



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Jon E. Penhallurick

File: B-223809

Date: December 24, 1986

DIGEST

1. An employee who ships a boat and its trailer as part of a household goods shipment incident to a transfer of duty station must bear the expense since boats are expressly excluded by regulations from the definition of "household goods" that may be shipped at government expense, even though a government transportation officer mistakenly authorized shipment of the boat and the trailer at government expense.

2. The constructive weight that the mover used as the basis for his charges in this case (which was based on the full - cubic capacity of his vehicle), and which was also used as the basis of overweight charges assessed against the employee, must be recalculated because that constructive weight does not appear to represent sufficiently the actual weight shipped. The proper formula for computing the employee's expenses for shipping items that are not household goods as well as for shipping more than the authorized weight of household goods is explained in James Knapp, B-216723, August 21, 1985.

DECISION

Mr. Jon E. Penhallurick appeals the determination by our Claims Group that he is indebted to the Indian Health Service, Department of Health and Human Services, for \$2,005.54 for shipping as household goods a boat and its trailer, contrary to regulations, and for shipping other household goods in excess of the weight limit. We conclude that Mr. Penhallurick is not entitled to the transportation of his boat and its trailer at government expense, even though a government transportation officer erroneously authorized their shipment. However, the constructive weight that the mover used to determine his charges for the shipment, which was also used as the basis for the overweight charges assessed against Mr. Penhallurick, must be recalculated by

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the Indian Health Service because that constructive weight does not appear to represent sufficiently the actual weight shipped.

BACKGROUND

Mr. Penhallurick transferred from Kayenta, Arizona, to Tucson, Arizona, in July 1983. He specifically inquired whether his 14-foot boat could be moved at government expense, and a government transportation officer assured him that it could. The boat and trailer were specifically listed on the government bill of lading, the government document authorizing movement of the household goods.

The mover did not weigh the shipment to determine the actual weight of Mr. Penhallurick's household goods. Instead, the mover used a constructive weight of 21,000 pounds (7 pounds a cubic foot multiplied by 3,000 cubic feet, the entire capacity of the moving van) as its charge basis to the Indian Health Service. The mover's justification for using this method was that no scale was available. Therefore, the provision of its tariff which states, "If no scale is available the weight shall be determined by multiplying the cubic feet occupied by seven (7) pounds per cubic foot," should be applicable. The mover stated that "* * * this shipment occupied the complete van." As a result, the constructive weight amounted to nearly twice the weight, 11,000 pounds, authorized to be shipped at government expense. The Indian Health Service and our Claims Group accepted this constructive weight as the weight for the shipment. The charges specifically applicable to the boat and its trailer were segregated and charged directly to Mr. Penhallurick, with the other overweight charges determined by a proration formula. Mr. Penhallurick objects because the movement of his boat was specifically authorized at government expense and because the mover "* * * could charge for the whole capacity of the van, even though I had much less weight than my limit."

AUTHORIZATION OF THE BOAT'S SHIPPING EXPENSES

Federal Travel Regulations, para. 2-1.4h, FPMR 101-7 (Supp. 4, October 1, 1982), incorp. by ref., 41 C.F.R. § 101-7.003 (1985), expressly excludes boats from being an item of household goods that may be shipped at government expense. This exclusion for boats was also reflected in the Indian Health Service's Travel Manual. Therefore, while it is unfortunate that Mr. Penhallurick received erroneous

information concerning the shipment of the boat, which was reflected in the document authorizing its shipment, this would not afford a basis for the government to pay for its shipment. The government cannot be bound by the erroneous advice or actions of its agents which would create a legal liability unauthorized by the statute or regulation. Jay Johnson, B-215629, November 27, 1984; Seymour A. Kleiman, B-211287, July 12, 1983. Mr. Penhallurick must pay the moving expenses for his boat and its trailer, an appurtenance of the boat.

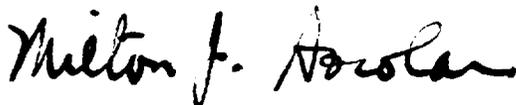
DETERMINATION OF THE SHIPMENT'S WEIGHT

Although a mover normally uses a scale to obtain a weight certificate or ticket to indicate the weight of his shipment, the mover in this case offered its tariff as authority for using a constructive weight when "* * * no scale is available * * *." Although we can appreciate that there may have been no scales available for a moving van in the small town of Kayenta, Arizona, where the mover picked up Mr. Penhallurick's shipment, we fail to see why during the journey from Kayenta to Tucson there were not sufficient large metropolitan areas in which scales would have been available and from which an accurate weight of the shipment could have been determined. This situation is similar to the one encountered in J & V Audit Company, B-211465, November 18, 1983. In that case there were no certified scales where the shipment was picked up, and the mover failed to weigh the shipment on scales at intervening points or at the destination, using a constructive weight similar to that the movers used in this case for his charge basis. We found that the use of a constructive weight was unauthorized in that case because of the controlling tariff provisions involved, and that the mover's action had made it impossible to determine with certainty the actual weight of the shipment. We used a lower weight produced from an uncertified weigh master's scale for the mover's charge basis rather than the higher constructive weight in that case to determine the weight of the shipment.

There is no scale weight of any kind available in this case. However, where it appears that an error has been made in determining the net weight of household goods shipped under a government bill of lading, a constructive shipment weight should be obtained based on 7 pounds per cubic foot of "* * * properly loaded van space * * *" as provided for by FTR para. 2-8.2b(4).

Mr. Penhallurick says that when his boat was loaded into the van, it filled the van up, and he objected that the mover " * * * could charge for the whole capacity of the van, even though I had much less weight than my limit." When scales are unavailable, the mover's tariff allows him to charge for " * * * cubic feet occupied * * *." It appears that for only the 14-foot boat and its trailer, approximately one-third of the entire cubic space of the van was occupied and the mover charged for 7 pounds per cubic foot, or 7,000 pounds. That constructive weight would be more than double or triple what a normal 14-foot boat and trailer would weigh. We do not believe that the space "occupied" by the boat and its trailer alone is equivalent to the "properly loaded van space" that may be subject to constructive weight in the FTR. Nor can we be confident in this case that the space occupied by the rest of the household goods is equivalent to properly loaded van space. We have been informally advised that an inventory list of the shipment can be located. Therefore, the constructive weight of Mr. Penhallurick's shipment should be computed by listing the items of his household goods from the packing inventory on a cube sheet and multiplying the cubic feet by 7 pounds, as was done in William A. Schmidt, Jr., 61 Comp. Gen. 341 (1982). Also, it is appropriate in this case to determine the actual weight of the boat and its trailer either by a separate scale weighing or by manufacturer's literature, as was apparently done with the shipment of an automobile in James Knapp, B-216723, August 21, 1985. The weight thus determined should be used as the basis for charging Mr. Penhallurick for the cost of shipping the boat and trailer. Assuming Mr. Penhallurick's contention that he shipped "much less weight than my limit" is borne out by the cube sheet, he would only have to pay the expense of the actual weight of the boat and trailer computed at the same rate as the rest of the household goods.

Accordingly, the Claims Group's determination that the shipment of a boat and its trailer may not be made at government expense is affirmed. However, the constructive weight of the shipment should be recomputed by the Indian Health Service and based on properly loaded van space, rather than space occupied, by the method described in William A. Schmidt, Jr., supra. The shipping expenses for the boat and its trailer and other overweight charges, if any, should be computed in accordance with the method referred to above and used in James Knapp, B-216723, supra.



Acting Comptroller General
of the United States