

11/21/417
PUM-II

DECISION



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

FILE: B-218985 **DATE:** January 15, 1986
MATTER OF: Richard E. Davies

DIGEST:

Army's assessment of excess weight charges based on weight tickets obtained in reweigh is a valid basis for computing net weight of an employee's household goods. Employee alleges that the weights are fraudulent and in error. In the absence of proof to the contrary, GAO will accept weight tickets as valid and accurate, especially since the administrative agency has made like determination. Burden of proof is upon employee to affirmatively establish that the excess weight charge was the result of fraud or clear error. Since employee has not met that burden, his claim is denied.

Mr. Richard E. Davies, a civilian employee of the Department of the Army, requests reconsideration of our Claims Group's denial of his claim for the excess cost of shipment of household goods incident to a permanent change of station when the weight of the shipment was in excess of his authorized weight allowance.^{1/} He questions the validity of the weight tickets submitted by the carrier and used to determine the net weight of the household goods. We sustain the Army's and our Claims Group's determination that there is no substantial evidence that the weight certificates are in error.

In connection with a permanent change of station, a Government bill of lading was issued on November 16, 1979, to North American Van Lines, Inc., for the movement of Mr. Davies' household goods from New Palestine, Indiana, to Prince Frederick, Maryland.

^{1/} Mr. Davies' claim was denied by Settlement Certificate No. Z-2736619 dated March 21, 1984.

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Prior to arriving at origin for loading on November 26, 1979, the carrier's driver obtained a weight ticket on certified scales maintained by Carlton Transit Company, Indianapolis, Indiana. That ticket recorded a tare weight of 32,370 pounds. After loading the shipment, another ticket was issued by Carlton Transit Company, Inc., dated November 26, 1979, which recorded a gross weight of 47,880 pounds. These tickets show that the weight of the household goods was 15,510 pounds.

Upon reweigh the weight of the household goods was determined to be 15,200 pounds. Excess cost computations on transportation charges of \$3,134.60 are based on the reweigh weight since it resulted in a lower weight. Mr. Davies was notified that the principal amount due to the excess cost of the shipment of his household goods was \$866.14.

In his appeal from the denial of his claim by our Claims Group, Mr. Davies reiterates his opinion that the weights used were excessive. His argument concerns the amount of fuel in the tanks when the gross weights were obtained. He further states that he has moved approximately the same household goods previously and does not feel that he had in excess of the allowable weight.

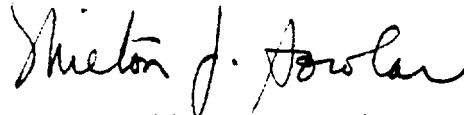
Authority for transporting household effects of transferred employees at Government expense is found at 5 U.S.C. § 5724(a). Under the provisions of that statute at the time of Mr. Davies' move, the maximum weight of the household goods authorized to be transported was 11,000 pounds. The implementing regulations to that statute are found in the Federal Travel Regulations, FPMR 101-7 (FTR). Paragraph 2-8.4e(2) of the FTR 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 the force and effect of law. Norman Subotnik, B-206698, November 30, 1982.

The question of whether and to what extent authorized weights have been exceeded is a question of fact primarily for administrative determination which ordinarily we will not question in the absence of evidence showing it to be clearly in error. Joseph S. Montalbano, B-197046, February 19, 1980. The determination is ordinarily based

on the shipping documents of each particular shipment. Robert J. Furey, B-193397, February 22, 1980. The weight ticket is a valid basis for determining net weight of a shipment. The burden of establishing fraud rests upon the party alleging it. Circumstantial evidence is competent if it offers a clear inference of fraud and amounts to more than a mere suspicion or conjecture.

Mr. Davies questions the procedures involved in obtaining the weight of his household goods but his questions are based on speculation and conjecture, not upon any evidence clearly demonstrating that his household goods did not exceed the weight allowance. Estimates of approximate weight and evidence of the weight of household goods in a different move are insufficient to establish error in scale weight certificate. Lt. Col. Larry B. Freeman, B-207806, August 24, 1982.

We conclude that Mr. Davies has not provided substantial evidence that the weight tickets submitted by the carrier and used to determine the net weight of his household goods are in error. Accordingly there is no basis upon which we may reverse the agency's determination regarding the excess weight charges.



Acting Comptroller General
of the United States