



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Dennis Janicki
File: B-222038
Date: October 31, 1986

DIGEST

1. Federal employee's claim for reimbursement under commuted rate system for transportation of household effects is denied because employee has not submitted proper weight certificates nor any evidence upon which a constructive weight of goods shipped could be determined. Employee also may not be reimbursed actual expenses since he has provided no evidence of his expenses.

2. In any case involving a claim against the Federal Government for payment, the burden is on the claimant to provide evidence to demonstrate his entitlement to be paid. When the case record demonstrates that a claimant has made material misrepresentations and inconsistent statements of fact in support of his claim, then the claim is too doubtful to be approved for payment.

DECISION

The question in this case is whether Mr. Dennis Janicki, a former civilian employee of the Department of the Army, may be reimbursed for costs associated with shipping his household effects upon his transfer from Washington, D.C., to Buffalo, New York.^{1/} Having considered the entire case record before us, we conclude that Mr. Janicki has failed to establish his right to reimbursement and consequently, his claim is denied.

Prior to setting out the underlying facts from which the claim arose, some preliminary discussion regarding the claim

^{1/} The question was submitted for an advance decision under the provisions of 31 U.S.C. §§ 3526-3529 by Jerry T. Graves, Chief, Finance and Accounting, Department of the Army, Buffalo District, Corps of Engineers.

is necessary. Briefly, on January 28, 1986, Mr. Janicki, through counsel, filed suit in the United States District Court for the Western District of New York seeking to compel the Comptroller General to issue a decision on this matter. Mr. Janicki's suit was occasioned by a misapprehension of fact, namely that his case had been submitted to us for an advance decision by an appropriate official of the Department of the Army. The true facts were that such a submission had been prepared and forwarded through agency channels but had never been sent to us. After we apprised the concerned parties regarding this matter, a stay in the proceeding was obtained so as to have us issue a decision.^{2/}

BACKGROUND

Mr. Janicki, a civilian employee of the Department of the Army, Corps of Engineers, indicates that in connection with his transfer in July of 1983 from Washington, D.C., to Buffalo, New York, he had his household effects moved from the Washington area into storage in Cheektowaga, New York. Initially, he filed a travel voucher dated August 15, 1983, with the Buffalo District of the Corps of Engineers seeking payment for having shipped 11,000 pounds of household effects, his maximum entitlement under the law then in effect. He also noted on the voucher that a weight ticket was enclosed. Actually the weight ticket was a so-called "Straight Bill of Lading--Short Form" which stated that on July 9, 1983, Mr. Janicki had had a "Private-Hauling" and the weight of goods hauled was 12,100 pounds net based on a gross weight of 23,300 pounds and a tare weight of 11,200 pounds. The Straight Bill of Lading was imprinted with the name Derrick Manufacturing Corp. and was signed by a D. Tyler.

Ms. Pat Sadler of the Army Corps of Engineers, who was responsible for processing the voucher, became perplexed by the short form bill of lading since it was an unusual type of document to have been submitted by a claimant in connection with a permanent change-of-station move. Consequently, she called Mr. Tyler of Derrick Manufacturing Corp. who professed ignorance of the matter and subsequently wrote a letter on September 12, 1983, to verify this as follows:

^{2/} While it is our general policy to refrain from commenting or acting on matters pending litigation before the courts, as an exception to this policy we may issue decisions on such matters when a stay in proceeding has been ordered by the court for that purpose.

"Per my phone conversation with Patricia Sadler and reviewing the copy of the Bill of Lading concerning Mr. D. Janicki, I regret to inform you we have no knowledge of this whatsoever. We have never contracted any business with Mr. Janicki and we do not wish to be misrepresented."

Of additional relevance is the fact that Mr. Tyler's signature in his letter did not resemble the signature D. Tyler on short form bill of lading; the two documents appear to have been signed by different people.

