

5311  
**DECISION**



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

FILE: B-189358

DATE: February 8, 1978

MATTER OF: Richard L. Canas - Transportation of Household  
Goods

DIGEST:

1. Employee indebtedness arising from excess cost of shipping household goods incident to permanent change of station cannot be waived since the authority is statutory and 5 U.S.C. 5724 limits the maximum weight which may be transported at Government expense to 11,000 pounds.
2. If property was after-acquired, costs could not be reimbursed since rule is well established that responsibility of Government for household goods is limited to those owned by employee on effective date of travel authorization. 52 Comp. Gen. 765 (1973).
3. Assuming employee has been given erroneous information, rights are determined on the basis of the facts in the matter rather than information provided. United States is not liable for erroneous actions of its officers, agents or employees even though committed in performance of their official duties. 44 Comp. Gen. 337 (1964).
4. Waiver of certain claims of the United States Government against a person arising out of erroneous payment of pay or allowances of civilian employees is authorized when collection action would be against equity and good conscience and not in best interest of United States, but such authority does not extend to indebtedness resulting from payment of travel and transportation expenses and allowances and relocation expenses. 5 U.S.C. 5584; 4 C.F.R. 91.2(c) (1977).

By letter dated June 2, 1977, Edwin J. Fost, Chief, Accounting Section, Office of Controller, Drug Enforcement Administration (DEA), Department of Justice, requests our decision concerning the liability of Mr. Richard L. Canas, a DEA employee, for excess transportation costs incident to a transfer of duty station.

7-189358

Department of Justice travel orders dated April 25, 1975, and amended May 8, 1975, authorized Mr. Canas' transfer of official station from San Francisco, California, to Guatemala City, Guatemala. The orders authorized the transportation of household goods and personal effects not to exceed 11,000 pounds. However, DEA shipped for Mr. Canas 12,120 pounds of household goods under Government bill of lading (GBL) No. K-2553522 and 235 pounds under GBL No. K-2937224, for a total net weight of 12,355 pounds. DEA determined that the employee was personally liable for the excess weight over 11,000 pounds in accordance with the Federal Travel Regulations (FTR) (FPMR 101-7) (May 1973), paragraph 2-8.4e(a), and Mr. Canas was billed for \$1,111.79.

DEA requests that we advise: "(1) If there are any circumstances under which employee's liability for excess weight over and above the maximum specified in the Federal Travel Regulations (FPMR 101-7) can be waived and (2), if so, do the circumstances surrounding Special Agent Canas change of station from San Francisco, California, to Guatemala City, Guatemala, qualify."

Mr. Canas states that he does not feel that he should be held liable for the cost of excess weight under the conditions applicable in this case. He states that he carefully followed instructions of the DEA Transfer Control Unit, as well as DEA guidance handbooks for employees. Mr. Canas says that he was not aware of the weight of his household goods until he was advised by DEA of the excess weight. And because he was not aware of the weight of his household goods, and upon advice of a DEA employee in its Transfer Unit, Mr. Canas requested and received a second shipment of household goods on GBL No. K-2937224, which further increased his liability for excess weight.

Prior to the move, a Bear Van Lines employee estimated the weight of the household goods at 9,000 pounds, plus or minus 500 pounds. In addition, DEA handbook entitled "Guide for Incurring and Claiming Expenses Incident To Change Of Official Station - Foreign," provides an estimate table based on so many pounds of household goods per room, per house. Applying the estimate to Mr. Canas' household goods, he obtained an estimate of 9,500 pounds. Thus, Mr. Canas alleges that the net weight of 12,120 pounds for the shipment on GBL K-2553522 is completely unreasonable.

B-189358

Mr. Canas alleges that the Bear Van Lines employee failed to comply with several provisions of a DEA handbook entitled "DEA Service Requirements For The Transportation Of Household Goods By The Bill Of Lading Method," specifically Section II, paragraph 12b and 12c. The paragraphs provide in pertinent part:

"b. The net weight shall be determined in the manner described by the Interstate Commerce Commission Regulations, Title 49, CFR, 1056.10. Weighing shall be performed by a certified weighmaster as soon as possible after loading. The owner or a DEA representative may accompany the carrier to the weighing of the shipment. One copy of each certified weight certificate will be furnished the owner prior to unloading at final destination. \* \* \*

"c. In determining the net weight for containerized shipments, all padding material of any type and blocking and bracing material for the carrier's convenience to secure the shipment will be included in the tare weight."

