

1839-2

DECISION



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

FILE: B-198576

DATE: June 10, 1981

MATTER OF: Charles Gilliland - Transportation of
Household Goods - Excess Weight

- DIGEST:**
1. Employee may not be relieved of liability for cost of shipping weight allowance even if his request for a reweigh was not honored. Regulations which provide for reweigh at employee's request are procedural or instructional and do not provide a basis for relieving an employee from excess weight charges when the weight was properly established at origin by weight certificates.
 2. Employee claims that mistake was made in weighing his household goods because the number for one of four van containers listed on the weight certificate differed from one van container listed on the Government Bill of Lading (GBL). In these circumstances employee has met burden of proof and shown that an error was made in weighing part of his shipment. To correct this error, the constructive weight of the misweighed portion of the shipment should be computed and substituted for the incorrect actual weight.

Mr. Charles Gilliland, a civilian employee of the Department of the Air Force, requests reconsideration of his claim for \$964.68, for excess costs incurred in the shipment of his household goods in June 1973. Mr. Gilliland's claim was denied by our Claims Group in its settlement of March 15, 1978.

The record reveals that Mr. Gilliland's household goods were shipped from Okinawa to Wright-Patterson Air Force Base, Ohio under two Government Bills of Lading (GBL) H-4,811,509 and GBL H-4,811,508, both dated May 30, 1973. Mr. Gilliland was authorized shipment of

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Household Goods]*

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household goods not to exceed 5,750 pounds. The total net weight reported under both GBL's was 8,328 pounds, but after weight deductions for professional baggage, lost baggage, and a hold baggage shipment, the net weight of Mr. Gilliland's shipment was reduced to 7,831 pounds. Mr. Gilliland was then charged \$964.68 for the excess cost incurred because he exceeded his authorized weight limit.

The main issue in this case is whether Mr. Gilliland has met his burden of proof and documented enough evidence to show that the weights were clearly in error. We believe that the evidence submitted shows that an error was committed.

Mr. Gilliland alleges that his shipment was incorrectly weighed and the goods were not reweighed as he requested. Mr. Gilliland also states that the container numbers on the weight certificate and the GBL do not correspond and he believes this indicates that the wrong shipment was weighed. Finally, Mr. Gilliland has requested that the excess costs be waived.

Applicable administrative regulations do provide for reweighing household goods shipments when requested by an employee. However, we have held that these regulations are instructional or procedural and do not provide a basis for relieving an employee from excess weight charges when the weight of the household goods was properly established at the origin by weight certificates. Fredric Newman, B-195256, November 15, 1979.

Further, the question of whether and to what extent authorized weights have been exceeded in the shipment of household effects is a question of fact considered to be a matter primarily for administrative determination and ordinarily will not be questioned in the absence of evidence showing it to be clearly in error. Fredric Newman, supra.

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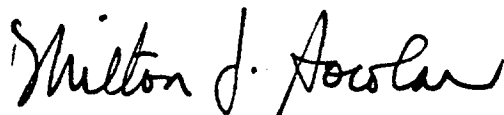
We believe that the evidence contained in the record shows that an error was made in the weighing of Mr. Gilliland's household goods. Instead of weighing van container number RK-2766, the record shows that van container number RK-2788 was weighed. We believe that by introducing evidence that at least part of the shipment was incorrectly weighed, the claimant has met his burden of proof and established that an error was committed. The next issue concerns the determination of the weight of household goods that Mr. Gilliland shipped.

The record shows that most of Mr. Gilliland's shipment of household goods were correctly weighed. The only error shown involves a van container listed as RK-2788, which had a listed net weight of 1,956 pounds. Of course, if we just subtracted 1,956 pounds from the total net weight, we would fail to take into account the weight of van container RK-2766. Moreover, Mr. Gilliland's shipment would still be in excess by 125 pounds. Therefore, after subtracting the net weight of container RK-2788, it would still be necessary to determine the net weight of container RK-2766. Thus, a constructive container weight should be obtained based on 7 pounds per cubic foot as provided for by paragraph 2-8.2b(3) of the Federal Travel Regulations (FPMR 101-7, May 1973). The record shows that all four large van containers had an area of 180 cubic feet. Using the constructive weight formula we compute the constructive weight of container RK-2766 to be 1,260 pounds. Therefore, Mr. Gilliland's total net weight should be reduced by 696 pounds, which is the difference between the net weight of container RK-2788 and the constructive net weight of container RK-2766. Accordingly, the net weight of Mr. Gilliland's household goods is reduced from 7,831 pounds to 7,135 pounds, and the excess costs should be computed based on the reduced net weight.

As to Mr. Gilliland's request for waiver, 5 U.S.C. § 5584 (1976), specifically prohibits the Comptroller General from waiving claims for travel and relocation expenses. Richard L. Canas, B-189358, February 8, 1978.

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Accordingly, our Claims Group settlement is overturned in part and the submission is returned for action in accordance with this decision.

A handwritten signature in dark ink, reading "Milton J. Fowler". The signature is written in a cursive style with a large, prominent "M" and "F".

Acting Comptroller General
of the United States