Apparently having become aware of the agency's questions regarding his voucher, Mr. Janicki prepared a written communication dated September 13, 1983, to explain what had happened in regard to his household goods. According to him, he had made a "partial shipment" of his household goods and "[a]t the time of arrival by an independent trucker no weight ticket was available." Mr. Janicki noted that prior to the arrival of his household goods, he was aware that scales would not be available and had contacted Mr. Tyler, an acquaintance, who agreed to let Mr. Janicki use scales at his place of employment, Derrick Manufacturing Corp. Mr. Janicki says that Mr. Tyler gave him weight tickets to use. He also says that when his goods arrived in the Buffalo area, he again contacted Mr. Tyler and learned that the scales at the corporation were not suitable for weighing a truck; the scales could only weigh packages. Mr. Janicki indicated that he then procured two scales, set up a weight platform, and weighed each piece of goods individually. He then entered the weight on the weight ticket Mr. Tyler had given him although he never informed Mr. Tyler that he was using this ticket.

Mr. Janicki further indicated that upon submitting his voucher for payment, he had requested Ms. Sadler to contact him if there were any problems with his voucher. He explained that when Ms. Sadler called him three weeks after he submitted the voucher, he was on annual leave. He then stated he was aware that Ms. Sadler contacted Mr. Tyler by telephone as well as writing him and that Mr. Tyler would probably respond that he knew nothing about the matter. Mr. Janicki then indicated that he was having the independent trucker who moved him forward a letter to Ms. Sadler. Mr. Janicki concluded his communication by stating that he had on several occasions requested Ms. Sadler to discuss the documents with him before processing them. Mr. Janicki did not explain why he did not provide Ms. Sadler with a clarifying memorandum when submitting the voucher.

Next, in a written communication dated September 15, 1983, a Mr. George Hillburger stated that during the first week in July Mr. Janicki had contracted with him to truck household goods from Washington, D.C., to Cheektowaga, New York. He enclosed an unsigned weight ticket from "COLDWAY FOOD EXPRESS, INC." stating that unladen weight was 12,200 pounds, gross weight was 23,400 pounds, and net weight was 11,200 pounds. Mr. Hillburger did not explain how he got this weight ticket or where he weighed the goods. Apparently, Ms. Sadler called Coldway Food Express, Inc., regarding this matter. Subsequently by letter of December 8, 1983, Mr. Yetman of Coldway wrote Ms. Sadler a letter as follows:

"To the best of my recall I received a telephone call that a George Hillburger was involved in a shipment by truck that belonged to Mr. Janicki. I was informed that Mr. Hillburger would call me in regards to scaling the load. When he called I directed him to a scale that was available.

"Mr. Hillburger relayed the information to me as to the unladen weight, gross weight and net weight."

Thus, as of December 1983, Mr. Janicki had submitted two weight tickets that differed in several respects, as noted. Moreover, he had never satisfactorily explained why he had to weigh the goods himself if Mr. Hillburger had weighed the goods on a scale as explained by Mr. Yetman. The Army, seeking to resolve this matter, contacted Mr. Janicki and told him to contact the transportation section at Niagara Falls Air Force Base and have a Government inspector come out and estimate the weight of the household goods.

Contrary to the instructions of his agency, Mr. Janicki did not contact the transportation section at Niagara Falls Air Force Base, so that a Government inspector could come out and estimate the weight of the household effects. Rather, on January 5 and 7, 1984, Mr. Janicki rented three U-Haul vehicles and allegedly filled them with his household effects. He then weighed each trailer and the resulting net weight of these effects was 11,880 pounds. He has official weight certificates from a certified weigher with the gross weights of the trailer but in only one of these weight certificates is the tare or empty weight noted.

Next, on February 15, 1984, Mr. Janicki had Cook Moving Systems, Inc., take his goods out of temporary storage at his relatives' homes and transport them to temporary quarters. Mr. Janicki obtained two weight tickets, of which we have

been provided with illegible copies, although Mr. Janicki indicates the gross and tare weights for us with a resulting net weight of 11,240 pounds for his shipment.

