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DECISION



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

FILE: B-210713

DATE: May 17, 1983

MATTER OF: Charles L. Eppright

DIGEST:

1. An employee is indebted to Government because he exceeded his authorized weight allowance for shipment of household goods. He claims the weight of his shipment from Germany to Michigan should have been reduced by 15 percent for weight of bracing and padding material. Weight receipts show that padding and bracing materials returned to the warehouse were weighed separately and their weight was included in tare weight of shipment. Since weight of padding and bracing was, therefore, excluded from net weight, employee is not entitled to 15 percent reduction under Volume 2 of the Joint Travel Regulations, paragraph C7050-2c.

2. An employee is indebted to Government because he exceeded his authorized weight allowance for shipment of household goods. He claims weight for shipment of household goods from California to Michigan was erroneous. Although he claims that his wife witnessed a reweigh that reduced the weight over 300 pounds, in the absence of weight certificates or other demonstrative evidence to support this allegation, we must accept the agency determination that the weight stated on the Government Bill of Lading was correct.

3. An employee states that he moved 12 times in 16 years preceding move for which he became indebted to Government for exceeding the authorized weight allowance. He indicates

that he never exceeded authorized weight allowance previously. However, weights of previous shipments are not relevant to determining weight of disputed shipment since inclusions and exclusions of household goods may have occurred.

By letter of September 9, 1982, Mr. Charles L. Eppright appealed our Claims Group's determination of his indebtedness for the excess weight of household goods shipped incident to his transfer as a civilian employee of the Department of the Army. Based on our determination that the weight of the goods shipped was correctly determined, we sustain the action of the Claims Group.

Incident to his transfer from Germany to Michigan in 1974, the claimant was authorized to ship household goods weighing not in excess of 11,000 pounds, the maximum that may be shipped at Government expense under 5 U.S.C. 5724(a). His household goods were transported from Germany to Michigan in two shipments under Government Bills of Lading (GBL) No. K-6,601,225 and No. K-6,601,245 reflecting net weights of 10,663 pounds and 282 pounds, respectively. Additional household goods taken out of storage in California were shipped to Michigan under GBL No. K-6,682,341 reflecting a net weight of 4,380 pounds. Based on a reweigh the net weight of the goods transported under GBL No. K-6,601,225 was determined to be 9,660 pounds and Mr. Eppright was given a 15 percent allowance for bracing and padding under GBL No. K-6,601,245, reducing the net weight of that shipment to 240 pounds. Since the net weights of the household goods transported under the three Government Bills of Lading totaled 14,280 pounds, Mr. Eppright was billed \$787.15 for transportation charges attributable to the 3,280 pounds by which his household goods shipment exceeded the 11,000-pound statutory maximum.

Mr. Eppright questioned the Army's determination of excess weight. He did not specifically challenge the 9,660-pound net weight of the larger shipment from Germany as determined by the reweigh. However, he claimed a 15 percent allowance for bracing and padding materials which would reduce the net weight of that shipment to 8,211 pounds. For the California shipment, he believed that the correct weight should have been 4,050 pounds based on a reweigh witnessed by his wife. The Army and the Claims Group denied a 15 percent

allowance on the larger shipment from Germany on the basis that the tare rather than the net weight of the shipment included the weight of bracing and padding. Absent documentation of a lower weight, the Army and the Claims Group accepted the 4,380-pound net weight of the California shipment stated in the GBL.

In appealing from the Claims Group's determination, Mr. Eppright asserted that the weight of packing materials was not in fact excluded from the net weight of the larger shipment from Germany and that the 15-percent reduction for that shipment should have been allowed. He suggested that a reweigh of that shipment would have resulted in a further reduction if it had been witnessed by the contracting officer's representative and he stated that the driver's failure to obtain documentation and thus to comply with an official request to reweigh the California shipment resulted in an erroneous determination of the net weight of that particular shipment. He stated that incident to his earlier move to Germany he had reported to the contracting officer that he believed the weight of goods placed in storage had been overstated by as much as 1,500 pounds and had been advised that any discrepancy should be resolved by reweighing the shipment when it was removed from storage. He added that his household goods were transported at Government expense incident to twelve earlier moves and had never exceeded the applicable 11,000-pound limitation.

