

Board of Contract Appeals
General Services Administration
Washington, D.C. 20405

February 6, 2002

GSBCA 15641-RELO

In the Matter of DAVID L. FOSTER

David L. Foster, Grand Haven, MI, Claimant.

Brenda H. Mixon, Chief, Travel Division, Finance Center, United States Army Corps of Engineers, Millington, TN, appearing for Department of the Army.

BORWICK, Board Judge.

In this matter, Mr. David L. Foster seeks reimbursement from the United States Army Corps of Engineers under the commuted rate system for the shipment of his household goods (HHG) when he transferred from Fort Wayne, Indiana, to Grand Haven, Michigan. The agency reimbursed claimant using a Government Bill of Lading (GBL) rate for the move and a General Services Administration (GSA) estimate for storage-in-transit rate. We conclude that the agency misapplied the pertinent provisions of the Joint Travel Regulations (JTR) and we grant the claim. Claimant is entitled to be reimbursed for his move based on the commuted rate schedules for both the move and storage-in-transit costs.

The facts shown by the record are as follows. By orders issued on October 26, 1999, the agency transferred claimant in the interest of the Government from Fort Wayne, Indiana, to Grand Haven, Michigan. Among other entitlements, the agency authorized claimant shipment of HHG and temporary storage of those goods for a period not to exceed ninety days.

The agency states that, before issuing the authorization, it had conducted a cost comparison of moving claimant's HHG by commuted rate and by GBL. The agency says it determined that moving the HHG by commuted rate would cost the agency \$5706 and that moving the HHG by GBL would cost the agency \$4752. The agency explains that the cost comparison was made "in the usual manner," i.e., the person who made the cost comparison "was given the 'To' and 'From' locations for the Shipment of [HHG] for the PCS move. She called us back with two figures: Commuted Rate of \$5706 and GBL rate of \$4752."

When issuing the authorization, the agency did not specifically advise claimant that it had conducted a cost comparison and had found the GBL rate to be the less expensive

method of moving claimant's HHG. The agency did not authorize a particular method of shipment (commuted rate or GBL method). Instead, the agency stated in the authorization:

SHIPMENT OF HHG NTE [not to exceed] 18,000 LBS IS AUTHORIZED VIA GOVERNMENT BILL OF LADING (GBL) OR COMMUTED RATE SYSTEM. HOWEVER, REIMBURSEMENT WILL BE MADE ONLY FOR THE LESSER AMOUNT OF THE TWO.

Claimant states that, beginning on October 27 through January 13, 2000, claimant made arrangements for his move. During this period (he does not tell us precisely when) claimant: "called the [agency's] Transportation Office to inquire as to a GBL and was told that an individual GBL move is more expensive than the commuted rate. Based on this conversation I chose to accomplish the move myself."

Claimant states that, in moving himself, he moved 15,300 pounds by commercial carrier and personally moved 7970 pounds. Claimant maintains he is entitled to be reimbursed per the commuted rate schedule as follows: \$8097 for the commuted line haul rate of 18,000 pounds, \$6597 for normal accessorial services, \$504 for insurance for the shipment of HHG, \$91.50 for the shipment of a piano "at origin and destination," \$776.72 for an "auxiliary van" at the origin, and \$2905.95 for storage-in-transit (SIT) of the HHG. The total is \$18,194.50.¹

Claimant states that for normal accessorial services, "I performed all the services except putting mattresses in boxes for SIT." Claimant derives the \$2905.95 SIT portion of his claim by including \$1906.20 for pickup and delivery, \$57.19 for fuel surcharge by carrier, \$626.54 for the first day of storage, and \$316.02 as storage charge for seventeen days pro-rated from the eighty-nine day charge of \$1654.47. He used SIT rates charged by his commercial carrier.

The agency paid claimant \$8350.87. That figure was composed of \$7097.89 for what the agency stated was the "lowest GBL estimate from the GSA Interagency Traffic Management System (GSA-ITMS) Household Goods Shipment Estimate" and \$1252.98 for SIT. The agency took the GSA-ITMS estimate for ninety days of SIT (\$6265.32), divided by ninety to obtain a daily rate (\$69.61), and multiplied by eighteen days to obtain the total due for SIT. Claimant reported for duty at his new station on January 18, 2000.

The Federal Travel Regulation (FTR), which applies to all federal civilian employees, provides for two methods of shipping and subsequent reimbursement of a transferred employee's HHG, the commuted rate method and the actual expense method. 41 CFR 302-8.3 (2000). Under the commuted rate method, the employee makes the arrangements for transporting the HHG and the Government reimburses him in accordance with published rate schedules. Under the actual expense method, the Government assumes the responsibility for making the shipping arrangements, ships the HHG under a GBL, and pays the carrier directly. See Steven C. Mantooth, GSBCA 14824-RELO, 99-2 BCA ¶ 30,424.