Following this, the Army appointed an officer under the provisions of Army Regulation 15-6 to conduct an investigation. This officer's report of investigation dated April 13, 1984, concluded that Mr. Janicki had shipped some goods from Washington, D.C., to the area of Buffalo, New York. The investigating officer further concluded that it was impossible to determine accurately the weight of those goods, however, and that Mr. Janicki had acted with disregard for established claim procedures and guidance. He also found that Mr. Janicki was the Chief of Program Development for the Buffalo District, a GM-13 level position; that he had previously transferred from Buffalo to Washington, D.C.; and that he was or should have been familiar with the requirements regarding reimbursement for moving of household effects. The investigating officer, therefore, recommended that Mr. Janicki's claim be denied.

On April 22, 1985, subsequent to the completion of the investigative report, Mr. Janicki retained legal counsel and resubmitted his claim. He reiterated his assertions through counsel regarding his having set up two portable scales to weigh each item as it came off the truck to arrive at a net weight of 12,100 pounds. He further asserted that after the goods were weighed, they were placed in temporary storage at the homes of Mr. Janicki's brother and parents, all of whom lived in Cheektowaga. He acknowledged that there were different weights submitted in the various documents submitted to the Army, but he attributed these differences to the different scales that were used. On May 9, 1984, counsel submitted another letter on Mr. Janicki's behalf in which it was argued that because of the various weight tickets there could be no dispute that Mr. Janicki had shipped in excess of 11,200 pounds of household effects. Counsel argued that it was mere inadvertence, partially because of the lack of agency guidance, that caused the problem.

On May 23, 1985, the responsible Army finance and accounting officer forwarded the claim through channels to us requesting an advance decision concerning the propriety of allowing payment on it. On September 17, 1985, the Corps of Engineers' Directorate of Resource Management returned the request to the accountable officer with a brief endorsement recommending that payment on the claim be allowed on the basis of our decision B-169117, March 16, 1970. The accountable officer declined to accept that recommendation. There

ensued the initiation of judicial action and the resubmission of the matter to our Office, as described above.

ANALYSIS

At the time in question, Federal employees who were transferred for the benefit of the Government received certain statutory benefits and entitlements including shipment of their household effects up to a maximum weight of 11,000 pounds (now 18,000 pounds). See 5 U.S.C. § 5724(a)(2) (1982). The statutory regulations implementing the entitlement to shipment of household effects are contained in Chapter 2, Part 8, of the Federal Travel Regulations (FTR) (September 1981, as amended), incorp. by ref. 41 C.F.R. § 101-7.033.

Under the commuted rate system, which is the one applicable to this case, the employee makes his own arrangements for shipping his household effects and pays a carrier or moves the effects himself. The employee is then reimbursed according to a rate per hundred pounds for the distance shipped. See FTR, para. 2-8.3a(1) and (2). When seeking reimbursement the employee is required to submit documentation. Specifically, para. 2-8.3a(3) states:

"(3) Documentation. Claims for reimbursement under the commuted rate system shall be supported by a receipted copy of the bill of lading (a reproduced copy may be accepted) including any attached weight certificate copies if such a bill was issued. If no bill of lading was involved, other evidence showing points of origin and destination and the weight of the goods must be submitted. Employees who transport their own household goods are cautioned to establish the weight of such goods by obtaining proper weight certificates showing gross weight (weight of vehicle and goods) and tare weight (weight of vehicle alone) because compliance with the requirements for payment at commuted rates on the basis of constructive weight (2-8.2b(4)) usually is not possible."

Clearly, Mr. Janicki has not provided the documentation required under the regulation. His initial documentation, the Bill of Lading--Short Form, contained several misrepresentations. Although signed D. Tyler, Mr. Tyler did not sign it and we have no explanation as to who did sign it. This was in clear contravention of the regulations since obviously a bill of lading must be receipted by an individual authorized to sign for the carrier. See generally Kurt P. Goebel,

B-191539, July 5, 1978. Also, this bill of lading had purportedly certified weights stated on it face, but in a subsequent attempt to explain the matter Mr. Janicki indicated the weights supposedly were from two scales set up by him. This is insufficient since for a weight ticket to establish the weight of a shipment for reimbursement purposes, the ticket must come from a certified weighmaster or certified scale and identify the vehicle. See Challis Broughton, B-193133, April 24 and August 13, 1979.