The net weight of a shipment is equal to the gross weight minus the tare weight. The proper means of determining the net weight of a shipment such as Mr. Eppright's containerized shipment from Germany is addressed by the following provision from paragraph C7050-2c of Volume 2 of the Joint Travel Regulations:

"c. Containerized Shipments. When special containers designed normally for repeated use, such as lift vans, CONEX transporters, and household goods shipping boxes are used and the known tare weight does not include the weight of interior bracing and padding materials but only the weight of the

container, the net weight of the household goods shall be 85% of the gross weight less the weight of the container. If the known tare weight includes interior bracing and padding materials so that the net weight is the same as it would be for uncrated shipments in interstate commerce, the net weight shall not be subject to the above reduction. If the gross weight of the container cannot be obtained, the net weight of the household goods shall be determined from the cubic measurement on the basis of 7 pounds per cubic foot of properly loaded container space."

Under this regulation Mr. Eppright's entitlement to a 15 percent reduction in the net weight of the larger shipment from Germany depends on the correctness of the agency's factual determination that the weight of bracing and padding materials was included in the tare weight of the shipment.

Where the record does not establish whether the weight of interior bracing and padding materials was included in the tare weight indicated on official weight documents, we have given the employee the benefit of a presumption that it is not included in the tare weight. In these circumstances we have allowed a 15 percent reduction in the net weight of the household goods shipped. See Matter of Tucker, 60 Comp. Gen. 300 (1981) as modified in other respects by Matter of Selner, 61 Comp. Gen. 452 (1982). In Mr. Eppright's case it would be inappropriate to apply that presumption since the weight certificates themselves establish that the tare weight determined at the time of reweighing included the weight of bracing and padding materials. The net weight of 9,660 pounds was based on a gross weight of 43,500 pounds less a tare weight of 33,840 pounds. That tare weight figure is the sum of separate tare weights of 24,790 and 8,220 pounds and an additional factor of 830 pounds. As shown on a separate weight certificate, that 830 pounds is the difference between the gross and tare weights of a vehicle "used to haul trash and packing material back to whse." Thus, the 830 pounds included in the aggregate tare weight figure is the weight of reusable as well as excess packing, padding and bracing materials. The weighing procedure used by the carrier appears to be in compliance with the requirements of the Personal Property Traffic

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Management Regulations (DOD 4500.34-R) that for "Code 4" containerized shipments, the weight of padding, blocking and bracing material used to secure the shipment will be included in the tare weight.

While we are obliged to disallow Mr. Eppright's claim for a 15 percent reduction in the net weight of the larger shipment from Germany, we note that the net weight figure of 9,660 pounds includes the weight of some packing materials. As distinguished from the treatment of padding, blocking and bracing materials, DOD 4500.34-R provides that the carrier will invoice for the net weight of the shipment which will consist of actual goods plus cartons, barrels, drums and wardrobes used to pack fragile articles and the necessary wrapping, packing and filler material. The 15 percent reduction is not authorized for these materials.

In regard to the California shipment, Mr. Eppright's basic contention is that the carrier failed to properly comply with his request to reweigh the shipment. As previously noted, the claimant does allege that his wife was present at a reweigh but this reweigh never resulted in any official weight tickets being received by the Army. In the absence of such weight certificates and since no agency representative witnessed the reweigh, the Army was required to accept the weight of 4,380 pounds recorded on the GBL.

The general rule is that a carrier's failure to comply with a request for a reweigh of household goods does not give an employee a basis to dispute the recorded weight. See e.g., Matter of Newman, B-195256, November 15, 1979. Therefore, since it is for an agency to determine the weight of household goods shipped, we generally do not take issue with the agency's administrative determination. See Matter of Combs, 60 Comp. Gen. 336, 339 (1981); and Matter of Brown, and Schmidt, B-199780, February 17, 1981. Indeed, it is only if the record reveals clear error that a claimant will have met his burden to prove that the recorded weight was incorrect. Matter of Martello, B-198561, December 24, 1980. There is nothing in the record that evidences there was clear error in the recorded weight. In reaching this conclusion we have considered Mr. Eppright's allegations regarding the reweigh; however, in the absence of further evidence these allegations are not the type of evidence necessary to establish clear error.

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The above discussion addresses all but the argument implicit in Mr. Eppright's contention that his prior shipments of household goods did not exceed the 11,000 pound statutory maximum. It continues to be our view that the weight of prior or subsequent shipments is not indicative of the weight of a shipment of household goods because of the possibility of inclusion or exclusion of items which would vary the prior weight or subsequent weights. Matter of Subotnik, B-206698, November 30, 1982, citing Matter of Halpin, B-198367, March 26, 1981. See also Matter of Findlay, B-198337, May 30, 1980, and cases cited therein.

Accordingly, we sustain the denial of Mr. Eppright's claim by the Claims Group.

for *Shelton J. Aocolan*
Comptroller General
of the United States