

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

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FILE: B-211465**DATE:** November 18, 1983**MATTER OF:** J & V Audit Co.**DIGEST:**

1. Uncertified scale weight taken at origin in Korea is properly applicable for calculation of freight charges when carrier failed to get weight on certified scales at destination and, by terms of governing section 22 quotation and governing GBL, constructive weight is not applicable. By terms of the tender constructive weight applied only if certified scales were unavailable or impractical to use, and carrier failed to show either contingency and also failed to show uncertified weight shown on GBL to be inaccurate.
2. GBL is prima facie evidence that the weight shown is the correct scale weight.
3. The claimant bears the burden of furnishing evidence clearly and satisfactorily establishing its claim and all incidental matters to establish the clear legal liability of the United States and the right of the claimant to receive payment.

J & V Audit Co. (J & V) requests review by the Comptroller General under the provisions of 4 C.F.R. § 53 (1983) of the recovery by setoff of \$2,289.42 by the General Services Administration (GSA) for the transportation of the household goods of a military officer from Seoul, Korea, to Fort Sheridan, Illinois, under government bill of lading (GBL) No. K-9455491, dated June 15, 1977.

We sustain the audit action.

For the transportation services performed, Bekins International Lines (Bekins), the through household goods carrier, initially billed and was paid \$5,092.40 on the basis of the net weight of 6,211 pounds shown on the GBL. Subsequently, J & V, on behalf of Bekins, claimed and was paid additional freight charges of \$2,289.42 on the basis of

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a constructive weight of 8,750 pounds at 7 pounds per cubic foot (cft.). The GBL shows that the shipment measured 1,250 cft.

On audit of the payment vouchers, GSA assessed an overcharge of \$2,289.42 on the basis of the weight shown on the GBL. In accordance with § 322 of the Transportation Act of 1940, 54 Stat. 955, as codified in 31 U.S.C.A. § 3726(b), the assessed overcharge was recovered by offset in March 1983.

J & V contends that under the provisions of item 41 of Military Basic Tender (MBT) 1F, which contains the applicable charges, the constructive weight must be applied whenever it is not practical to have the weight determined on a certified weight scale.

GSA and J & V agree that no certified scales existed anywhere in Korea at the time of this shipment.

GSA contends that the constructive weight used by J & V is not applicable under the terms of MBT 1F for determining the billing weight unless authorized by the origin transportation officer and no certified scales were available either at destination or at origin. GSA alleges that the Quality Control Office at Fort Sheridan reported that four certified scales were available in the destination area for weighing the shipment and the installation did not know why the shipment was not weighed on one of the scales at the destination.

Item 41 of MBT 1F provides that the net weight will be used in determining charges, and the net weight is to be determined by scale weight, "except where an adequate scale is not available at origin or at destination." (Emphasis added.) In the latter circumstance, when authorized by the origin transportation officer, the constructive weight may be used, but, where practicable, the shipment shall be weighed at destination, and the destination scale weight is to be used for billing purposes.

Notations on the GBL provide as follows:

"REQUEST REWEIGH AT DESTINATION CONSTRUCTIVE
WEIGHT UTILIZED
SHIPMENT WILL BE REWEIGHED AT DESTINATION AT NO
COST TO THE GOVERNMENT."

GSA contends that:

". . . even though the origin TO (transportation officer) incorrectly indicated on this particular GBL . . . that constructive weight was utilized at origin, clearly, he did not authorize the use of constructive weight in lieu of a scale weight . . ." (Emphasis added.)

It is clear that notwithstanding the notation on the GBL, constructive weight was not, in fact, used. J & V construes the notation as authorization by the transportation officer to use constructive weight, if it is not "practicable" to secure a certified scale weight. J & V implies that it was not practicable to secure certified scale weight because failure to weigh at destination if certified scales were available would be a breach of contract which would subject the carrier to reprimand or to suspension, and the carrier has neither been reprimanded nor suspended. However, no evidence, such as the driver's log or testimony, has been presented to show that certified scales were not available or that it was not practicable to secure a certified scale weight. Further, the destination installation has reported, and J & V has not denied, that four certified scales existed in the destination area.

GSA construes the notation on the GBL as simply an erroneous statement of fact and not an authorization to use constructive weight. GSA contends, therefore, that under the provisions of MBT 1F, constructive weight is only authorized if certified scales were unavailable at destination.

At most, the notation on the GBL constituted authority to use constructive weight only if the shipment could not be "reweighed" at destination on certified scales, as also required by notation on the GBL. Item 41 of MBT 1F authorizes use of constructive weight only if certified scale weights are unavailable, or, when authorized by the transportation officer, if certified scale weights are not practicable to obtain. J & V has not shown that scale weights were not practicable to obtain, and the evidence does indicate that certified scales were present at destination.

Therefore, by the terms of MBT 1F and the instructions on the GBL, constructive weights were unauthorized.

A bill of lading constitutes prima facie evidence of the facts stated on the bill of lading. See Navajo Freight

Lines, Inc. v. United States, 176 Ct. Cl. 1265 (1966). The scale weight shown on the GBL and supported by a weight ticket, although uncertified and, thus, also an unauthorized weight, is prima facie evidence of the actual scale weight.

The failure of J & V to reweigh at destination, contrary to the instructions on the GBL, has resulted in a situation where it is impossible to determine with certainty the actual weight. Under the circumstances, we think GSA was justified in relying on GBL weight rather than the higher constructive weight.

J & V alleges that scale weights in Korea at the time of the shipment were inaccurate because of inadequate scales and inexperienced personnel performing the weighing. However, J & V has presented no evidence of the manner in which the weight shown on the GBL was derived or that this particular weight is inaccurate.

The burden is on the claimant to furnish evidence clearly and satisfactorily establishing its claim and all incidental matters to establish the clear legal liability of the United States and the claimant's right to payment. See 31 Comp. Gen. 340 (1952); 18 Comp. Gen. 980 (1939).

On the basis of the present record, the claimant has failed to present evidence to establish its claim.

for *Larry R. Van Cleve*
Comptroller General
of the United States