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DECISION



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

FILE: B-216195

DATE: January 28, 1985

MATTER OF: Jack R. Weyer

DIGEST:

Interior Department billed its employee for that portion of the carrier's charges relating to the transportation of 2,980 pounds of household goods that exceeded his weight allowance. Employee's allegation that the carrier fraudulently altered the description of some items to professional books and equipment, weighing 3,020 pounds, is irrelevant since, in the absence of authority to ship professional books and equipment as administrative expense, the items were part of the employee's household goods and, regardless of their description, were properly included in the determination of excess weight. Also, the employee's bare allegation of fraudulent waiting-time charges provides no basis to alter the agency's determination of excess charges where distance, time, and safety regulations support the waiting-time charges.

An authorized certifying officer of the Department of the Interior^{1/} requests an advance decision on the propriety of paying a claim presented by Jack R. Weyer, an employee of the Bureau of Reclamation. The claim is for the refund of monies deducted by the Bureau from an amount otherwise due him from the Government. The amount due Mr. Weyer was based on settlement of a claim for damages that occurred to his household goods during transportation incident to a change of station. The agency made the deduction to recover the amount of the carrier's charges on the weight of his shipment that exceeded his maximum net weight allowance. We conclude that the record does not provide a basis for certification of the claim for payment.

^{1/} The request was made by Kathryn E. Mitchell, Certifying Officer, Bureau of Reclamation, Regional Office, Lower Missouri Region, Denver, Colorado.

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Facts

When Mr. Weyer was transferred from Grand Coulee Dam, Washington, to Estes Park, Colorado, in January 1983, the agency issued a Government bill of lading (GBL) to a carrier to transport his household goods. The carrier presented several documents to support its bill for the services performed. Weight certificates were presented showing gross weight of 43,640 pounds and tare weight of 29,660 pounds, which produced a net weight of 13,980 pounds. This weight exceeded Mr. Weyer's weight allowance of 11,000 pounds by 2,980 pounds. The GBL shows that 3,020 pounds of the net weight reflected weight of professional books and equipment; several line items on the inventory sheets were marked "PB&E." These items appear to have been boxes containing some of Mr. Weyer's personal books, papers and tools. In addition, the record indicates that the shipment contained a large amount of heavy items including tools, auto parts, and three motorcycles. It also included a canoe, which under the regulations is excluded from transportation at Government expense.^{2/} The line-haul transportation charges were based on the net weight and a distance of 1,220 miles.

Among its charges, the carrier billed \$712.80 for waiting time, which was based on 27 vehicle hours, and the same number of hours for each of two employees. According to Mr. Weyer, the carrier's vehicle departed from his residence in Electric City, Washington, at 4:30 p.m. on January 23, 1983, and arrived in Estes Park, Colorado, the shipment's destination, at 1 p.m. on January 27, 1983. Mr. Weyer arrived there at 10 a.m. The Statement of Accessorial Services Performed states that the waiting time occurred (with his property in the carrier's vehicle) because it would have been more costly for the Government to rehandle and store the shipment. The supporting documents were signed by Mr. Weyer, and he indicates that he did not want

^{2/} It also appears that Mr. Weyer made some private arrangements between himself and the driver to pull his camper trailer behind the carrier's vehicle at Mr. Weyer's personal expense. According to Mr. Weyer, however, the extra weight of the trailer was not included in the gross weight of the shipment.

the goods unloaded, stored and then delivered, because of the extra cost and additional opportunity for damage.

The agency billed him \$769 for the 2,980 pounds of excess weight on July 1, 1983. The excess was based on a formula that included the weight of the goods labeled as professional books and equipment and the waiting-time charge. On March 9, 1984, Mr. Weyer filed a claim for damages to various items of household goods under 31 U.S.C. § 3721, and on April 6, 1984, he accepted an offer in settlement for \$1,056.05. On April 24, 1984, the agency mailed notice to Mr. Weyer that interest of \$61.33 had accrued from August 1, 1983, through April 17, 1984, on its claim for excess transportation charges, and that the entire amount of \$830.33 would be deducted from his damage award. Shortly thereafter, the certifying officer made the deduction because Mr. Weyer was transferring to another region and it was agency policy to collect monies due from transferring employees.

Issues

Mr. Weyer contends that he is not liable for the excess charges because they are based on fraudulent representations by the carrier concerning the professional books and equipment, and the waiting time. He also disputes the interest charge.