Mr. Canas says that the carrier failed to comply with paragraph 12b because he did not receive a copy of the certified weight certificate until February 1977, several years after his move and that it failed to comply with paragraph 12c because the van was empty when it was loaded at his residence and the blocking and bracing material at destination was therefore not included in the tare weight.

Mr. Canas raises several other questions about his move involving his inconvenience, routing, and the subsequent delay in the delivery of his household goods. However, these points are not relevant here.

Authority for transporting the household effects of transferred employees at Government expense is found at 5 U.S.C. 5724(a) (1970), which also establishes the maximum weight of the goods authorized to be transported as 11,000 pounds. The implementing regulations to that statute are found in the Federal Travel Regulations, FPMR 101-7, May 1973, in effect at the time of the travel. FTR paragraph 2-8.2(a) repeats the 11,000 pound maximum weight allowance found in the statute, and provides in paragraph 2-8.4e(2) that the employee is responsible for the excess weight.

B-189358

Thus, the 11,000 pound weight limitation is statutory, and no Government agency or employee has the authority to permit transportation in excess of the weight limitation. Therefore, regardless of the reasons for the shipment of the excessive weight of household goods, the law does not permit payment by the Government of charges incurred incident to shipment of the excess weight. See for example, B-181631, October 9, 1974, where the carrier underestimated the weight of an employee's household goods by 6,360 pounds.

Mr. Canas alleges that a DEA employee was negligent in advising him to ship the second shipment inasmuch as his weight limit was exceeded. However, the record seems to indicate that the DEA employee also was not aware that Mr. Canas had exceeded his weight allowance when the second shipment was suggested. The record also is not clear if Mr. Canas had title to the chairs shipped on the second or later shipment on GBL K-2937224, or if the property was after-acquired. If after-acquired, the costs could not be reimbursed in any event since the rule is well established that the responsibility of the Government for shipment of household goods is limited to those goods owned by an employee on the effective date of his travel authorization. FTR paragraph 2-3.1c(5); 52 Comp. Gen. 765 (1973); B-185638, February 28, 1977; B-183385, April 28, 1976.

Even assuming that Mr. Canas may have been given erroneous information about the shipment of his household goods, his rights are for determination on the basis of the facts in the matter rather than the information provided. And in the absence of specific authority, the United States is not liable for the erroneous actions of its officers, agents or employees, even though committed in the performance of their official duties. 44 Comp. Gen. 337 (1964).

It is true, as Mr. Canas states, that DEA and Interstate Commerce Commission (ICC) regulations provide that the carrier shall give the shipper a copy of the weight certificate upon delivery. See 49 C.F.R. 1056.6(b) (1976). However, the ICC regulation also states that the shipper can be given a copy of the weight certificate at the weighing station and states at 49 C.F.R. 1056.6(a)(1) (1976) that:

B-187358


"the person paying the freight charges, or his representative, upon request of either, shall be permitted without charge to accompany, in his own conveyance, the carrier to the weighing station and to observe the weighing of his shipment after loading. The carrier shall use a certified scale which will permit the shipper to observe the weighing of his shipment without causing delay."

Paragraph 12d of the DEA handbook contains a similar provision. Thus, Mr. Canas could have accompanied the shipment to the weighing station and obtained the correct weight.

The DEA regulations also provide for the determination of the net weight of containerized shipments by including blocking and bracing material in the tare weight. However, the record contains certified weight certificates for the tare and gross weights of the shipment and since the certificates indicate that the same vehicle was used, there is a strong presumption that the shipment was weighed prior to containerization by the carrier. This would mean that the packing material was added at a later date and would have no bearing on the net weight determination.

We know of no authority under which liability to the United States for the excess costs may be waived. Waivers of certain claims of the United States against a person arising out of erroneous payment of pay or allowances of civilian employees are authorized when collection would be against equity and good conscience and not in the best interest of the United States under 5 U.S.C. 5584 (1970). However, such waiver authority does not extend to indebtedness resulting from payment of travel and transportation expenses and allowances and relocation expenses payable under 5 U.S.C. 5724a (1970). See 4 C.F.R. 91.2(c) (1977).

Action should be taken by the agency in accordance with this decision.

  
Deputy Comptroller General  
of the United States