Most critical, however, is Mr. Janicki's failure to explain satisfactorily why he chose not to submit Mr. Hillburger's letter and bill of lading with his original voucher. Instead, Mr. Janicki submitted a bill of lading containing several misrepresentations of facts and only when this documentation was challenged did he get Mr. Hillburger to provide the second bill of lading. Moreover, this documentation provided by Mr. Hillburger instead of clarifying the matter not only raised the question just noted but also the question of why Mr. Janicki would weigh the goods upon arrival in Buffalo if Mr. Hillburger had weighed them.

Further questions are raised by Mr. Janicki's next action which entailed his renting three U-Haul vehicles to transport items to be weighed. He did this after the Army had advised him to contact an Army transportation officer so an inspector could be sent to examine the goods and estimate the weight. The Army so advised him because, in certain circumstances where an employee has failed to obtain the actual weight of his household goods at the time of transportation, he may be paid at the commuted rate if he is able to show the amount of properly loaded van space occupied by his goods upon which a valid computation of weight can be based. See FTR paragraph 2-8.2b(4). In establishing the amount of space which would have been occupied by his effects if properly loaded, the employee may submit a list of items transported together with the volume occupied by each item based on actual measurement or a uniform table, preferably prepared by a commercial carrier. 48 Comp. Gen. 115 (1968).

Therefore, while on two separate days, January 5 and 7, 1984, he did weigh U-Haul trailers filled with something, we have no basis to know what these items were. Accordingly, we cannot determine the actual weight of his shipment or the volume of his shipment so as to entitle him to reimbursement at the commuted rate. In the decision referred to by the Corps of Engineers' Directorate of Resource Management, B-169117,

supra, we expressed the view that an employee performing a "do-it-yourself" move under the commuted rate system may be permitted to establish the weight of the household goods through weight certificates obtained after the completion of the move if the goods were not weighed at the time of transportation. We indicated, however, that an employee in that situation must provide reasonable assurance that the household goods weighed are the same as those which were transported. Here, no such assurances have been made, and any statements the claimant might now make in that regard would be highly questionable in view of the prior misstatements and misrepresentations made in the matter.

Generally if an employee is unable to establish his entitlement to a commuted payment by complying with the requirements listed above, he may be reimbursed the actual expenses incurred in transporting his household goods upon complying with the rule set forth in 38 Comp. Gen. 554, 555 (1959) as follows:

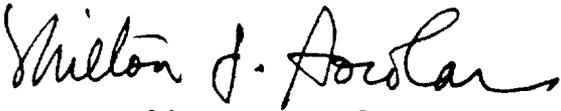
"When, however, as here, the evidence available affords a basis for concluding that the actual weight of the goods shipped reasonably approximates the estimated weight, the employee may be reimbursed for his actual expenses to the extent they do not exceed the amount which would have been payable for such estimated weight at the applicable commuted rates."

In this case, however, we lack sufficient evidence to ascertain what expenses Mr. Janicki actually incurred. Furthermore, we have no basis to ascertain what goods were actually moved and their weights.

In cases before our Office for payment, the burden is on the claimants to provide evidence sufficient for us to determine that they have a claim for which the Government is liable. See e.g., Dewitt Freight Forwarding, 63 Comp. Gen. 254, 257 (1984) and cases cited. When the evidence provided is such that we have doubt as to a claimant's right to be paid, we will not approve payment of the claim but rather will leave the claimant to pursue the matter before the courts. See Kalman Pater, Jr., 60 Comp. Gen. 148 (1980). See also B-180897, June 14, 1974.

In this case, we have great doubt regarding Mr. Janicki's right to any reimbursement. He has not established the

weight of the goods he may have shipped from Washington, D.C., to his relatives' homes in New York, nor has he established the amount of his expenses, if any. Accordingly, we deny Mr. Janicki's claim.

for 
Comptroller General
of the United States