauthorized, a certifying officer is protected against liability for erroneously certifying payment under a Government bill of lading because, with respect to transportation bills, there is a statutory requirement that they be paid upon presentation. See 31 U.S.C. § 3726 (formerly 49 U.S.C. § 66). Since the mandate of the statute deprives disbursing and certifying officers of the prerogative of performing a pre-payment administrative verification of the charges, they are afforded protection under 31 U.S.C. § 3528 (formerly 31 U.S.C. § 82g). Matter of Flynn is amplified in accordance with the above.

This does not mean that a certifying officer has no duty to challenge the validity of a transportation voucher. Where doubt arises, as here, over the amount allowable, the validity of packing charges, and alleged irregularities in bills, the matter should be treated as a doubtful claim.

The transportation audit function is performed by the General Services Administration under provisions of the General Accounting Office Act of 1974, Pub. L. No. 93-604, approved January 2, 1975, 31 U.S.C. § 3726. That authority includes the authority to settle transportation claims. Matter of Trans Country Van Lines, Inc., 57 Comp. Gen 157 (1977). The General Services Administration has adopted procedures for the direct settlement of doubtful claims. See, generally, 41 C.F.R. § 101-41.605 (1982). Agencies are instructed not to pay any doubtful transportation claims, and are informed that the claims will be handled by the General Services Administration. 41 C.F.R. § 101-41.604(c). The definition of a "claim" includes "unpaid original bills requiring direct settlement by GSA, including those subject to doubt regarding the propriety of payment." 41 C.F.R. § 101-41.601.

Conclusion

The certifying officer here would not be liable for payment of the transportation bills even though there is no authority to pay for the transportation of Ms. Naguski's household goods. However, since the certifying officer has some evidence that certain billed services may not have been performed there remains a doubt as to the propriety of paying the original transportation bills. Because of this problem the claims should be forwarded to the General

B-212335 -

Services Administration which will certify the amount determined to be payable. See 41 C.F.R. § 101-41.605-2.

The carrier may be paid only to the extent that the General Services Administration certifies the payment of its claim. That amount should be collected from the employee. See Matter of Elder and Owen, 56 Comp. Gen. 85 (1976).

for 
Comptroller General
of the United States