118061 21453

DECISION

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

FILE: B-199780 DATE: April 8, 1982

MATTER OF: William A. Schmidt, Jr. - Transportation of household goods - Excess weight

DIGEST: 1. An employee whose household goods shipment exceeds his authorized weight must reimburse the Government in accordance with paragraph 2-8.3b(5) of the Federal Travel Regulations for the cost of transportation and other charges applicable to the excess weight. Since there is no way to discern which charges are applicable to the authorized weight and which charges are on account of the excess weight, the regulation provides a formula based on a ratio of excess weight to total weight as a proportion of the total charges. Accordingly, the net amount actually paid by the Government is for use in determining the pro rata portion of shipping charges for collection as excess weight charges.

2. Employee authorized to move 11,000 pounds under actual expense method claims that error was made in weighing his household goods because gross weight of shipment (44,050 pounds) exceeded the rated capacity of the scale (30,000 pounds) used to weigh shipment, thus invalidating weight certificate and placing accuracy of weight in reasonable doubt. Although employee has established that error was made in obtaining weight certificate for actual weight (14,800 pounds) of shipment, he is not relieved of liability for charges on 3,800 pounds of excess weight. To correct error, constructive weight of 15,169 pounds computed in accordance with paragraph 2-8.2b(4) of FTR is substituted for incorrect actual weight of 14,800 pounds. However, there is no additional liability for resulting increase in excess weight since Government only incurred expenses on 14,800 pounds.

Mr. William A. Schmidt, Jr., has requested reconsideration of that part of our decision B-199780, February 17, 1981, which established his liability for excess costs incurred in the transportation of his household goods in connection with his official change of station. We are affirming our disallowance of Mr. Schmidt's claim.

BACKGROUND

As a Department of Energy employee, Mr. Schmidt was officially transferred to a position in the Office of the Chief Counsel, Oak Ridge Operations, in July 1978. In connection with this transfer Mr. Schmidt shipped 14,800 pounds of household goods on Government Bill of Lading No. K-1106932 (actual expense method) from Gaithersburg, Maryland, to Concord, Tennessee, at a total cost to the Government of $2,461.30. Applying the 11,000 pound limitation set out in 5 U.S.C. § 5724(a)(2) and the procedure prescribed by paragraph 2-8.3b(5) of the Federal Travel Regulations (FTR) (FPMR 101-7, May 1973) for computing the charges payable by an employee for excess weight charges, we concurred with the agency's determination that Mr. Schmidt was liable to the Government in the amount of $631.96, for 3,800 pounds of excess weight. In so concluding we found that the agency had correctly applied the provisions of paragraph 2-8.3b(5) of the FTR in computing Mr. Schmidt's excess weight charges. We also held that the fact that the scales used to weigh his shipment were rejected by state officials 15 months after his move did not establish clear error in the weight of Mr. Schmidt's shipment, and was, therefore, of insufficient probative value to relieve him of his liability for the excess weight charges.

COMPUTING EXCESS WEIGHT CHARGES

In paragraph 2-8.3b(5) of the FTR a procedure is prescribed for determining the charges payable by the employee for excess weight when the actual expense method of shipment is used. That paragraph reads as follows:

> "(5) Excess weight procedures. When the weight of an employee's household goods exceeds the maximum weight limitation, the total quantity

> may be shipped on a Government bill of lading, but the employee shall reimburse the Government for the cost of transportation and other charges applicable to the excess weight, computed from the total charges according to the ratio of excess weight to the total weight of the shipment."

Applying the formula to the facts of Mr. Schmidt's claim - using 14,800 pounds as the total weight, 3,800 pounds as the excess weight and $2,461.30 as the total charges - resulted in an excess weight charge of $631.96, computed as follows:

Step 1: $\frac{\text{Excess weight}}{\text{Total weight}}$ = Ratio to be applied

Step 2: Ratio x Total charges = Employee's share

Step 1: $\frac{3,800}{14,800} = 0.2567$

Step 2: 0.2567 x $2,461.30 = $631.96

Mr. Schmidt questioned this result stating that the computation failed to subtract those expenses which would have been incurred by the Government irrespective of the actual weight of the shipment, such costs incurred bearing no relationship to the weight of the shipment included a "per-shipment charge" of $39; a piano handling charge of $15; a washer charge of $10; and an origin surcharge of $74.

