

DECISION

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

*Wrightwood
RM-II
30137*

FILE: B-214373

DATE: January 3, 1985

MATTER OF: Colonel Donald MacLeod, JR., USAF
Retired

DIGEST:

1. Although an estimate of the weight of a service member's household goods was over 4,000 pounds lower than the actual weight as shown on weight certificates, since the service member has not produced evidence to show the weight certificates to be clearly in error, he must bear the cost of the overweight, even though by error the Air Force did not reweigh all lots of the service member's shipment at destination.
2. A service member questions the Air Force's adjustment to the weight of his household goods because of excess water in certain items of the overseas shipment. Since the service member has presented nothing indicating specifically what the adjustment should have been, the adjustment, which was not unreasonable, and the weight of household goods so adjusted must be relied on in determining the excess weight of household goods shipped by the service member.
3. An Air Force procedural regulation interpreting the formula for determining overweight costs shown in Volume 1 of the Joint Travel Regulations which would require the service member to pay the cost of lots of household goods shipped after his full weight allowance had been shipped should not be applied if disadvantageous to the member because the applicable Joint Travel Regulations may more readily be interpreted as requiring the overcharge to be calculated on the basis of the aggregate net weight and cost of all lots of the shipment.

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Colonel Donald MacLeod, Jr., USAF, appeals a settlement of our Claims Group which denied his claim for reimbursement of the charges collected from him by the Air Force because the weight of his household goods shipment exceeded his authorized weight limitation. Weight tickets and weight certificates were submitted by the movers to establish the weight of the different lots that were shipped. Since these weight tickets and certificates, as adjusted by loss of some of the goods and water damage, have not been shown to be clearly in error by evidence submitted by the claimant, they were correctly relied upon by the Air Force and the Claims Group in determining the excess weight. However, an Air Force formula for determining overweight costs should not be applied to the disadvantage of the service member. Rather, the overweight costs should be computed in accord with the literal interpretation of the formula prescribed in Volume 1 of the Joint Travel Regulations, and the service member's claim for refund of overweight charges is allowed to that extent.

FACTS

Colonel MacLeod was authorized to move 13,500 pounds of household goods at Government expense from High Wycombe Air Station, London, England, to Barksdale Air Force Base, Louisiana, in connection with a permanent change of station in September 1981. He applied in May 1981 to the transportation officer at High Wycombe Air Station to effect the shipment of his household goods in four lots. His application consisted of four Department of Defense Forms No. 1299--one form for each lot. Two of the lots were household goods that he had stored in two separate non-temporary storage sites in the United States when he had been transferred to England 6 years earlier. One of the lots was unaccompanied baggage that would receive expedited service provided by the Military Airlift Command. The fourth lot was the main portion of his household goods at High Wycombe.

The High Wycombe transportation officer prepared the application forms that Colonel MacLeod signed to effect shipment of the two lots of nontemporary storage household goods in the United States. The transportation officer sent these application forms soon after their preparation in May to the transportation officers in the United States where the two lots of nontemporary storage household goods were located. The forms called for immediate transportation

of the goods involved from nontemporary storage to Barksdale Air Force Base. Therefore, these two lots were delivered to Barksdale by July and had to be placed in temporary storage there until Colonel MacLeod arrived in September.

When Colonel MacLeod's main lot of household goods at High Wycombe Air Station was packed later in July before it was shipped to Barksdale, it was weighed at 19,773 pounds--over 4,000 pounds more than High Wycombe's transportation officer had previously estimated for the entire shipment. At that point High Wycombe's transportation officer sent instructions to Barksdale's transportation officer to reweigh Colonel MacLeod's entire shipment when it arrived. The two lots taken out of nontemporary storage and shipped to Barksdale weighed 1,400 pounds and 464 pounds, respectively. The unaccompanied baggage weighed 672 pounds. None of these lots of household goods was reweighed at Barksdale upon delivery in September even though instructions for reweigh had been given. The main lot of Colonel MacLeod's household goods from High Wycombe was reweighed at Barksdale upon delivery later in September and found to weigh 19,280 pounds rather than the 19,773 pounds previously certified.

The main lot of household goods from High Wycombe was transported from England on a ship in 21 large shipping containers of 192 cubic feet or less. When these 21 containers were unpacked in September, some of the contents of some of the containers had sustained water damage. Colonel MacLeod signed claim forms at the time of unpacking stating:

"Greater majority of furniture scarred, mildewed and paper rubbed. All clothing mildewed - excessively.

