

Transportation
13859

DECISION



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

FILE: B-198337

DATE: May 30, 1980

MATTER OF: Lorenzo F. Findlay

DIGEST:

1. Claim for refund of costs recovered for excess weight of household goods shipped in connection with permanent change of official station may not be allowed in absence of evidence showing agency determination to be clearly in error.
2. Question whether and to what extent authorized weights have been exceeded in shipment of household effects of Government employee is considered to be matter primarily for administrative determination and ordinarily will not be questioned in absence of evidence showing it to be clearly in error.
3. Weights of prior or subsequent shipments of household goods are not relevant to determinations of weight of another shipment particularly when shipments have been made over extended period, under different circumstances and include situations involving inclusions and exclusions of household items.

An authorized certifying officer of the Department of Housing and Urban Development (HUD) has furnished our Office a copy of a voucher for \$273.84 payable to Lorenzo F. Findlay (Findlay) and requests, pursuant to 31 U.S.C. 82d, an advance decision whether that amount recovered for the shipment of an excess weight of household goods may be refunded.

Based upon the review which follows the voucher may not be certified for payment.

Pursuant to change of official station in September 1976, the household goods of Findlay were tendered to Trans-American Van Service, Inc. (Trans-American) on or about April 15, 1977, for transportation from Oxon Hill, Maryland, to Aurora, Colorado, under Government bill of

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lading (GBL) K-0412394. The shipment was weighed by United Iron & Metal Co., Inc., resulting in a net weight of 12,400 pounds which was 1,400 pounds more than the maximum weight authorized by law to be moved at Government expense. By Administrative Difference Statements, dated February 1, 1978, Findlay was billed by HUD and has paid \$189.14 for excess transportation charges on 1,400 pounds and \$84.70 for the excess storage, handling and delivery charges.

On or about March 23, 1979, nearly two years following the prior shipment, upon Findlay's retirement from service, the household goods were again shipped this time by Bekins Van & Storage Co. (Bekins), on commercial bill of lading No. 829950 from Aurora, Colorado, to Scottsdale, Arizona. The shipment was weighed by Metro Moving and Storage Co., Littleton, Colorado, resulting in a net weight of 7,680 pounds. Mr. Findlay states that the only difference in the goods shipped were that a Simmons Hide-A-Bed and a power lawn mower were in the first shipment but not in the second, but a large double-door refrigerator, a washer and a dryer, all purchased in Denver, were included in the second shipment while no such items were in the first shipment.

The record identifies TAV (Trans-American) Tender 448 as the governing rate publication of the first shipment. Tender 448 incorporates by reference Government Rate Tender (GRT) 1X. Item 240 of GRT 1X provides that upon request of an interested party prior to delivery the carrier will reweigh a shipment and applicable charges will be based on the lower weight. The record does not indicate any request for reweigh of either shipment.

Authority for transporting the household effects of transferred employees at Government expense is found at 5 U.S.C. 5724(a) (1976), which established 11,000 pounds as the maximum weight of goods authorized to be transported. The implementing regulations to that statute are found in the Federal Travel Regulations, FPMR 101-7, in effect at the time of the travel. FTR paragraph 2-8.2(a) repeats the 11,000 pound maximum weight allowance found in the statute, and provides in paragraph 2-8.4e(2) that the employee is responsible for the excess weight. Thus, the 11,000 pound weight limitation is statutory, and no Government agency or

employee has the authority to permit transportation in excess of the weight limitation. Therefore, regardless of the reasons for the shipment of the excess weight of household goods, the law does not permit payment by the Government of charges incurred incident to shipment of the excess weight. B-195256, November 15, 1979.

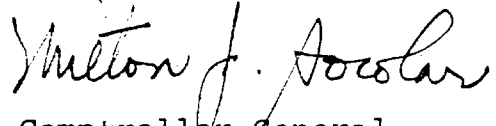
We have regularly held that the question of whether and to what extent authorized weights have been exceeded by the shipment of household effects is considered to be a matter primarily for administrative determination and ordinarily will not be questioned in the absence of evidence showing it to be clearly in error. See B-195256, November 15, 1979, and B-194961, July 23, 1979, and cases cited. The evidence upon which Findlay relies is as consistent with the second shipment having been underweighed as with the first shipment having been overweighed as alleged, or with both weighings being erroneous, and, therefore, does not clearly show the first shipment weight to be erroneous.

Common carriers of household goods by motor vehicle are required by regulation to have the tare and gross weights determined by a certified weighmaster or on a certified scale. 49 C.F.R. 1056.6 (1978). This appears to have been done, and the weight tickets in the file showing the gross weight and the tare weight, support the administrative determination of excess weight.

The weight of household goods in a particular shipment is a question of fact established by the shipping documents of that shipment and may not be established by the weight of a prior or a subsequent shipment, particularly when those shipments have been made over extended periods, here nearly two years, under different circumstances, and include situations involving inclusions and exclusions of household items. See B-158287, February 17, 1966; B-162530, March 13, 1970; B-175484, July 26, 1972; and B-195256, November 15, 1979.

Accordingly, on the basis of all the facts and evidence in this record, the weight of the first shipment and the administrative determination of

liability for excess weight have not been shown to be erroneous and the voucher for refund of charges for excess weight may not be certified for payment.

A handwritten signature in cursive script, reading "Milton J. Fowler".

For the Comptroller General
of the United States