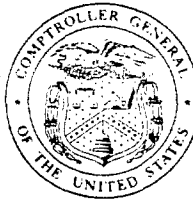


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DECISION

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

FILE: B-195256

DATE: November 15, 1979

MATTER OF: Fredric Newman

[Request for Reconsideration of Indebtedness for Excess Costs Incurred in Shipment of Household Goods]

DIGEST:

1. Question whether and to what extent authorized weights have been exceeded in shipment of household effects is question of fact primarily for administrative determination and ordinarily will not be questioned, in absence of evidence showing it to be clearly in error.
2. Civilian employee of Department of Army is liable for excess costs incurred in shipment of household goods where weight of shipment was established at origin by certificate of public weighmaster and no sufficient evidence has been presented to show that weight is incorrect.
3. Absent other sufficient evidence that Department's weight determination was in error, carrier's failure to satisfy appropriate request for reweigh of effects at destination cannot increase employee's household effects shipment entitlement. Failure to follow procedural or instructional regulations standing alone is not sufficient to relieve employee of charges for excess weight.

Mr. Fredric Newman, a civilian employee of the Department of the Army, requests reconsideration of his alleged indebtedness in the amount of \$503.20 for excess costs incurred in the shipment of his household goods from Honolulu, Hawaii, to Washington, D.C., incident to his official change of station in 1975. The indebtedness was sustained by our Claims Division in its adjudication Z-2721989, dated March 8, 1979.

The basis of Mr. Newman's request for reconsideration is that he continues to believe that the 925 pounds excess weight figure for which he has been determined to be liable is not correct. In support of this contention, Mr. Newman states the following:

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B-195256

"a. Because of my previous experience in shipping household goods and the knowledge of the approximate weight of my personal possessions, from the beginning of this shipment I was positive the total amount of (sic.) was less than 11,000 pounds.

"b. The local transportation officer estimated my household goods shipment to be 9,000 pounds.

"c. The Joint Personal Property Shipping Office /JPPSO/ performed a constructive analysis of the shipment on the cubic representation. That analysis gave a constructive weight of 10,963 pounds."

In addition Mr. Newman contends that since the carrier unjustifiably failed to obtain a reweigh he requested on two occasions prior to delivery, the carrier should be responsible for any additional amounts due for excess weight costs.

Based upon the review which follows we are sustaining the adjudication of our Claims Division.

Pursuant to governing authority, Mr. Newman was authorized shipment of a maximum of 11,000 pounds of household goods incident to his official change of station in 1975. Prior to shipment, a licensed weighmaster for the State of Hawaii certified that the net weight of Mr. Newman's household goods was 11,925 pounds. Under Government Bill of Lading (GBL) K-0618721, household goods of 11,925 pounds net weight were shipped from Honolulu, Hawaii, to Mr. Newman's residence in Arlington, Virginia. Mr. Newman requested that the shipment be reweighed at the time of arrival in Arlington on June 6, 1975, and again prior to delivery on August 7, 1975. The carrier failed to reweigh the shipment.

Authority for transporting the household effects of transferred employees at Government expense is found at 5 U.S.C. 5724(a) (1976), which established 11,000 pounds as the maximum weight of goods authorized to be transported. The implementing regulations to that statute are found in the Federal Travel Regulations, FPMR 101-7, in effect at the time of the travel. Mr. Newman was also subject to the regulations contained in Volume 2 of the Joint Travel Regulations (JTR) which is essentially a restatement and implementation of the FTR and concerns per diem, travel, and transportation allowances of civilian officials

B-195256

and employees in the Department of Defense. In addition, the Department of Defense Personal Property Traffic Management Regulation (DOD 4500.34-R, May 1, 1971) which established standards and special procedures concerning the movement and storage of personal property for all Department of Defense personnel (military and civilian) is pertinent to this review. 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. 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. B-189358, February 8, 1978.

The adjudication of our Claims Division set forth the well established rule that the question of whether and to what extent authorized weights have been exceeded in the shipment of household goods, 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. See B-192618, November 9, 1978, and cases cited therein.

