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DECISION



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

[Liability for Excess Weight Charges]

FILE: B-198367

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DATE: March 26, 1981

MATTER OF: George R. Halpin - Transportation of Household Goods - Excess Weight

DIGEST: Employee may not be relieved of liability for cost of shipping household goods in excess of statutory amount of 11,000 pounds. Question whether and to what extent authorized weights have been exceeded is question of fact for administrative determination and will not be questioned in absence of evidence showing it to be clearly in error. Weight of shipment was established at origin by weight certificate and no sufficient evidence has been presented to show that weight is incorrect. Weight of a prior or subsequent move is not 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.

This action is in response to a request by Simone J. LeRoux, Acting Chief, Accounting Section, Office of the Comptroller, Drug Enforcement Administration (DEA), Department of Justice, for our decision whether Mr. George R. Halpin, an employee of the agency, is liable for excess costs of \$480 for transportation of household effects in excess of 11,000 pounds.

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For the reasons set forth below, we determine that Mr. Halpin is liable.

The record shows that "Mr. Halpin and his dependents were transferred from Chicago, Illinois, to Los Angeles, California, as authorized in a DEA permanent change of station authorization dated July 6, 1977. In connection with his transfer, the

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employee was authorized to ship household goods not in excess of 11,000 pounds, net weight. However, the weight of the shipment amounted to 13,100 pounds net weight, as indicated by Government bill of lading No. L-0,967,654.

Weight certificates were submitted by the carrier, Trans-American Van Lines, which reflected a net weight of 13,100 pounds, but failed to identify if the weighed items were Mr. Halpin's. The carrier also billed the DEA for its transportation charges and was paid on the basis of 13,100 pounds.

The DEA billed Mr. Halpin for charges incident to shipment of the excess weight in the amount of \$480. Mr. Halpin, in a memorandum dated October 27, 1978, disputed the weight of 13,100 pounds and raised other matters pertaining to his shipment. In contesting the weight overage, Mr. Halpin points out that documentation of his prior move, albeit four years earlier, reflects a weight of 10,850 pounds, and that he is convinced that he exceeded as much weight as he acquired during the intervening four years. Mr. Halpin also accents the fact that the weight certificates were not properly completed and could not objectively be identified as pertaining to the weight of his household goods.

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 goods authorized to be transported as 11,000 pounds. The implementing regulations to that statute are found in the Federal Travel Regulations (FTR) (FPMR 101-7, May 1973). Paragraph 2-8.2(a) of the FTR repeats the 11,000 pound maximum weight allowance found in the statute. Paragraph 2-8.4e(2) 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

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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. Richard L. Canas, B-189358, February 8, 1978.

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 excess costs involved are considered to be matters primarily for determination by the administrative agency and ordinarily will not be questioned in the absence of evidence showing such determination to be clearly in error. Fredric Newman, B-195256, November 15, 1979. The record contains official weight certificates and there is no indication of error or fraud in their preparation. It is true, as Mr. Halpin states, that the weight certificate was not cross-referenced to his shipment. However, the carrier billed and was paid its charges on the basis of 13,100 pounds. The carrier also states that the weight tickets were furnished by its driver and were contained in the file on Mr. Halpin's shipment. Further, the Interstate Commerce Commission (ICC) Regulations provide that the shipper or his representative can witness the original weigh or a re-weigh for which he has a right to request. See 49 C.F.R. § 1056.6 (1976). Thus, Mr. Halpin could have witnessed the original weigh or could have requested and witnessed a re-weigh.

It is also possible, as Mr. Halpin suggests, that another shipment may have been loaded on the same vehicle with his household goods. However, ICC regulations provide that in that case the weight of the vehicle, together with one or more part loads, then becomes the tare weight as to any subsequent shipments that are loaded. 49 C.F.R. § 1056.6(a) (1976). Thus, assuming that there was another shipment, it could be included in the tare weight shown of 36,220 pounds. Further, the evidence upon which Mr. Halpin relies,

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namely, the weight of his household goods four years earlier, is as consistent with the first shipment having been underweighed as with the second shipment having been overweighed as alleged, or with both weighings being erroneous, and, therefore, does not clearly show the second shipment weight to be erroneous. 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. Fredric Newman, supra.

Accordingly, Mr. Halpin is liable for the costs incurred by the excess weight of his household goods in the total amount of \$480.

Milton J. Aroslan

Acting Comptroller General
of the United States