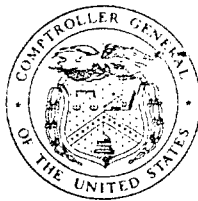


DECISION



13499 PLM II
THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-196535

DATE: April 22, 1980

MATTER OF: Richard J. Hennessey

Personal

DIGEST: 1. Employee who receives appointment to manpower shortage position with Nuclear Regulatory Commission contemporaneously with discharge from military service has dual entitlement to transportation of household goods. Government will bear expense of employee's move up to the larger of the two entitlements. See B-177743, February 2, 1975, and B-173758, October 8, 1971.

2. Where employee (former Army member) has dual entitlement to transportation of household goods because of accession to manpower shortage position with Government agency contemporaneous with military discharge, the cost factors involved in the shipment of the household goods by the Army on a Government Bill of Lading and the cost factors which compose the commuted rate payable by civilian agencies may not be interchanged to increase or decrease an employee's entitlement.

This case concerns the amount of expense to be borne by the Government for transportation of household goods for an employee who contemporaneously with his discharge from military service receives an appointment to a manpower shortage position with a Government agency. We are asked whether an agency may reimburse an employee in excess of the commuted rate allowance for the move. As will be explained, the employee may not be reimbursed in excess of the commuted rate.

The question is presented for an advance decision by Angelo S. Puglise, Director, Division of Accounting, Office of the Controller, Nuclear Regulatory Commission (NRC), Washington, D.C., and involves an NRC employee, Richard J. Hennessey.

Contemporaneous with his discharge in November of 1977, Mr. Hennessey was to accede to a manpower shortage position with the NRC in Atlanta, Georgia. As a discharged member, he

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was entitled to transportation of his household goods from his discharge point to Milton, Massachusetts, his home of record, or to any other location not to exceed the cost to his home of record 37 U.S.C. § 406(b) (1976) as implemented by 1 Joint Travel Regulations (1 JTR), Chapter 8. As an individual acceding to a manpower shortage position, he was entitled to transportation of his household goods to his residence in the new duty station area. 5 U.S.C. § 5723(a)(2) (1976) as implemented by chapter 2, Part 8 of the Federal Travel Regulations (FTR) (FPMR 101-7) (May 1973). Apparently, because of this dual entitlement, Mr. Hennessey spoke with appropriate Army and NRC personnel to ascertain his entitlements. He was informed that the move should be done under his military entitlement but that the NRC would reimburse him for excess costs due to his new duty station being over 550 miles further than his home of record.

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In November 1977, the claimant's household goods were transported under a Government Bill of Lading (GBL) from his point of discharge, Fort Dix, New Jersey, to his new residence at Stone Mountain, Georgia. The total mileage was 850 miles and the move cost the Government \$2,318.76. Since Mr. Hennessey's military entitlement of \$1,982.88 was based on mileage to his home of record which was 295 miles, the Army billed him for the cost for the excess mileage, \$336. When Mr. Hennessey sought reimbursement of the \$336 from the NRC, the NRC informed him that reimbursement was precluded as his move had already exceeded the commuted rate allowance of \$1,938.60 for the move.

Based on these facts, Mr. Puglise, in effect, asks if the decisions, B-177743, February 2, 1973, and B-173758, October 8, 1971, which the NRC relied on in denying Mr. Hennessey's claim for reimbursement have been modified or overruled and may the commuted rate be divided into its subparts to allow the NRC to reimburse Mr. Hennessey for mileage alone?

Figures supplied in the submission provide a breakdown of the component costs of the charges paid by the Army and subsequently billed to Mr. Hennessey. Also provided is a comparable division of the commuted rate which NRC is authorized to pay. The Army paid \$12.20 per hundred pounds for the mileage portion or a total of \$1,317.60. Packing charges were assessed at \$9.27 per hundred pounds or a total of \$1,001.16. Totaled

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these figures equal \$2,318.76. His military entitlement was \$1,982.88. Presumably, Mr. Hennessey was charged the difference on the basis that packing charges would be the same regardless of the mileage, whether the shipment was to Milton, Massachusetts, or Stone Mountain, Georgia.