Our decision B-199780, February 17, 1981, emphasized that the excess weight charge computation provided in paragraph 2-8.3b(5) of the FTR is predicated on the actual net excess weight as a percentage of the total weight of the shipment multiplied by the total charges. Thus, since the Federal Travel Regulations have the force and effect of law, the provision may not be waived or modified by the employing agency or the General Accounting Office regardless of the existence of any extenuating circumstances. We then concluded that we were unaware of any additional authority which would permit the agency to prorate transportation charges, origin charges, or other shipment charges.

On appeal, Mr. Schmidt contends that our reading of paragraph 2-8.3b(5) of the FTR and, thus, our method of computing excess weight charges is incorrect. Mr. Schmidt frames his argument as follows:

> "5 U.S.C. 5724(a) applies the 11,000 lb. weight limitation to only 'the expenses of transporting, packing, crating, temporarily storing, draying, and unpacking... household goods and personal effects.' Please note that none of these terms appear to cover expenses which by their nature bear no relationship whatsoever to the weight of the shipment, e.g., a 'pershipment' charge, a piano handling charge, a washer appliance charge (take down and set up), and an origin surcharge. Moreover, the implementing regulation, FTR 2-8.3b(5) in addressing the computation of excess weight likewise states that: '... the employee shall reimburse the Government for the cost of transportation and other charges applicable to the excess weight, computed from the total charges according to the ratio of the excess weight to the total weight of the shipment.' (Underlining added.) Here again, the regulation separates weight-related expenses of transportation and other charges (such as packing and unpacking) from those charges which are not related, by the use of the phrase 'applicable to the excess weight' and the phrase 'computed from the total charges.' If it was not the intent of the drafters of this regulatory language to so separate weight-related charges from nonweight-related charges, there was no need for the phrase 'computed from the total charges.' The formula applied by the subject decision utilizes total charges and ignores the clear language of the regulation 'computed from the total charges.' Accordingly,

it would appear appropriate that in computing employee liability that the expenses which are not related to the actual weight of the shipment should not be included in the formula or equation. In my particular case, this amounts to a dollar reduction from the total charges of $138.00 comprised of $39.00 for a 'per shipment charge,' $15.00 for a piano handling charge, $10.00 for the washer appliance charge, and $74.00 for an origin surcharge * * *."

We believe the express provision of 5 U.S.C. § 5724(a)(2) precludes favorable consideration of Mr. Schmidt's contention. The statute provides for reimbursement of the expenses of transporting, packing, crating, temporarily storing, draying, and unpacking of an employee's household goods and personal effects not in excess of 11,000 pounds net weight. The piano handling charge, washer appliance charge, per-shipment charge and origin surcharge, were all expenses incurred by the Government to pack, transport and unpack Mr. Schmidt's household goods and personal effects. Such expenses are ordinarily and customarily incurred by the Government under the actual expense method in the knowledge that utilizing the actual expenses method of shipment (Government Bill of Lading) in the given case will nevertheless result in costs to the Government substantially lower than the commuted rate. See for example Alan Lee Olson, B-191518, October 10, 1978.

Under the actual expenses method an employee whose household goods shipment exceeds the maximum of 11,000 pounds has the option of shipping the excess weight on his own or to allow it to be shipped on a GBL together with the 11,000 pounds authorized and reimbursing the Government for the excess weight using the formula as prescribed in paragraph 2-8.3b(5) of the FTR. Under the formula the employee must reimburse the Government for the cost of transportation and other charges applicable to the excess weight. Since there is no way to discern which charges are applicable to the authorized 11,000 pounds, and which charges are on account of the excess weight, the regulation provides an equitable estimation based on the ratio of the excess weight to the total weight as a proportion of the total charges. The net amount

actually paid by the Government is for use in determining the pro-rata proportion of shipping charges for collection from Mr. Schmidt and, as $2,461.30 was paid for packing, transporting and unpacking his household goods and personal effects, that amount should be used in determining the excess cost. See 22 Comp. Gen. 2 (1942). Mr. Schmidt's appeal on this issue is not meritorious.

VALIDITY OF THE WEIGHT CERTIFICATE

In connection with our initial consideration of his claim Mr. Schmidt contended that because the scales used for determining the weight of his household goods shipment were themselves inspected in October 1979 and failed to meet specifications and tolerances, the determination of the weight of his shipment in July of 1978 was clearly in error. As a result, Mr. Schmidt concluded, since the Government did not have substantiation or evidence to support its contention that his household goods exceeded 11,000 pounds, he was not liable for any excess weight charges.

