

**DECISION**

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

**FILE:** B-206704

**DATE:** October 28, 1982

**MATTER OF:** James C. Wilson - Transportation of  
Household Goods - Excess Weight

**DIGEST:**

1. Transferred employee was assessed weight charges for 4,300 pounds over statutory maximum household goods shipment of 11,000 pounds. Mover admitted that weight certificates were invalid because 200 pounds unrelated to employee's move were included in weight due to unintended error and for which mover made refund to Government. The invalidation of the weight certificates does not mean that the Government may not claim excess weight costs in the move; rather, a constructive shipment weight should be obtained under paragraph 2-8.2b(4) of the Federal Travel Regulations.
2. To correct error resulting from invalidation of weight certificates the constructive weight of the household goods shipment should be computed and substituted for the incorrect actual weight. Where the constructive weight under paragraph 2-8.2b(4) is unobtainable the weight of the shipment must be determined by other reasonable means. Here mover's evidence supporting revised constructive weight determination is un rebutted by employee, is the only evidence of record on the correct weight of the shipment, and is not unreasonable. Excess weight charges should be computed on the revised constructive weight.

Mr. James C. Wilson has been notified by the Department of Health and Human Services of his obligation to reimburse the Government for excess weight charges in connection with the shipment of his household goods upon transfer of official duty station in November 1978. The

mover admitted that the weight certificates for Mr. Wilson's shipment were invalid because they included a maximum of 200 pounds which were unrelated to Mr. Wilson's shipment. Mr. Wilson believes the weight is incorrect and that he is relieved from any liability for an alleged excess in the weight of his household goods shipment.

The invalidation of the weight certificates does not mean that the agency may not claim excess weight costs in the move. Where the parties have been unable to obtain a constructive shipment weight under paragraph 2-8.2b(4) of the Federal Travel Regulations (FTR) (FPMR 101-7, May 1973), and since the only substantive evidence of record on the weight of Mr. Wilson's shipment is the revised total submitted by the carrier, we find that Mr. Wilson has failed to meet the burden of proving his claim as to the actual weight of his household goods shipment and is liable for excess weight charges.

On November 30, 1978, Mr. Wilson's household goods were moved under Government Bill of Lading No. L-0364516 from Meridian, Idaho, to Kirkland, Washington, because of his transfer of official station as an employee of the Department of Health and Human Services. The agency reports the development of Mr. Wilson's claim as follows:

"On December 26, 1978, an invoice was received from Cartwright Van Lines for shipment of household goods for Mr. James C. Wilson pursuant to GBL #L-O-,364,516 (Attachment A). This invoice included charges for 4,300 pounds of excess weight. The invoice was paid in full, and Mr. Wilson was notified of his obligation to reimburse the government the amount of \$714.23 for the excess weight (Attachment B). Mr. Wilson responded by disputing the weight charged by Cartwright and submitted a statement by his wife to the effect that the truck(s) on to which their household

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goods were shipped contained material which did not belong to them (Attachment C). Based upon this, the matter was referred to the General Services Administration for resolution. During this time, Cartwright sent a check to us in the amount of \$33.22 for 200 pounds which they admitted had been erroneously billed to the government for the subject move (Attachment D). Mr. Wilson still believed that the weight was incorrect and refused to pay."

Authority for transporting the household effects of transferred employees at Government expense is found at 5 U.S.C. § 5724(a) (1976), which also establishes the maximum weight of the goods authorized to be transported at Government expense as 11,000 pounds. The implementing regulations to that statute are found in the FTR. Paragraph 2-8.2a of the FTR repeats the 11,000 pound maximum weight allowance found in the statute. Paragraph 2-8.4e(2) 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. Therefore, regardless of the reasons for the shipment of the excessive weight of household goods, the employee is required to pay the Government the charges incurred incident to the shipment of the excess weight. George R. Halpin, B-198367, March 26, 1981.

We have consistently held that whether and to what extent authorized shipping weights have been exceeded in the shipment of household goods and the excess costs involved are questions of fact primarily for determination by the administrative agency which, ordinarily, we will not question in the absence of evidence showing such determinations to be clearly in error. Where the transportation voucher prepared by a mover in support of its charges is supported by a valid weight certificate or weight tickets, in the absence of fraud or clear error in the computation, the Government must rely on

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the scale certifications of record in computing the excess costs. Fredric Newman, B-195256, November 15, 1979. Thus, absent computational errors, or fraud, the Government is bound by a weight certificate unless the certificate is shown to be invalid. In order to show invalidity, one must show that the certificate is clearly in error. See Charles Gilliland, B-198576, June 10, 1981.