In the present case the record includes a weight certificate, proper on its face, and executed by a certified weighmaster. While the shipment was not reweighed at destination, since the weight of that shipment was established at origin as shown by the weighmaster's certificate, the only basis for this Office to question the Department's determination of excess weight would be the presentation of sufficient evidence showing such determination to be clearly in error.

We turn to Mr. Newman's specific evidentiary contentions on appeal. In the first instance, Mr. Newman's previous experience in shipping household goods and his knowledge of the approximate weight of his personal possessions is not sufficient evidence to rebut the scale certifications signed by the weighmaster. It has long been our view that the weight of a prior or subsequent move is not necessarily indicative of the weight of the move in question because of the possibility of inclusion or exclusion of items which would vary the prior or subsequent weights. B-189388, August 23, 1977.

The fact that the local transportation officer estimated Mr. Newman's household goods shipment to be 9,000 pounds is equally unpersuasive in view of the actual weight certificate signed by the

B-195256

weighmaster which certified the actual net weight of the shipment at 11,925 pounds. This type of estimate does not bind the Government nor provide a reasonable basis for permitting payment for a shipment of household goods in excess of the authorized weight. See also B-181631, October 9, 1974, where the carrier underestimated the weight of an employee's household goods by 6,360 pounds. The transportation officer's estimate, like Mr. Newman's previous experience and approximate knowledge of the weight of his personal possessions, is essentially speculative when compared with a properly executed weight certificate. And as such, it is not sufficient evidence of an alleged erroneous excess weight computation by the Department. See also B-190541, November 28, 1977, and cases cited therein.

Finally, where the weight of Mr. Newman's shipment listed on the GBL was supported by scale certifications from a licensed weighmaster, the weight analysis performed at JPPSO—which was based on an estimate of the total cubic feet in the shipment—is not sufficient evidence to rebut the scale certifications signed by the weighmaster. Such an estimate is also speculative evidence when compared with a properly executed weight certificate.

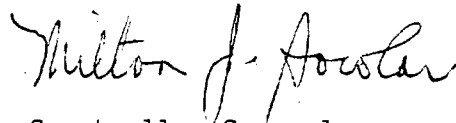
Thus, where the transportation voucher prepared by the carrier in support of its freight charges is supported by a valid weight certificate, in the absence of fraud or clear error in the computation of whether and to what extent authorized weights have been exceeded in the shipment of household goods, the Government must rely on the scale certifications of record in computing the excess costs. See B-189888, March 22, 1978.

The fact that the carrier may have unjustifiably failed to obtain the properly requested reweigh of the shipment of household goods was unfortunate. However, this alone does not increase Mr. Newman's entitlements nor does it serve to relieve him of his liability for the excess weight charges. The Personal Property Traffic Management Regulation (DOD 4500.34-R), as we have noted, established standards and special procedures concerning the movement and storage of personal property for all Department of Defense personnel (military and civilian). In accordance with paragraph 6007c(2) of that regulation, Mr. Newman's request for a reweigh was appropriate. However, we have held that in accordance with paragraphs 1000 and 1001 of the Personal Property Traffic Management Regulation (DOD 4500-.34-R) their provisions do not apply to administration or interpretation of entitlements. Procedures governing Mr. Newman's entitlements are set

B-195256

forth in the provisions of Volume 2 of the JTR which are consistent with the FTR. Thus, the Personal Property Traffic Management Regulation while it may be specific in nature, does not provide additional entitlements nor does it confer benefits not specifically authorized by the statute itself or volume 2 of the JTR. A failure to fully follow procedural or instructional regulations standing alone is not sufficient to relieve the member of the charges for excess weight. B-190687, March 22, 1978.

In view of the foregoing, we do not find sufficient basis to conclude that the weights used in the administrative computation of excess costs were not correct, nor do we find that the procedural failure to reweigh Mr. Newman's shipment served to relieve him of liability for the excess weight charges. The adjudication of our Claims Division dated March 8, 1979, is sustained.



For The Comptroller General
of the United States