

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

October 16, 2001

GSBCA 15664-RELO

In the Matter of DANIEL J. SWART

Daniel J. Swart, Colleyville, TX, Claimant.

Chris J. Barned, Fiscal Specialist, National Business Center-Denver, Department of the Interior, Denver, CO, appearing for Department of the Interior.

GOODMAN, Board Judge.

Daniel J. Swart is an employee of the United States Department of Commerce, International Trade Administration, United States & Foreign Commercial Service, stationed in Arlington, Texas. Mr. Swart is requesting a review of the agency's decision not to re-adjust moving expenses that he incurred when moving his household goods (HHG) resulting from a permanent change of station (PCS).

Background

In January 2001, claimant received travel orders for a PCS from Indianapolis, Indiana, to Arlington, Texas, and scheduled to move in early April. Claimant states that he had a conversation in early January with a government employee, Ms. Debbie Ferrara at the Central Administrative Support Center (CASC), regarding the estimated weight of his HHG. He states that she advised him that his HHG would weigh approximately 15,000 pounds and that the Government would authorize payment for up to 18,000 pounds.¹

The agency issued government bill of lading (GBL) #HQ-575676, dated February 12, 2001, to Graebel Van Lines for the shipment of claimant's HHG. The GBL stated in relevant part that "[t]his GBL is limited to 18,000 # [lbs.]" and referenced a specific tariff as authority for the resulting charges.

Claimant further states that in early March, Mr. Jeff Moyer, a representative of Graebel Van Lines, came to his residence in Indiana to estimate the actual weight of his HHG. Mr. Moyer advised claimant that the estimated weight of the HHG was 31,000 pounds

¹ The record does not indicate Ms. Ferrara's basis for the alleged estimate of weight.

and that the cost to the claimant for the overage would be \$3100. Claimant states that he "objected to the amount, but by that time, early March, [he] had no other options other than to accept the charges and complete his move." He had already sold his home in Indiana and purchased a home in Texas.

In April 2001, claimant completed his PCS move and was authorized payment for transportation of 18,000 pounds of HHG. In late April 2001, claimant received a "Bill for Collection" from the Government for \$8400.14, due June 22, 2001. Claimant's HHG actually weighed 33,000 pounds. Claimant states that "[t]here was no communication, nothing in writing from early March to late April to [me] about the overage, excess weight and nothing about a charge of \$8400.14."

Claimant states:

In the first week of June [I] spoke to both Debbie Ferrara of CASC and Graebel Van Lines representative, Jeff Moyer regarding the bill. [I] was not questioning the weight, but the charge of \$8400.14. And how could an estimate of \$3100 jump to \$8400.14 [?] Both indicated the bill was incorrect and that Jeff Moyer would review and submit a revised bill. Jeff Moyer reviewed the bill and stated the bill and the charge of \$8400.14 was indeed incorrect. The correct amount that should have been billed is \$3638.14. Jeff indicated that both the government and [I] had been over charged.

This information was then sent to Barbara Williams and Chris Barned of the Department of [the] Interior (DOI) for correction. DOI refused to correct the bill and stated the correct amount is \$8400.14.

Claimant has submitted documentation purporting to show the representative of the moving company's correction of the amount due for the shipment of the excess weight as \$3638.14, not \$8400.15. However, the agency has submitted information stating its position that the original billing from the moving company for the excess weight is correct and in accordance with the method of calculation set forth in the Federal Travel Regulation (FTR). Contrary to Mr. Moyer's assertion that the billing was incorrect, the agency has submitted a letter from the controller of Graebel Van Lines stating that the original billing of \$8400.15 was correct. Accordingly, the agency maintains that claimant must reimburse the agency \$8400.15. Claimant has requested that his debt be waived.

Discussion

When an agency transfers an employee, in the interest of the Government, from one official station to another, it must pay for "the expenses of transporting, packing, crating, temporarily storing, draying, and unpacking his household goods and personal effects not in excess of 18,000 pounds net weight." 5 U.S.C. § 5724(a)(2) (2000). The FTR provides in relevant part: "The maximum weight of household goods that may be transported . . . at Government expense is limited to 18,000 pounds for all employees." 41 CFR 302-8.2(a) (2000).

The agency may use the "actual expense method" for moves within the continental United States, shipping the employee's goods under a GBL and paying the carrier directly for its services, when doing so is most economical. 41 CFR 302-8.3. When the actual expense method is used and the employee's goods weigh more than 18,000 pounds, "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." 41 CFR 302-8.3(b)(5).

In establishing the debt, the agency acted in accordance with statute and the FTR. Documentation submitted by the agency and the moving company demonstrate that the calculation of the excess cost was computed as required by the FTR, even though a representative of the carrier gave an incorrect estimate to claimant before the HHG were moved and reiterated that estimate after the move. The controller of the carrier then insisted that the original billing was correct. While claimant asserts that he received erroneous estimates of the excess charges from both Government officials and third parties, we have previously held that erroneous estimates with regard to the weight of HHG by Government officials and third parties cannot bind the Government. Keith D. Weverstad, GSBCA 14366-RELO, 98-1 BCA ¶ 29,438.

This Board's recent decision in David O. Garner, GSBCA 15361-RELO (Oct. 9, 2001), dealt with a similar situation, in which the claimant actually entered into a written contract for a fixed price directly with the carrier, but the carrier billed the Government a higher price based upon its GBL and the referenced tariff, which also was a contract. This Board held that under the circumstances, when the employee has a contract directly with the carrier and the Government also has a contract directly with the carrier, and the goods are shipped under the Government's contract, the employee is liable to the agency for the excess costs pursuant to regulation, its GBL, and the carrier's tariff referenced therein. The Board stated:

We have no criticism of the [agency]'s actions in this case. The agency entered into a contract with the mover, the mover performed its part of the bargain, and the agency by paying the bills performed its part. Under statute and regulation explained above, [claimant] is liable to the [agency] for the portion of the charges which are attributable to the weight of the goods in excess of 18,000 pounds. The employee has not contended that the bills were calculated in a way inconsistent with the [carrier]'s tariff, and the agency's apportionment of the charges is accurate. Thus, [claimant] owes [the agency] the [amount] demanded by the agency. His claim must be denied.

Id., slip op. at 3.

The instant case differs from the situation addressed in the Garner decision, as Mr. Garner actually had a separate contract in writing with the carrier, whereas claimant in the instant case relied on oral representations made before his move by a representative of the carrier. We need not decide whether the carrier's representations and claimant's reliance resulted in an oral contract, because this would not be determinative of the issue. Claimant

remains liable to the agency for the excess charges computed in accordance with the the agency's contract with the carrier.²

Claimant seeks a waiver of the debt from this Board, but as we have noted previously, the authority to grant such a waiver rests with the head of the agency alone. Deland L. Broten, GSBCA 13730-RELO, 97-1 BCA ¶ 28,961. We therefore do not address the merits of the waiver request.

² In Garner, we noted that because the employee had a contract directly with the carrier, the employee may have a cause of action against the carrier for damages resulting from the carrier's representations to the employee. As an administrative tribunal charged with settling claims of or against the United States Government which involve expenses incurred by federal civilian employees, 31 U.S.C. § 3702(a)(3), however, we have no authority to resolve disputes between employees and third parties.

Decision

The claim is denied.

ALLAN H. GOODMAN
Board Judge