¹ Claimant had earlier claimed \$21,054.27, later amended his claim to \$21,053.55, and still later admitted that he had double-counted elements of SIT costs.

The FTR provides that, for individual moves, the commuted rate method is preferred because that method relieves the Government of the administrative expenses of selecting the carrier, arranging for services, preparing the GBL, paying the charges incurred, and processing loss and damage claims. Mantooth; Jeffrey P. Herman, GSBCA 13832-RELO, 97-1 BCA ¶ 28,704 (1996). The FTR permits an agency to use the GBL method for an individual move if the agency determines, under an appropriate cost comparison, that such a move would be more economical. 41 CFR 302-8.3(c)(4)(i).

Under the JTR, which supplements the FTR with applicability to civilian employees of the Department of Defense, the authorizing official must authorize or approve the HHG shipment method, using a cost comparison completed prior to determining the method to be authorized. JTR C8200-1,-2. The cost comparison must be made between the actual expense and commuted rate methods of HHG, and if the estimated cost under one method exceeds the estimated cost under the other method by more than \$100, the more economical method must be authorized. JTR C8220-1, -2. A proper cost comparison must consider line haul transportation charges, administrative costs of making all arrangements and payments, and paying any loss and damage claims. JTR C8220-4; see Steven J. Coker, GSBCA 15489-RELO (Dec. 20, 2001).

When an agency leads an employee to believe that he will be reimbursed under the commuted rate method, or gives the employee the choice of being paid under that method, the agency may not, after the move has occurred, limit reimbursement to GBL costs. Under that circumstance, the employee is entitled to reimbursement at the commuted rate. David L. Dillingham, GSBCA 15340-RELO, 00-2 BCA ¶ 31,061; Mantooth; Herman. In those cases, the agency did not perform a cost comparison before it issued the travel orders and the agency attempted to limit the employee's reimbursement to the GBL rate. Here, the agency says it did perform a cost comparison that showed the GBL cost to be cheaper, but the agency does not explain why, in its travel orders, it then authorized claimant to use the commuted rate method, or why it gave claimant oral encouragement to use the commuted rate method after he had received the travel authorization which authorized either the commuted rate method or the GBL method.

Furthermore, the agency's original cost comparison estimate of \$4752 for the GBL is only about sixty-seven percent of what the agency now says is the supposed lowest GBL cost of \$7097.89; this disparity calls into question the validity of the original cost comparison. In addition, the caveat in the travel order that "reimbursement will be made only for the lesser amount of the two" fails to put claimant on notice which method the agency had determined was less costly and which method of shipping the HHG the agency intended to authorize. Advising the employee in advance of the move which of the two methods the agency has chosen based on a reasonably accurate cost comparison is the whole purpose of the regulatory scheme, a purpose that regrettably was not fulfilled in this instance. Since here the agency authorized claimant to use either the commuted rate method or the GBL method, in the face of what seems to be an inaccurate and unstated cost comparison, and then later told the employee that the GBL method was more expensive than the commuted rate method, we conclude that claimant is entitled to be paid for shipment and SIT of 18,000 pounds of his HHG based on the commuted rate schedule.

This case is unlike Paul F. Hoffman, GSBCA 14348-RELO, 98-1 BCA ¶ 29,520 (1997), because in Hoffman, while the agency did not perform a cost comparison before issuing the travel authorization, the agency only authorized use of the GBL method and claimant chose to move himself. We found Mr. Hoffman could not obtain the benefit of the commuted rate because we concluded that if the agency had performed a proper cost comparison, it would have issued the same travel authorization requiring use of the GBL method. Here, the agency expressly authorized use of the commuted rate method and, consistent with that travel authorization, encouraged him to use the commuted rate method.

Claimant is entitled to reimbursement for shipment and SIT of 18,000 pounds of HHG based on commuted rate schedules issued by the General Services Administration (GSA). GSA explains that in addition to the transportation allowances, the commuted rate schedule includes allowances for various accessorial services expenses, including packing and crating, storage-in-transit, carrier labor charges, appliance servicing, and piano/organ handling. PFM P 4290.1 change 2.3 (Apr. 29, 1999). Claimant is not entitled to SIT expenses based on rates charged by his commercial carrier. If reimbursement on the commuted rate basis entitles claimant to more than the \$8350.87 the agency has paid claimant, the agency must pay claimant the difference. If reimbursement on that basis is less than the \$8350.87 the agency has paid claimant, then claimant shall refund the difference to the agency.²

ANTHONY S. BORWICK
Board Judge

² When an agency authorizes shipment of HHG by GBL and the employee chooses to move himself or herself, the employee is limited to reimbursement of actual costs not to exceed the cost of a Government arranged move. JTR C8210-B. That limitation does not apply here because the agency authorized claimant to move under either the commuted rate method or the GBL method.