

DECISION

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

FILE: B-207393**DATE:** May 23, 1983**MATTER OF:** Dennis O. Williams - Transportation of
Household Goods - Excess Weight**DIGEST:**

Transferred employee was assessed weight charges for 3,360 pounds over statutory maximum of 11,000 pounds. Employee alleges that his shipment weight was "bumped" by the carrier and that the weight tickets are fraudulent. Allegations are based on circumstantial evidence which does not afford a clear inference of fraud. In the absence of proof to the contrary, GAO will accept public weighmaster's tickets as valid and accurate, especially when administrative agency has made like determination. Burden of proof is upon claimant to affirmatively establish that excess weight charge was the result of fraud or clear error. Since employee has not met that burden, his claim is denied.

This decision responds to a request submitted by our Claims Group concerning the claim of Mr. Dennis O. Williams, an employee of the Federal Bureau of Investigation (FBI). Mr. Williams seeks reimbursement of \$1,404.97, which he has paid to the Government for excess costs incurred in the shipment of his household goods from Los Angeles, California, to Washington, D.C., incident to a permanent change of station in August 1979. For the reasons that follow, Mr. Williams' claim is denied.

BACKGROUND

Mr. Williams' goods were shipped by National Van Lines (NVL) under Government Bill of Lading (GBL) K-4,858,500. The net weight indicated on the weight certificate furnished by NVL is 14,360 pounds, 3,360 pounds over the allowed statutory limit of 11,000 pounds. This certificate is supported by California Public Weighmaster's tickets 94514 and 94243, both dated August 17, 1979, which show a gross weight of 46,830 pounds and a tare weight of 32,470 pounds respectively.

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Mr. Williams has repeatedly alleged that his shipment weight was "bumped" by the carrier and that the above weight tickets are fraudulent. His main support for these allegations rests upon California Weighmaster's ticket 40596, dated August 23, 1979, showing that the tare weight of the moving van containing Mr. Williams' shipment, when weighed prior to loading the additional shipment of another party, was 42,040 pounds, a discrepancy of 4,790 pounds from the original gross weight. The NVL driver offered his explanation for the discrepancy between the initial gross weight and subsequent tare weight by stating that part of Mr. Williams' shipment, about 5,000 pounds, was offloaded in order to accommodate the second shipment. According to the driver, that part of Mr. Williams' shipment offloaded was put into temporary storage and then subsequently transported to Washington, D.C., by a second van. Mr. Williams has contended that none of his shipment was ever offloaded, and that the weight discrepancy can only be attributed to fraud or error on the part of the carrier.

After extensive investigation, the FBI's Traffic Management Office (TMO) has found no fraud or error on the part of NVL or its driver, and has prepared and submitted to this office a cubic foot weight analysis of Mr. Williams' household goods which shows a total estimated weight of 14,161 pounds. Thus, the TMO has concluded that Mr. Williams is indebted for the amount in question.

AUTHORITY

Authority for transporting the household effects of transferred employees at Government expense is found at 5 U.S.C. § 5724(a) (1976), which also establishes the maximum weight of the household 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) (FTR). Paragraph 2-8.4e(2) of the FTR provides that the employee is responsible for the payment of costs arising from the shipment of excess weight. The implementing regulations are in accord with the statutory limitation and, thus, have the force and effect of law. Therefore, regardless of the reasons for the shipment of the excessive weight of household goods, the employee is required to pay the Government the charges incurred incident to the shipment of the excess weight. Matter of Subotnik, B-206698, November 30, 1982; Matter of Canas, B-189358, February 8, 1978.

OPINION

This Office has consistently held that the question of whether and to what extent authorized shipping weights have been exceeded in the shipment of household effects, and the amount of the excess costs involved, are matters primarily for determination by the administrative agency. We will not question the agency's determination in the absence of evidence showing it to be clearly in error. Subotnik, supra; Matter of Newman, B-195256, November 15, 1979. In the case before us, the FBI views the weight tickets to be valid and accurate. This position is substantiated by the agency's own cubic foot estimate of Mr. Williams' shipment which differs from NVL's weight certificate by 199 pounds. In William A. Schmidt, Jr., B-199780, April 8, 1982, 61 Comp. Gen. 341, we held that a constructive shipment weight based upon such a cubic foot estimate could be used as a proper substitute for an incorrect actual weight. See FTR paragraph 2-8.2b(4). Therefore, even if Mr. Williams' allegations were to be accepted, a determination of correct weight would have to be made based on the cubic foot analysis. See Matter of Wilson, B-206704, October 28, 1982, 62 Comp. Gen. ; Matter of Gilliland, B-198576, June 10, 1981. However, we are not prepared to accept those allegations.


We have generally held that the burden of establishing fraud rests upon the party alleging it, and that the fraud must be proven by evidence sufficient to overcome the existing presumption of honesty and fair dealing. B-200642, May 18, 1982, 61 Comp. Gen. 399. Circumstantial evidence is competent if it affords a clear inference of fraud and amounts to more than a suspicion or conjecture. If, however, the circumstances are as consistent with honesty and fair dealing as with dishonesty, the inference of honesty is required to be drawn. Id.

We do not believe Mr. Williams has met this burden, and therefore draw the requisite inference of honesty. Mr. Williams cites the fact that the tare weight of the shipment loaded directly after his own was less than the gross weight of his shipment. The NVL driver has explained this discrepancy by stating that part of Mr. Williams' goods were offloaded to accommodate the next shipment and that those goods offloaded were subsequently shipped on a different van. Mr. Williams has attempted to prove that no portion of his shipment was actually offloaded, based upon his view of the position of his goods in the van upon its

arrival. However, this is only circumstantial at best, as the FBI's Traffic Management Office relates that Mr. Williams was not present when his goods were initially loaded. Although NVL has not offered documentation supporting the alleged offloading, we understand that splitting of shipments is a common practice, and again stress that NVL is not the party which bears the burden of proof. 61 Comp. Gen. 399, supra.

We have examined the California regulations pertaining to public weighmasters and have found no errors or violations which would invalidate the weight tickets in question. As the FBI has reached a like determination of validity, and as the cubic foot estimate of 14,161 pounds closely coincides with the stated actual weight of 14,360 pounds, we must conclude that the weight tickets are free from fraud or error, and that the excess weight of 3,360 pounds is a correct figure.

Accordingly, reimbursement is denied.

for 
Comptroller General
of the United States