

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

FILE:

B-181635

DATE: NOV 17 1975

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MATTER OF:

William P. Sigler - Transportation of Household
Effects

DIGEST:

Where Navy Department officials wrongly advised employee that he could not be reimbursed the cost of transporting newly acquired items of household furniture incident to a change of station from the Philippine Islands to the U. S., and where employee proceeded to ship furnishings aboard a ship of foreign registry, section 901 of the Merchant Marine Act of 1936, as amended, 46 U. S. C. § 1241(2) nevertheless precludes reimbursement for the employee's costs incurred in shipment by other than an American flag vessel. The language of section 901 places the financial burden of use of a foreign flag vessel squarely upon the employee and the proviso contained therein gives the Comptroller General little if no discretion in applying the statutory restriction.

A Member of Congress has requested our reconsideration of the claim of Department of the Navy employee, William P. Sigler, for reimbursement for the shipment of his household goods incident to his change of station from the Naval Air Station, Cubi Point, Philippine Islands, to the Naval Air Station, Cecil Field, Florida. Mr. Sigler's claim is the subject of our Transportation and Claims Division Settlement Certificates No. Z-2523489, dated January 23, 1974, and March 25, 1975.

The specific shipment of household goods in question consisted of 28 items of furniture which Mr. Sigler purchased from a manufacturer in Taipei, Taiwan. The furniture had been ordered from the New Royal Furniture Company on February 27, 1972, and Mr. Sigler had been promised delivery on May 15, 1972. During the first week of June Mr. Sigler traveled to Taipei to determine the reason for the manufacturer's nondelivery on the promised date. While he was in Taipei, the last of the items of furniture being manufactured were completed and on June 9, 1972, Mr. Sigler paid the balance of the purchase price due.

Upon his return to the Philippines on June 10, 1972, Mr. Sigler was given orders transferring him to Cecil Field, Florida. Those orders had been issued May 31, 1972. Mr. Sigler departed the

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Philippines on July 11, 1972, and thereafter made arrangements for shipment of the 28 items of furniture from Taipei, Taiwan, to his residence in Florida which was shipped in October 1972.

The Department of the Navy refused to reimburse Mr. Sigler for the expense of transporting this lot of household effects in view of the fact that his transfer orders had been issued prior to the date on which he acquired title to the furnishings. The Navy's determination of nonentitlement was initially upheld by Settlement Certificate dated January 23, 1974. Upon further consideration of the matter a new Settlement Certificate was issued on March 25, 1975, authorizing reimbursement to the employee in the amount of \$527.01 for overland shipment of the furniture from Savannah, Georgia, to Jacksonville, Florida, and for crating and loading charges incurred at Taipei.

The partial payment authorized by the March Settlement Certificate was predicated on the language of section 1.2h of Office of Management and Budget (OMB) Circular No. A-56, effective September 1, 1971, which in part defines "household goods" as "personal property * * * which belongs to the employee and his immediate family at the time shipment or storage begins." By this definition the nature of the employee's ownership interest at the time of shipment rather than at the date his orders were issued is determinative of his entitlement to transportation at Government expense.

Notwithstanding Mr. Sigler's ownership interest in the furniture at the time of shipment, a substantial portion of his claim for transportation expenses, including \$800.40 for ocean shipment, was disallowed. The basis for disallowance of the \$800.40 amount is explained in the Settlement Certificate as follows:

"The ship you used to transport these goods from Taipei, Taiwan to Miami, Florida was a Latin American Express ship, the Isabel Erica, a vessel registered under a foreign flag. With regard to shipments aboard foreign registered vessels, your attention is directed to the following provisions of Section 901 of the Merchant Marine Act of 1936, as amended, 46 U. S. C. 1241(a).

'Any officer or employee of the United States traveling on official business overseas or to or from any of the possessions of the United

States shall travel and transport his personal effects on ships registered under the laws of the United States where ships are available unless the necessity of his mission requires the use of a ship under a foreign flag: Provided, That the Comptroller General of the United States shall not credit any allowance for travel or shipping expense incurred on a foreign ship in the absence of satisfactory proof of the necessity therefor. '

"We have been advised by the Maritime Administration that two ships of the American Export Lines and two of the American President Lines were in Keelung (Taipei) between September 27 and September 30, 1972, any of which arrived in Savannah, Georgia before Christmas of that year. The Export Champion, of American Export Lines (then known as 'Isbrandtsen Lines') arrived in Savannah on November 18, 1972, approximately the same date on which the Isabel Erica arrived in Miami. The Export Champion left Keelung on September 30, 1972. "

In requesting further consideration of the matter of his entitlement to the \$800.40 amount incurred for ocean shipment, Mr. Sigler outlines his extended efforts to obtain advance authorization from the Navy. He states that as a result of these efforts he was ultimately advised by the Office of Civilian Manpower Management, Washington, D. C., that the Navy could not bear the expense of transporting his newly acquired household furnishings. Upon receiving such advice, Mr. Sigler proceeded to make his own transportation arrangements, giving heed to the language of section 6.2d of OMB Circular No. A-56 limiting reimbursement for transportation expenses to an amount not to exceed "the cost of transporting the property in one lot by the most economical route from the last official station of the employee * * * to the new official station." It was Mr. Sigler's understanding that insofar as he might later be found eligible for transportation expenses he would be required to bear only those expenses in excess of what would have been incurred in shipment via the most economical route. Our consideration of his claim for ocean transportation charges is requested in view of his good faith effort to comply with section 6.2d.

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The language of section 901 of the Merchant Marine Act of 1936, quoted in pertinent part above, squarely places the financial liability for noncompliance with its provisions upon the Government employee involved. The proviso contained in that section leaves this Office little discretion as to its application. B-150581, April 10, 1963. Thus in B-160229, July 1, 1963, a case very similar to Mr. Sigler's, the fact that the employee had been wrongly refused Government transportation by his agency's transportation officer afforded no basis to reimburse him for the expense of transporting his automobile by foreign flag vessel. In B-150671, November 19, 1963, we similarly held that the fact that the administrative office erred in not advising an employee of the statutory prohibition against use of foreign flag ships provided no basis for relief.

Inasmuch as the prohibition against use of foreign flag vessels is statutorily prescribed and imposes the financial burden of noncompliance on the Government employee involved, the disallowance of Mr. Sigler's claim for shipment of his household effects aboard the Isabel Erica is sustained.

Deputy

Comptroller General
of United States