"* * * some articles of clothing were still damp and all the affected clothing had a strong, musty odor."

The Air Force paid for refinishing several water-damaged articles of furniture, and subtracted 70 pounds from the weight of seven cardboard cartons that contained some of the clothing because of possible water retention.

A fifth lot of household goods, consisting of one new cocktail table, determined to weigh 100 pounds upon reweigh, was delivered in November from a furniture warehouse in the United States. Colonel MacLeod apparently bought this table after he applied in England for shipment of his first four lots.

After reducing the weights of some of the lots due to items lost by the movers, shipment of professional equipment, packing materials, and water retention, the Air Force determined that the entire shipment was more than 5,000 pounds overweight. Their regulations required the overweight charges be determined by reimbursing only the charges on the lots of the shipment that were covered by the authorized weight allowance in the sequence that the lots were received by the movers. Since the two nontemporary storage lots were received by the movers first, and the combined weight of those lots was under the authorized weight allowance, the charges for those lots were reimbursed. The third lot received by the movers was the main lot at High Wycombe. The weight of this lot plus the weight of the first two lots exceeded the authorized weight allowance, so only part of the charges for the main lot was authorized for reimbursement. The charges for the unaccompanied baggage and the cocktail table were identified as excess charges. The mover's charges in dollars per pound on the first two lots were less than the charges on the other lots.

The Parties' Contentions

Colonel MacLeod contends that the weight certificates for the main lot of household goods were invalid because the origin weight certificate showed more weight than the reweigh at Barksdale even though the goods had been water damaged on the ship. He argues that the destination reweigh certificate was invalid because it was adjusted downward only 70 pounds on account of the weight of the water in the clothes. He also objects because the sequencing of the lots was to his disadvantage, contending that the shipment forms for his two nontemporary storage lots were prepared erroneously, causing those lots to be turned over to the carrier before the main lot and resulting in the Government paying for the least expensive lots rather than the most expensive. Finally he notes that all the lots of his shipment were not reweighed as requested and that an

estimate of the weight of the main shipment by the High Wycombe transportation officer was over 4,000 pounds lower than the weight shipped as demonstrated by the weight certificate. Because of this discrepancy he argues that his overweight charges cannot be determined.

The Air Force replies that the slight variance between the two weight certificates applicable to the main lot is not unusual and does not invalidate those weight certificates. It applies its sequencing rules because Colonel MacLeod signed the forms under which the various lots of goods moved. Finally, the Air Force indicates that the origin weight certificates of the lots that were not reweighed have not been shown to be clearly in error and that estimates cannot be used to invalidate these weight certificates.

The Overweight Issue

Colonel MacLeod's two arguments against using the weight tickets and certificates produced by the movers to determine the weight of his shipment are that some of the lots were not reweighed as requested and that the weight of the heaviest was never properly determined. Where the transportation voucher prepared by a mover in support of its charges is supported by a weight certificate or weight tickets which are valid on their face, the Government must rely on the scale certifications of record in computing the excess costs in the absence of fraud or clear error in the computation. Minor discrepancies in weight do not demonstrate that a weight certificate is clearly in error. See Major James S. True, USAF, B-206951, July 12, 1982. The Air Force has weight tickets or certificates for all five lots of Colonel MacLeod's shipment. He has presented evidence questioning the validity of the weight of only one of the lots. Thus, the weight of the other four lots must stand. As indicated, a failure to carry out a requested reweigh, which is authorized by regulation, is not sufficient to relieve the service member of the charges for excess weight where the weight is established by a weight certificate which is valid on its face and not shown to be clearly in error. Major Arthur D. Eiff, USAF, B-207950, February 8, 1983. Further, we consistently have held that weight estimates, such as that made by High Wycombe's transportation officer, are not sufficient to establish error in scale weight certificates. Lieutenant Colonel Larry B. Freeman, USAF, B-207806, August 24, 1982.

The Air Force made a water retention weight adjustment of 70 pounds based on evidence that excess water had been present in seven cardboard boxes of clothing. Colonel MacLeod's statement previously quoted that some clothing was still damp is not consistent with his later statement that "All clothing, sheets, linens, etc., were totally water soaked."

