



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Feivel P. Pector

File: B-256945

Date: March 27, 1995

DIGEST

A transferred employee of the Army, who shipped a privately owned vehicle (POV) to his overseas duty station at government expense, replaced that vehicle with a foreign-made vehicle (FPOV) purchased overseas shortly after the original POV had to be scrapped. He seeks reimbursement for the cost of shipping the FPOV back to the United States on his return transfer. The claim is denied. An FPOV may not be shipped at government expense unless it qualifies under an exception stated in 2 JTR C11003-2c and paragraph 12-26b(3) of Army Regulation 55-71, which grants major Army commanders overseas discretionary authority to approve shipments. The record shows that the employee's request for shipment was specifically disapproved.

DECISION

This decision is in response to an appeal by the U.S. Total Army Personnel Command, Department of the Army,¹ from our Claims Group's Settlement Z-2868933, Mar. 14, 1994. The settlement authorized reimbursement of an employee for the shipment of a foreign-made privately owned vehicle (FPOV) from Germany to the United States incident to a permanent change of station. For the following reasons reimbursement is not authorized.

BACKGROUND

Mr. Feivel P. Pector, an employee of the Department of the Army, was transferred from Mesa, Arizona, to Stuttgart, Germany (Ludwigsberg) in March 1985. Incident to that transfer he was authorized to and did ship his privately owned vehicle (POV) (1978 Buick Opel)² to his new duty station.

¹Mr. Remer W. Griner, Chief, Technical Services Branch.

²A vehicle purchased from a U.S. dealer is considered to be a USPOV. For that reason, the Buick Opel was considered to be a USPOV, not a FPOV.

In December 1986, the POV that Mr. Pector shipped to Germany became unrepairable and was scrapped. Shortly thereafter, he purchased a 1987 Nissan Stanza as a replacement vehicle. According to Mr. Pector, he used the replacement vehicle to perform his duties.

On May 21, 1992, after having served more than 7 years of continuous service overseas, he was issued travel orders transferring him from Darmstadt, Germany, to Fort Gordon, Georgia. Item 10 of those orders stated:

"10. Employee entitled to ship an American-made car. A foreign-made vehicle cannot be shipped at Government expense."

By letter dated June 15, 1992, Mr. Pector requested approval for shipment of his replacement vehicle to the United States. By action dated July 2, 1992, Headquarters, United States Army, Europe, disapproved the request. On further appeal, his claim was again disapproved on August 27, 1992, on the basis that his vehicle did not qualify under any of the exceptions permitting shipment of a FPOV. He was informed that he could pay to ship the vehicle to the United States on a space-available basis. Mr. Pector arranged for the shipment of his replacement vehicle to the United States by a commercial carrier and, following that shipment, he made claim for the cost of \$844.21.

Our Claims Group allowed his claim because it appeared that all of the stated requirements for the shipment had been met and, therefore, that he was entitled to be reimbursed. The Chief, Technical Services Branch of the U.S. Total Army Personnel Command has appealed that settlement, arguing that Mr. Pector did not secure command approval to replace his scrapped POV with an FPOV, nor did he receive approval to ship the FPOV from Germany to the United States at government expense.

OPINION

Under authority of 5 U.S.C. § 5727 (1988) and section 302-10.2 of the Federal Travel Regulation (FTR),³ an employee's POV may be transported to and from a post of duty outside the continental United States when the agency determines that its use there is in the interest of the government. Further, while section 302-10.3 of the FTR authorizes shipment of a replacement POV to that overseas location for a POV previously authorized and shipped, the FTR does not specifically address the return shipment of a replacement POV, either domestic or foreign-made, if it was purchased overseas.⁴ The Department of Defense, however, has adopted a regulation providing for the return shipment of

³41 C.F.R. § 302-10.2 (1993), formerly FTR, para. 2-10.2 when Mr. Pector transferred to his overseas location in Germany.

⁴See Ronald G. West, 70 Comp. Gen. 733, 737 (1991). The Army referred this case to us under its file number: B-239870, Sept. 30, 1991.

replacement POVs under specified conditions. The regulation generally prohibits the shipment to the United States of an FPOV, subject to the five exemptions stated in 2 JTR, C11003-2c.⁵ Exemption No. 4 states that an FPOV may be shipped to the United States when it is

"an FPOV purchased overseas as a replacement for a POV shipped [to the overseas location] at Government expense, when the Secretary of the Service concerned or the designated representative determines before such [return] shipment that the replacement was necessary because the POV transported overseas at Government expense was destroyed/lost . . . and it was necessary for the employee to purchase a replacement and authorizes the shipment based on that determination;" [emphasis supplied].

Paragraph 12-26b(3) of Army Regulation 55-71 (June 1, 1983), additionally provides that major Army commanders "may authorize or approve shipment" of FPOVs purchased overseas as a replacement for a POV initially shipped overseas at government expense, including return shipment to the United States, if certain of the criteria listed therein are met. One criterion is:

"(e) If there is no urgent need for a replacement POV, such purchase cannot be determined as necessitated by destruction of the original POV and shipment would not be in the best interest of the Government."

Under the law and regulation, overseas commanders "may authorize" the return of an FPOV purchased overseas under specified conditions. The term "may" signifies discretionary or permissive authority, as compared to the term "shall" which is construed in the mandatory sense.⁶ Therefore, there must be a positive authorization to ship an FPOV from an overseas location to the United States before it may be shipped at government expense.⁷

In the present case, the record shows that Mr. Pector's return travel orders specifically stated that a foreign-made vehicle cannot be shipped at government expense. In addition, the record shows that Mr. Pector's subsequent requests to allow shipment at government expense were disapproved by Headquarters, United States Army, Europe, and Seventh Army.

⁵Paragraph C11003-2 of Volume 2, Joint Travel Regulation (2 JTR) (ch. 314, Dec. 1, 1991).

⁶Joseph Nemargut, Jr., B-252674, June 29, 1993, and decisions cited. See also 10 U.S.C. §§ 101(28) and 101(29) (1988).

⁷Monika Weaver Ogburn, B-183408, Sept. 4, 1975.

Accordingly, we reverse the settlement certificate of our Claims Group and disallow Mr. Pector's claim for the cost of the shipment of his replacement vehicle.

for \s\ Seymour Efros
Robert P. Murphy
General Counsel