The breakdown of the commuted rate shows that the mileage portion in Mr. Hennessey's case was \$13.15 per hundred pounds and the portion attributable to packing was \$4.80 per hundred pounds or a total of \$1,938.60 for 850 miles. It is Mr. Hennessey's apparent contention that since he was billed only for the excess mileage portion by the Army, that only the mileage portion of the commuted rate should be considered in establishing his entitlements, since the Army would have paid the same rate for packing if the shipment was for 250 miles or 850 miles. This would result in the amount of \$438.48 being paid to Mr. Hennessey.

Section 5723(a)(2) of title 5, United States Code, authorizes new appointees in manpower shortage positions to receive the same entitlements under 5 U.S.C. 5724, as an employee who is transferred. Subsection (c) of section 5724 provides that a commuted rate for the shipment of household goods be paid to the employee instead of actual expenses.

Paragraph 2-8.3(1) of the FTR, promulgated pursuant to the above, provides as follows:

"a. The commuted rate system.

"(1) Description. Under the commuted rate system an employee makes his own arrangements for transporting household goods between points within the conterminous United States. He selects and pays the carrier or transports his goods by noncommercial means and is reimbursed by the Government in accordance with schedules of commuted rates which are contained in GSA Bulletin FPMR A-2, Commuted rate schedule for transportation of household goods. The schedules of commuted rates which are developed from tariffs that carriers have filed with the Interstate Commerce Commission consist of tables to be applied to the particular transportation involved. The

commuted rate includes costs of line-haul transportation, packing, crating, unpacking, drayage incident to transportation, and other accessorial charges. Costs of temporary storage which are subject to reimbursement under 2-8.5 are stated separately in the schedule of commuted rates." (Emphasis supplied.)

Paragraph 2-8.3(2) of the FTR states in pertinent part:

"(2) Reimbursement. When the commuted rate system is used, the amount to be paid to the employee for transportation and related services is computed by multiplying the number of hundreds of pounds shipped (within the maximum weight allowances) by the applicable rate per hundred pounds for the distance shipped as shown in the commuted rate schedule. The distance shall be determined in accordance with household goods mileage guides filed with the Interstate Commerce Commission. * * *"

As can be seen, a specific formula is provided for arriving at an employee's entitlement under the commuted rate system. No provision is made for deviating from this formula. Furthermore, the commuted rate system is a system of approximation which, depending on the variables in each shipment may operate to the employee's advantage, for example, B-173758, October 8, 1971, and B-177743, February 2, 1973, or it may work to his disadvantage where the actual costs exceed the commuted rate. This is the case even though he was not specifically informed of the cost limitation implicit in the system. See B-186975, March 16, 1977, and B-187211, February 9, 1977.

The decisions referred to in the submission, B-177743, February 2, 1973, and B-173758, October 8, 1971, concerned employees who had dual entitlements as here. We held that the employees were entitled to be reimbursed the commuted rate to their new civilian duty station less the amount of the move paid for by the military. Essentially, the cases were a recognition that the employee had separate and distinct entitlements based on his status as a military member being discharged and contemporaneously acceding to a civilian position. Compare 37 U.S.C. § 406(b) and implementing regulations in 1 JTR, Chapter 8 with

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5 U.S.C. § 5724 and implementing regulations in FTR, chapter 2, Part 8. While these statutes and implementing regulations would preclude the service or agency concerned from paying more than the authorized cost, we recognized that the employee was entitled to receive the amount of the greater entitlement. Since in both instances, the commuted rate allowance for the moves exceeded the cost for the military portion of the move, we concluded that the employee was entitled to the difference. In the instant case, the cost of the military portion of the move exceeded the commuted rate allowance of \$1,938.60, based on the weight and mileage involved in Mr. Hennessey's shipment. As a result, Mr. Hennessey could not be reimbursed any additional amounts.

While it is unfortunate that in this case the cost for the shipment borne by the Army exceeded those authorized under the commuted rate system, we are not aware of any authority which allows the NRC to subdivide the commuted rate and recompute the entire shipment on the basis of the costs of both systems most favorable to the employee so as to authorize a reimbursement to Mr. Hennessey.

Accordingly, Mr. Hennessey may not be reimbursed the amount which he paid the Army, and the voucher forwarded with the request for advance decision may not be certified for payment and will be retained here.



Acting Comptroller General
of the United States