In this case, the invalidity of the net weight has been established. Mr. Wilson has charged that after the shipment was weighed, the carrier's agents were seen transferring from the truck, items that were not part of the Wilson's property. Statements filed by the drivers and the agent verify that this was the case.

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

This argument must fail because the invalidation of the weight certificates does not mean that the agency may not claim excess weight costs in the move. In William A. Schmidt, Jr., B-199780, April 8, 1982, 61 Comp. Gen. \_\_\_\_\_, we held that 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 FTR. To correct the error, the constructive weight of the misweighed shipment should be computed and substituted for the incorrect actual weight. And, in Major James S. True, USAF, B-206951, July 12, 1982, we cited the

Schmidt and Gilliland cases to show that after an invalidation of weight tickets occurs, the weight of the shipment must be determined by other reasonable means.

The constructive weight of Mr. Wilson's household goods shipment does not appear in the record and owing to the lengthy administrative consideration of this claim we must presume that such a computation under paragraph 2-8.2b(4) of the FTR is at this point unobtainable. Thus, we consider the following view of the Director, Transportation and Travel Management Division, General Services Administration (GSA), in his final report to the agency on Mr. Wilson's claim:

"The Government has a definite interest in resolving the matter, but since there was no Government representative on the scene at the time, the circumstances can only be determined as accurately as possible from those who were present. In this regard, it would seem that the next step would be for Mr. Wilson to present any statement or evidence he may have to establish a different net weight than that arrived at by the carrier."

The record shows that the carrier furnished copies of statements filed by the drivers and the carrier's local agent which identify the extraneous items as a copy machine and two boxes of office effects having a maximum weight of 200 pounds. The carrier revised the total billing weight down to 15,100 pounds and refunded \$33.22 to the agency based upon this figure. We agree with GSA's observation that "the fact that the driver(s) apparently allowed contraband (personal non-revenue-property) to be weighed with the Wilsons' load, and did nothing to correct or explain their actions until asked to file statements several months later, may leave some question as to the reliability of such statements."

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Nevertheless, these facts and explanations are themselves unrebutted in the record before us, and standing alone they are not unreasonable. Mr. Wilson has presented no substantive evidence beyond his allegation of an improper weight that refutes the carrier's explanation of unintended error. Nor has Mr. Wilson submitted any evidence to show that the actual weight of his household goods was any other figure than the revised weight determination established by the carrier. Further, we note from the driver's statement in the record that Mr. Wilson apparently shipped a boat and a motorcycle. Both of these items are excluded from the definition of household goods and cannot be shipped at Government expense. See FTR paragraph 2-1.4h.

We are also mindful that Interstate Commerce Commission Regulations provide that the shipper or his representative can witness the original weigh or a reweigh for which he has a right to request. See 49 C.F.R. § 1056.6 (1978). Thus, Mr. Wilson could have witnessed the original weigh or could have requested and witnessed a reweigh.

Mr. Wilson says that the weight of his household goods shipment is incorrect; however he adds nothing to the evidential record before us to support his contention. Thus, on the basis of the administrative record before us, we conclude that Mr. Wilson has failed to meet his burden of proof under section 31.7 of Title 4, Code of Federal Regulations, and is liable for excess weight charges computed as set forth below. See Robert W. Dolch, B-197003, February 20, 1980.

Paragraph 2-8.3b(5) of the FTR prescribes a procedure 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. Wilson's claim--using the revised figure of 15,100 pounds as the total weight, 4,100 pounds as the excess weight and \$2,535.61 as the total charges--results in an excess weight charge of \$688.42, computed as follows:

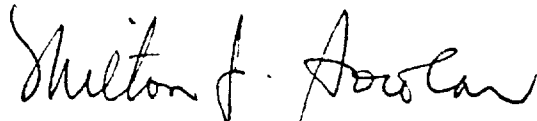
Step 1:  $\frac{\text{Excess weight}}{\text{Total weight}} = \text{Ratio to be applied}$

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

Step 1:  $\frac{4,100}{15,100} = 0.2715$

Step 2:  $0.2715 \times \$2,535.61 = \$688.42$

As our decision in the Schmidt case emphasized, 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 are unaware of any additional authority which would permit the agency to prorate transportation charges, origin charges, delivery or other shipment charges.



Acting Comptroller General  
of the United States