Under our claims settlement procedures set out at Part 31 of title 4, Code of Federal Regulations, claims are settled on the basis of the facts as established by the Government agency concerned and by evidence submitted by the claimant. All claims are considered on the basis of the written record only, and the burden of proof is on the claimants to establish the liability of the United States and the claimants' right to payment. In this case we are particularly mindful of the general rule that to what extent authorized shipping weights have been exceeded is a question of fact primarily for determination by the Government agency involved. Major James S. True, USAF, supra. Since Colonel MacLeod presented nothing for the record specifically indicating what different weight adjustment than the 70 pounds used by the Air Force would be appropriate, we are bound by the Air Force's adjustment, which is not unreasonable.

Accordingly, we find that Colonel MacLeod has not presented evidence which would invalidate the weight certificates nor has he presented evidence sufficient to establish a larger adjustment for excess water than the one used by the Air Force. Therefore, the weight certificates or tickets for each lot, as adjusted by the Air Force, establishes the weight of the shipment.

The Sequencing Issue

When there is more than one lot in an Air Force member's shipment of household goods and the lots are picked up for shipment by common carriers on different dates, the overweight charges are determined "* * *" from the chronological sequence of the dates that the carrier(s) received the property, as indicated on the applicable GBLs or other procurement documents." Air Force Regulation 75-25, para. 11-9(b)(11) (change 2, August 1, 1980). The regulation is interpreted so that the charges on each lot, sequenced as just described, whose weight is cumulated with each prior

lot and the total determined to be under the member's authorized weight limitation, are paid by the Government. When the additional weight of a lot causes the cumulative total to exceed the authorized weight limitation, the overweight charges collected from the member on that lot are computed according to the formula in Joint Travel Regulations, Volume 1, para. M8007-2. All charges on subsequent, sequenced lots are collected back from the member.

In Colonel MacLeod's case, since the two lots in nontemporary storage in the United States were received first by the carriers the charges for those lots were considered as payable by the Government, even though they were the least expensive in dollars per pound than any of the other three lots. The main lot at High Wycombe Air Station was next received by the carriers, and its weight, cumulated with the first two lots, exceeded the authorized weight limitation. The overweight charges on that lot were computed according to 1 JTR para. M8007-2. The cost of shipping unaccompanied baggage and the cocktail table were considered charges to be collected from Colonel MacLeod. He contends that if his application for shipment forms had been prepared correctly, the lots in nontemporary storage would have been received by the carriers after the lots in England, and he would have been reimbursed for the more expensive lot of unaccompanied baggage that was shipped by aircraft, rather than the less expensive lots in nontemporary storage.

The Air Force concedes that Colonel MacLeod's application for shipment forms were prepared incorrectly and that the shipments from storage should have been turned over to the carriers at later dates so as to arrive at the new duty station at about the time of his arrival. Colonel MacLeod's signature on the application for shipment forms did not ratify or approve the transportation officer's failure to properly prepare them, but that failure cannot create for Colonel MacLeod a nonexistent entitlement. Rather than attempt to determine the sequencing of the five lots that may have occurred under the Air Force regulation had the transportation officer correctly performed his duties and reconstruct the overweight charges from that sequencing, we believe that it is appropriate in this case to apply, literally, to all five lots the formula for determining overweight charges. We note, however, that the Joint Travel Regulations, Volume 1, para. M8007-2, provides:

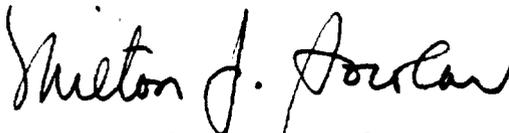
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"* * * the total cost of transportation
 * * * shall be prorated on the basis that
 the member bears the portion thereof that
 the excess net weight bears to the total net
 weight transported; e.g., if a member with a
 prescribed weight allowance of 7,500 pounds
 transports 8,000 pounds of authorized
 articles, excess shall be computed on the
 basis of $\frac{500}{8000}$ of all costs of transportation
 of authorized articles of household goods."
 (Emphasis supplied.)

That regulation could be interpreted as requiring the net weight and cost of all lots shipped by the Government to be added together to determine the member's liability. Use of that method would partially eliminate the disadvantage of sequencing in Colonel MacLeod's case. Although we do not question the Air Force practice of sequencing lots shipped because the controlling Joint Travel Regulations may be subject to different interpretations, we find that in a case like this where sequencing is disadvantageous to the member, computation of excess costs should be made on the basis of the aggregate net weight and cost.

Conclusion

Colonel MacLeod may ship at Government expense only his authorized weight allowance of 13,500 pounds. His over-weight charges should be computed on the basis of the total net weight and total cost of all lots.

for 
 Comptroller General
 of the United States