

Willard 2210
PLM-II

DECISION



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

FILE: B-220751

DATE: January 29, 1986

MATTER OF: Lieutenant Colonel Stephen E. Shepard

DIGEST: An Army officer notified the transportation officer at his old duty station that the carrier selected to move his household goods was using excessive packing materials to prepare the shipment for transportation. The transportation officer indicated that the shipment would be inspected at destination to determine whether his overpack allegation was valid. However, the personnel were not available to inspect the shipment upon arrival at the destination. The Army, after deducting 10 percent from the net weight, as authorized by regulation, determined that the member was liable for excess weight and recovered the excess charges. A member's opinion of overpacking based primarily on a comparison with previous moves is insufficient evidence to show that packing was unreasonable and accounted for excess weight when packing and charges therefor did not exceed established standards of carrier performance. In the absence of authority to waive liability for excess weight charges, the Claims Group's disallowance of the member's claim is sustained.

The issue in this case is whether a transferred member may be relieved of liability for excess weight charges on his household goods shipment where Government agents, although agreeing to do so, failed to be present upon delivery to determine whether the carrier used excessive packing materials. We conclude that the record provides no legal basis for the General Accounting Office to relieve the member of liability.

Facts

In June 1981, when Lieutenant Colonel Stephen E. Shepard was a major in the United States Army, he was transferred from Fort Sam Houston, Texas, to Vicksburg, Mississippi. The Army issued a Government Bill of Lading to a household goods forwarder to arrange for the through

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transportation of the shipment and performance of accessorial services. At origin, apparently, small items and other articles vulnerable to damage were packed in containers and loaded with unpacked articles in a conventional highway van, and transported to destination in that manner. In addition to line-haul transportation charges of \$1,776, among other charges the forwarder's bill included accessorial charges of \$1,629.85 for furnishing and packing 192 containers of various sizes. Based on documents including the Government Bill of Lading, the forwarder's bill, voucher and weight certificates it was determined that the gross weight of the shipment was 49,430 pounds, and the tare weight was 33,680 pounds. The Army deducted 428 pounds for professional books^{1/} and 10 percent for packing materials from the net weight of 15,750 pounds, as required by the Joint Travel Regulations. Thus, it determined that the net weight exceeded the member's authorized weight allowance of 12,000 pounds by 1,790 pounds.

The record shows that a reweigh occurred and that the validity of the weight certificates is not in dispute.

The member alleges that when the packers were preparing his property for transportation he and his wife remarked about the amount of paper and quantity of containers being used. His letter of March 2, 1982, to the Army states that "the driver also indicated that there appeared to be light dish packs and other boxes that 'didn't feel right.'" At origin, the member compared the number of containers used in prior shipments with the number used by the packers then and formed the opinion that excess packing materials were being used. When advised by a Government inspector that the shipment could be examined there at origin or at destination to determine whether his overpack suspicion was valid, the member, because of other commitments, notified the destination installation about the possible overpack and requested that a Government agent be present upon arrival to conduct an examination. Although the Army agreed, no inspector appeared when the shipment was delivered, although the one who arrived 1 week later, according to the member, appeared "disinterested" in the packing-materials question.

^{1/} An additional 100 pounds was later deducted for professional books and a small refund was made.

The member contends that there is substantial doubt that his household goods exceeded his authorized weight allowance because he moved many heavy items himself in a truck and horse trailer and in a carrier affixed to the top of his car. Further, he explains that the weight of previous and subsequent shipments which, apparently, were within his authorized weight allowance at the time, demonstrates that the shipment in controversy should have been within his allowance. He contends that an investigation would have verified the validity of his overpack allegation and since the Government failed to act on his notice of the possible overpack, the Government should absorb the excess weight charges.

The Army's report of July 26, 1985, contained copies of various documents, including a copy of DD Form 619, "Statement of Accessorial Services Performed." The form, which apparently was certified by the member, contains a detailed breakdown of the packing containers used by size, the packing charges of \$1,580.35, and a notation that the maximum packing charge, "Max Pack," was \$1,771.86. This "Max Pack" was computed on a rate of \$11.25 per 100 pounds which was established by the Military Rate Tender as an acceptable standard for accessorial services on shipments transported from Fort Sam Houston, Texas, to Vicksburg, Mississippi. The Army reported that there was no documentary evidence of excess packing.

Discussion

Carriers desiring to participate in military household goods traffic are required to comply with a Tender of Service which contains, among various performance standards, a requirement that they pack property in a manner producing the least cubic displacement and weight consistent with the obvious need to protect the member's property against damage in transit.^{2/} We are aware of no duty imposed by law

^{2/} The Tender of Service names the qualifications required of the carrier, contains carrier service and performance requirements and sets forth the mutual understandings between the carrier and DOD. Hilldrup Transfer & Storage Co., 58 Comp. Gen. 375, 377 (1979).

upon transportation officers to conduct a visual inspection upon request of the member. Administrative regulations governing performance of carrier services assign responsibility to transportation officers to inspect 50 percent of their shipments to determine whether carriers are complying with the Tender of Service. See Department of Defense Personal Property Traffic Management Regulation (DOD Reg. 4500.34-R, May 1971), para. 3006.o. Since we view the regulation as procedural or instructional only, the failure of a transportation officer to inspect an individual shipment provides no basis for us to overturn an agency's determination of excess weight charges. Compare Lieutenant Colonel Rodney F. Brunton, USAF, B-190687, March 22, 1978, which applies a similar rule to reweigh procedure.

In the absence of a visual inspection the reasonableness of the carrier's accessorial charges can be determined by comparing the "Max Pack" charges with the actual accessorial charges. In this case the DD Form 619 furnished by the carrier shows that the total accessorial charges were less than the "Max Pack" standard.

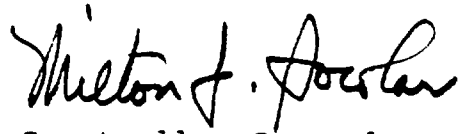
The basic entitlements for the transportation of household goods are provided in chapter 8, Volume 1, of the Joint Travel Regulations, which are published pursuant to 37 U.S.C. § 406. The member does not dispute the existence of a maximum weight allowance established by law, that the carrier's bill was supported by valid weight certificates, or that the agency deducted 10 percent from the net weight as provided for by paragraph M8002-2, Volume 1, of the Joint Travel Regulations. In effect, the member contends that the carrier's use of excessive packing materials accounted for the excess weight and the agency's erroneous determination that he is liable for the excess weight charges.

The evidence on the issue of packing weighs heavily for the Government. The record presents two alternative bases to visual inspection for sustaining the Army's determination. Since the carrier's accessorial charges were less than the "Max Pack" standard for such service and since the member was allowed 1,532 pounds for packing as provided by regulation, the record will not support the

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claimant's contention that his overweight resulted from excess packing. We hold that a member's opinion based on the use of containers and materials compared with previous moves is insufficient evidence to rebut an agency's determination of reasonable packing performance which is based on convenient management standards obtained from pertinent transportation documents. See Charles L. Eppright, B-210713, May 17, 1985.

Accordingly, the adjudication by our Claims Group is sustained.

A handwritten signature in cursive script, reading "Milton J. Fowler".

Acting Comptroller General
of the United States