Mr. Weyer contends that the inventory sheets did not contain references to professional books and equipment when he signed them, since he had no authority to ship any such material; that the carrier fraudulently altered the description of several items from ordinary boxes to boxes containing professional books and equipment, and falsely determined their total weight to be 3,020 pounds.

He contends that the waiting-time charges are fraudulent because, he alleges, he did not authorize the charges; he also doubts that the carrier's agents could have driven the 1,220 miles, within the time allowed by law and regulations, in time to have been required to wait 27 hours.

In addition to refund of the excess charges, he believes he is entitled to refund of the interest because based on the fact that he received no notice, after the

initial bill, it was his understanding that the debt was in dispute and no interest would accrue until settlement.

The issues raised by these contentions is whether Mr. Weyer has proven fraud on the part of the carrier and whether the interest was properly assessed.

Discussion

Authority for transporting household effects of transferred employees at Government expense is found at 5 U.S.C. § 5724(a) (1982). Under the provisions of that statute as it existed at the time of Mr. Weyer's move, the maximum weight of the household goods authorized to be transported was 11,000 pounds. The implementing regulations to that statute are found in the Federal Travel Regulations, FPMR 101-7 (FTR). Paragraph 2-8.4e(2) of the FTR provides that the employee is responsible for the payment of costs arising from the shipment of excess weight. The implementing regulations are in accord with the statutory limitation and, thus, have the force and effect of law. Norman Subotnik, B-206698, November 30, 1982.

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. Joseph S. Montalbano, B-197046, February 19, 1980. The determination is ordinarily based on the shipping documents of each particular shipment. Robert J. Furey, B-193397, February 22, 1980. The weight ticket is a valid basis for determining net weight of a shipment. 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. Dennis O. Williams, B-207393, May 23, 1983; see also Captain Roger L. Reasonover, Jr., USN, B-213543, December 7, 1983.

Mr. Weyer does not challenge the authenticity of the weight tickets, which reflect the gross and tare weights. These constituted a valid basis for the agency's computation

of the net weight. Whether the description of several items, weighing 3,020 pounds, was improperly altered to professional books and equipment is irrelevant. In the absence of authority to ship professional books and equipment at the agency's administrative expense, they are considered, simply, part of the household goods the weight of which is charged to the employee's allowance as was done in this case. Ganesh C. Bhuyan, B-202906, September 15, 1982. Thus, the 3,020 pounds was properly reflected in the gross weight certificate, and properly included in the net weight computation.^{3/}

Concerning waiting-time charges, we have considered Mr. Weyer's allegations in relation to the circumstances, and Federal Highway Administration's regulations concerning the "Hours of Service of Drivers" published in 49 C.F.R. Part 395 (1983), and conclude that the charges are at least as consistent with fair dealing as with fraud. We note that the distance was only 1,220 miles from origin to destination, which, at an average speed of only 35 miles per hour would have required about 35 hours driving time. Based on Mr. Weyer's assertions, 89-1/2 hours elapsed from departure of the vehicle at 4:30 p.m. on January 23rd and Mr. Weyer's arrival at destination at 10 a.m. on January 27th. The regulations, generally, authorize driving for 10-hour intervals, with 8-hour periods off duty and contain more liberal provisions for operation of 2-man sleeperberth operations. These circumstances permit a reasonable inference that the carrier's vehicle and drivers would have been required to wait for Mr. Weyer to arrive at destination for the 27 hours claimed.^{4/}

^{3/} See also 62 Comp. Gen. 19 (1982), holding that even invalid weight certificates and transportation of items excluded from the definition of household effects in FTR, para. 2-1.4h, such as a boat, do not relieve the agency of the duty to claim excess weight costs.

^{4/} We note that the Government bill of lading authorized storage of the household goods at destination. Waiting time in lieu of storage is acceptable where it results in a savings to the Government. 29 Comp. Gen. 399 (1950).

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As to the interest the agency charged Mr. Weyer, 31 U.S.C. § 3717 requires that an agency charge interest on outstanding debts. While the agency has authority to consider waiver of the interest under 31 U.S.C. § 3717(h) and section 102.13 of the Federal Claims Collection Standards, that is a matter for the agency to consider, not us.

We conclude that Mr. Weyer has not established fraud or provided another basis for reversing the agency's determination of the excess weight charges.

for *Milton J. Rowland*
Comptroller General
of the United States

General Electric