

DROWNED
PLM-II

DECISION



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

27676

FILE: B-212818

DATE: March 13, 1984

MATTER OF: Robert P. Auber

DIGEST:

A manpower shortage category appointee who was authorized transportation of household goods by Government bill of lading chose instead to make his own shipping arrangements. He may not be reimbursed for actual expenses in excess of the commuted rate for shipping his household goods to his first duty station on the basis of the Federal Tort Claims Act or under principles of contract law.

This decision discusses the claim of Mr. Robert P. Auber, an employee of the Department of the Air Force, for additional reimbursement for the cost of transporting his household goods.¹

BACKGROUND

Mr. Auber was appointed to the position of Patent Attorney, GS-1222-13, by the Department of the Air Force effective June 2, 1982. As an appointee to a manpower shortage category position, he was eligible for the travel and relocation expenses authorized by 5 U.S.C. § 5723. By travel authorization, issued May 12, 1982, Mr. Auber was authorized shipment of household goods under a Government bill of lading. However, the household goods were not shipped by the Government under a Government bill of lading. Mr. Auber made his own arrangements and his household goods were shipped by a commercial mover at a cost of \$2,503.31. His reimbursement was limited to \$1,564.20, the amount allowable under the schedule of commuted rates. Mr. Auber claims reimbursement for amounts in excess of the commuted rate based on the actual expenses he incurred for transporting his household goods.

¹This decision is issued at the request of Mr. Auber, who by letter of August 17, 1983, appealed Settlement Certificate No. Z-2850505, issued July 27, 1983, which held that reimbursement is limited to the commuted rate schedule and denied his claim for actual expenses in excess of the commuted rate.

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CLAIM BASED ON TORT LAW

Mr. Auber contends that he is entitled to reimbursement of his actual expenses under the Federal Tort Claims Act, 28 U.S.C. § 2671 et seq. (1982). This claim is based on his assertion that Government employees were negligent in failing to inform him of possible limitations on reimbursement of moving expenses. He points out that his travel authorization contained an estimated cost of \$3,805 for per diem, travel and other expenses and that he was not informed that his transportation of household goods would be limited to the commuted rate in the event that he made his own transportation arrangements.

With regard to Mr. Auber's contention that he is entitled to reimbursement of his actual expenses under the Federal Tort Claims Act, we point out that under section 2672 the head of the Federal agency concerned, not the General Accounting Office, is responsible for settling a claim under the Act. Once this administrative remedy is exhausted, the appropriate United States District Court then has jurisdiction of civil actions on claims under the Act. 28 U.S.C. § 1346(b).

Not all tort claims are cognizable under the Federal Tort Claims Act. The doctrine of sovereign immunity, which precludes bringing an action against the Government, still applies to:

"Any claim based upon an act or omission of an employee of the Government, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation be valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Government, whether or not the discretion involved be abused." 28 U.S.C. § 2680.

In this regard see Clark v. United States, 198 Ct. Cl. 593 (1972), cert denied, 409 U.S. 1028 (1972). Mr. Auber's tort claim, if not barred by section 2680, would be properly brought before the Department of the Air Force. As our Office has no authority to settle that claim, we sustain the Claims Group's action in this regard. See Matter of Brown, B-201773, March 4, 1981.

CLAIM BASED ON CONTRACT LAW

Mr. Auber contends that he is entitled to reimbursement of the actual cost of moving his household goods based on contract law. He states that he was not a Government employee at the time travel to his first duty station was authorized, and, therefore, he cannot be charged with constructive notice of regulations applicable to Government employees. Thus, he contends that his reimbursement may not be limited to the commuted rate, and that the Government is bound by its contractual agreement, as evidenced by the estimated cost contained in his travel authorization, to reimburse his actual expenses up to \$3,805.

With regard to Mr. Auber's contention that the Government is contractually bound to reimburse him up to \$3,805 in moving expenses, we note that Federal employment does not give rise to a contractual relationship in the conventional sense. Bers v. United States, 207 Ct. Cl. 941 (1975). Federal employees are appointed and serve only in accordance with applicable statutes and regulations, and the ordinary principles of contract law do not apply. Matter of Elder and Owen, 56 Comp. Gen. 85 (1976); Matter of Peak, B-199251, November 18, 1980. Thus, there is no basis to consider Mr. Auber's claim for reimbursement based on contract law, and the Claims Group's action in this regard is sustained.

ENTITLEMENT TO REIMBURSEMENT
FOR SHIPPING HOUSEHOLD GOODS

Where shipment of household goods is authorized and both the point of origin and new duty station are within the continental United States, shipment may be made under the commuted rate system or the actual expense method depending upon cost. Under the actual expense method the Government is the shipper. It issues a Government bill of lading and reimburses the carrier the applicable transportation charges. Under the commuted rate system the employee is responsible for shipping his own household goods, and he is reimbursed in accordance with the General Services Administration Commuted Rate Schedule. Shipment by Government bill of lading is to be authorized only when it will result in a savings to the Government over the cost of the commuted rate system. Joint Travel Regulations, Volume 2, paragraph C8001-4.

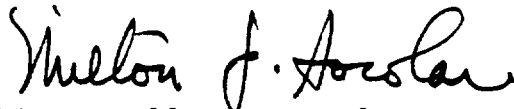
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An employee may be reimbursed under the actual expense method only where the Government has both authorized and shipped his effects on a Government bill of lading. Where an employee has been authorized shipment under Government bill of lading, but shipped his household goods under his own arrangements with a commercial carrier, we have held that the employee is to be reimbursed under the commuted rate system. Matter of Mullinax, B-181156, November 19, 1974, and Matter of Villarosa, B-201615, September 1, 1981. In the case of individuals employed other than by the Department of Defense that rule has been superseded by the specific regulatory provision of 41 C.F.R. 101-40.203-2(b) limiting reimbursement to the lower cost of shipment by Government bill of lading. See Matter of Phillips, 62 Comp. Gen. 375 (1983). That regulation does not apply, however, to employees of the Department of Defense. 41 C.F.R. 101-40.000. Thus, the Air Force properly reimbursed Mr. Auber under the commuted rate system.

CONCLUSION

Mr. Auber was authorized shipment by the actual expense method using a Government bill of lading. However, he made his own arrangements and shipped his household goods on a commercial bill of lading. Under these circumstances he is entitled to be reimbursed for the shipment of his household goods under the commuted rate system. It appears that he has been reimbursed by the Air Force for movement of his household goods at the commuted rate. Since Mr. Auber has been properly reimbursed under applicable regulations and our decisions for the expenses he incurred in moving his household goods, the action of the Claims Group in denying his claim for reimbursement of actual expenses is sustained.

for 
 Comptroller General
 of the United States