In our February 17, 1981, decision in Mr. Schmidt's case, we held that the question of whether and to what extent authorized weights have been exceeded in the shipment of household effects is a question of fact primarily for administrative determination and ordinarily will not be questioned in the absence of evidence showing it to be clearly in error. Absent other sufficient evidence that the agency's reliance on a valid weight certificate in determining excess weight was clearly in error, the fact that the scales used were found to be inaccurate 15 months after the employee's shipment was of insufficient probative value to relieve the employee of liability for excess weight charges.

In so holding we compared specific findings presented in the record and reasoned in part as follows:

> "By his own account Mr. Schmidt's contention turns on a scale discrepancy that was detected 15 months after the shipment of his household goods. We do not believe that such evidence is dispositive of whether

the scales were defective at the time of his shipment. Moreover, the administrative record shows that in response to Mr. Schmidt's allegation the carrier prepared a computation of the constructive weight of Mr. Schmidt's shipment by listing the items from the packing inventory on a cube sheet and multiplying the cubic feet by 7 pounds. See paragraph 2-8.2b(4) of the FTR. The resulting cubed weight was 15,169 pounds as compared to the weight charged of 14,800 pounds. This computation is also not dispositive of Mr. Schmidt's allegation; but, it does reflect a form of consistency that appears to indicate that the weight established by the scales at the time of Mr. Schmidt's shipment in July 1978 was not grossly inflated upward."

Mr. Schmidt renews his initial contention on appeal and has submitted a range of documentation and analysis challenging the validity of the weight certificate used to establish the weight of his household goods shipment in July 1978. In essence Mr. Schmidt points out that the rated capacity of the scales used to weigh his household goods shipment was 30,000 pounds, yet the purported gross weight of his shipment was 44,050 pounds as indicated on the weight certificate. Citing pertinent provisions of the Tennessee Code Annotated and incorporating a letter from Tennessee's Supervisor of Weights and Measures, Mr. Schmidt persuasively establishes that no accurate determination could be made from weights that exceed the particular scale's specified rated capacity. This inaccuracy goes directly to the weight certificate, which itself cannot be considered evidence of the accuracy of the weights shown. Thus, Mr. Schmidt concludes, and we concur with his analysis, that the discrepency created by using a scale to weigh a load the value of which exceeded the rate capacity of the scale, serves to invalidate the weight certificate and place the accuracy of the weight of the material weighed in reasonable doubt.

However, resolution of the issue of the validity of the weight certificate in Mr. Schmidt's favor is itself not ultimately dispositive of whether and in what amount he is liable for excess weight charges. Mr. Schmidt would

argue that the agency's reliance in reimbursing the mover on such an improper weight certificate was clearly in error and he should not be bound by the agency's determination made on such a basis. Thus, he should be relieved from any liability for an alleged excess in the weight of his household goods shipment.

Here, we do not agree. Where an error has been committed in determining the net weight of household goods shipped by the actual expense method under a Government Bill of Lading, a constructive shipment weight should be obtained based on 7 pounds per cubic foot as provided for by paragraph 2-8.2b(4) of the Federal Travel Regulations. See Charles Gilliland, B-198576, June 10, 1981. To correct the error, the constructive weight of the misweighed shipment should be computed and substituted for the incorrect actual weight.

As we noted in the analysis quoted from our February 17, 1981, decision, the carrier prepared a computation on the constructive weight of Mr. Schmidt's shipment by listing the items from the packing inventory on a cube sheet and multiplying the cubic feet by 7 pounds in accordance with paragraph 2-8.2b(4) of the FTR. The resulting cubed weight was 15,169 pounds as compared to the weight charged of 14,800 pounds.

As a result, Mr. Schmidt's total net weight would be increased by 369 pounds, and applicable excess weight charges would be increased commensurately. However, since the Government only paid the carrier on 14,800 pounds as specified on the transportation voucher, there is no reason to now extend Mr. Schmidt's liability beyond the amount of $631.96 for excess weight charges on 3,800 pounds. That amount must be recovered by the Government.

Milton J. Socolar

for Comptroller General
of the United States