PLM 2

The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: William J. Caspary

File: B-223600

Date: August 18, 1986

DIGEST

A transferred Federal employee performed most of the unpacking of his household goods when the carrier delivered them to his new duty station, under a Government Bill of Lading, because the carrier's unpacking services were being performed unsatisfactorily to him. He contends that his liability for excess weight charges should be reduced in an amount equal to the value of the unpacking services that he performed. The provision in the Federal Travel Regulations requiring application of a specific formula to compute excess weight charges cannot be waived regardless of extenuating circumstances. Accordingly, the employee's liability cannot be reduced as a credit for his unpacking services.

DECISION

The primary issue presented in this case is whether an employee of the National Institutes of Health is entitled to a downward adjustment in his debt for excess household goods weight charges on a permanent-change-of-station move because he provided most of the unpacking services.[1] We conclude that the employee's liability cannot be reduced.

In October 1983, a carrier acting under a Government Bill of Lading transported the household goods of Dr. William J. Caspary incident to his transfer from Baltimore, Maryland, to Durham, North Carolina. When the contents of the moving van were unloaded into his new residence at 10 p.m. on the evening of October 20, the carrier's employees refused to comply with his request that they unpack the various boxes containing his property. With reluctance, according to Dr. Caspary, however, one

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1/ The matter is on appeal from a settlement by our Claims Group. Another issue was considered by NIH. The employee argued that he was entitled to an additional weight allowance for packing materials under DHHS Travel Regulations, Chapter 6-70-10B. However, the agency reports that the cited regulations do not pertain to uncrated shipments, as were involved here, and we have held that no reduction in net weight is authorized for packing materials on uncrated shipments. Dudley E. Cline, B-217382, July 12, 1985.

employee remained to unpack. Within an hour Dr. Caspary terminated the unpacker's services when he discovered that some boxes, selected for discard, still contained wrapped items. Since it was then about 11 p.m., Dr. Caspary signed for the shipment believing that, at that late hour, he could not obtain any advice from his agency on how to proceed.2/

On the date of transfer the maximum weight allowance for the transportation of household goods was 11,000 pounds. 5 U.S.C. § 5724 (1982). The net weight of Dr. Caspary's shipment was 16,220 pounds; therefore, the excess weight was 5,220 pounds. The transportation charges were $2,545.52. The agency's determination that Dr. Caspary's liability for the excess weight was $819.21 was based on a formula required by regulation. Federal Travel Regulations, para. 2-8.3b(5) (Supp. 1, November 1, 1981), incorp. by ref., 41 C.F.R. § 101-7.003 (1983). The regulation requires that a ratio of excess weight over total net weight be multiplied by the transportation charges.

Dr. Caspary does not dispute the material facts or the agency's application of the formula. He contends that the transportation-charge element of the formula should have been reduced by an amount equal to the amount received by the carrier for the unpacking services it did not perform. Even assuming that the proportionate value of the unpacking services could be separated from the carrier's bill,3/ the pertinent regulation does not authorize variations from the formula, even for extenuating circumstances.

In a recent decision we noted that FTR para. 2-8.3b(5) provides that an employee's liability for excess weight must be based on the ratio of excess weight to total weight multiplied by the total charges. See James Knapp, B-216723, August 21, 1985. In that case the employee argued that the total weight should have been reduced by the weight of a portion of the shipment which did not require packing. We held that the weight may not be deducted when applying the formula regardless of whether the goods were packed by the employee, at his expense, or otherwise.

2/ There is nothing in the record to indicate whether Dr. Caspary made any request of his agency to require the carrier to perform the unpacking services the following day. Also, the agency reports that he did not request its Division of Financial Management to reduce payment to the carrier for the packing services until after he received the bill for excess charges in January 1984, or 4 months after the incident. It appears that when he accepted the shipment, he did make the following notation: "All items not accounted for. Approval is subject to inspection for hidden damage." He does not now complain of damage to his property, but argues that this notation nevertheless rendered the carrier ineligible for full payment under its contract.

3/ The carrier's bill for transportation charges is not itemized to identify unpacking services as a separate charge.

Whether the employee relates his packing or unpacking services to a reduction of the net weight, as in James Knapp, supra, or to a reduction of the transportation-charge element of the formula, as here, there is no legal basis to reduce his excess weight charges in light of the underlying principle that the regulation, FTR para. 2-8.3b(5), has the force and effect of law and may not be waived or modified regardless of extenuating circumstances. See William A. Schmidt, Jr., 61 Comp. Gen. 341 (1982), cited in James Knapp, supra. See also William L. Brown, B-199780, February 17, 1981.

In the absence of authority to reduce the transportation-charge element of the excess-weight formula, we are unable to agree with the arguments advanced by Dr. Caspary in this matter, and we sustain our Claims Group's determination that he was liable for the debt as computed by the agency.

for Comptroller General
of the United States