

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

August 27, 2002

GSBCA 15721-RELO

In the Matter of ANDREW J. DUFF

Andrew J. Duff, Orange Park, FL, Claimant.

Edgardo Aviles, Chief, Travel Section, National Finance Center, United States Customs Service, Indianapolis, IN, appearing for Department of the Treasury.

HYATT, Board Judge.

In May 2000, claimant, Andrew J. Duff, an employee of the United States Customs Service, transferred from Corpus Christi, Texas, to Jacksonville, Florida. The transfer was in the interest of the Government and relocation expenses were authorized. At issue is the expense of shipping one of the Duff family's personally owned vehicles (POV) from Texas to Florida.

Background

Mr. Duff was selected for a new position with the Customs Service in Jacksonville in March 2000. In early April 2000, he was given a reporting date of May 21, 2000. Initially, Mr. Duff and his spouse planned to drive both family vehicles to Jacksonville, and were authorized to recoup the costs of driving both vehicles. In late April, their son underwent surgery, from which he was still recuperating at the time the Duffs needed to depart Corpus Christi for Jacksonville. When it was time to depart for Jacksonville, the son required significant attention and care. The Duffs concluded that it would be necessary for the entire family, which included four children, to travel in one vehicle in order to give the recuperating son proper care en route. Mr. Duff contacted the relocation company handling the move for him and inquired whether the other vehicle could be shipped. The relocation company told him he would need the approval of the agency, which was obtained. Mr. Duff had the second vehicle shipped with his household goods. More than a year later, he received a notice from the Customs Service's National Finance Center in Indianapolis, Indiana, informing him that the shipment had not been properly authorized and that he owed the agency the cost of shipping his second car to Jacksonville -- some \$975. Mr. Duff points out that he received written authorization to ship the second vehicle and could have delayed

his start date if Customs had wanted him to do so rather than incur the cost of shipping the vehicle. Claimant further notes that he was not advised of any policies against shipment of a second vehicle.

Discussion

In September 1996, Congress enacted legislation with an effective date of March 1997, authorizing agencies to reimburse employees for the cost of transporting a POV to a new official station under certain conditions, 5 U.S.C. § 5727(c) (2000); see James H. Shaw, GSBCA 14718-RELO, 99-1 BCA ¶ 30,359, reconsideration denied, 00-1 BCA ¶ 30,821; Gary J. Rossio, GSBCA 14570-RELO, 98-2 BCA ¶ 29,844. The implementing regulations are published in the Federal Travel Regulation (FTR), part 302-10. 41 CFR 302-10 (2000). As we recognized in Arlon J. Rowe, GSBCA 15056-RELO, 00-1 BCA ¶ 30,819, the FTR permits agencies to authorize transportation of a POV to the new official station when an agency determines that it is advantageous and cost-effective to the Government. 41 CFR 302-10.4. FTR 302-10.12 advises employees that:

Your agency decides whether it is more advantageous for you and/or a member of your immediate family to drive your POV for all or part of the distance or to have it transported. If your agency decides that driving the POV is more advantageous, your reimbursement will be limited to the allowances provided in part 302-2 of this chapter for the travel and transportation expenses you and/or your immediate family incur en route.

41 CFR 302-10.12. FTR 302-10.301 further provides:

Under what conditions may my agency authorize transportation of my POV wholly within CONUS [Continental United States]?

Your agency will authorize transportation only when:

(a) It has determined that use of your POV to transport you and/or your immediate family from your old official station (or place of actual residence, if you are a new appointee or student trainee) to your new official station would be advantageous to the Government;

(b) Both your old official station (or place of actual residence, if you are a new appointee or student trainee) and your new official station are located within CONUS; and

(c) Your agency further determines that it would be more advantageous and cost effective to the Government to transport your POV to the new official station at Government expense and to pay for transportation of you and/or your immediate family by commercial means than to have you or an immediate family member drive the POV to the new official station.

41 CFR 302-10.301.

FTR 302-10.505 identifies the following factors that an agency must consider in determining whether transportation of a POV wholly within CONUS is cost effective:

- (a) Cost of travel by POV.
- (b) Cost of transporting the POV.
- (c) Cost of travel if the POV is transported.
- (d) Productivity benefit [derived] from the employee's accelerated arrival at the new official station.

The Customs Department, as anticipated under the FTR, has developed an internal policy applicable to the shipment of a POV under an in-CONUS PCS move. The internal guideline provides that:

Customs may authorize transportation of one POV in connection with a PCS within CONUS if the distance between the old and new duty station is 1,500 miles or more. [The employee] may ship a POV for distances of less than 1,500 miles if the transportation is advantageous and, based on a cost comparison, cost effective to Customs.

The policy further addresses the cost elements to be compared in determining whether to authorize shipment of a POV for distances of less than 1500 miles. These include the cost of per diem if the vehicle were driven rather than shipped; the cost of commercial transportation for the employee and family members versus the mileage reimbursement if the vehicle were to be driven; the cost of the employee's time (measured by daily salary) multiplied by the number of days of travel for each scenario, and the cost of shipping the POV. Unless the agency determines that shipment of a POV is advantageous and economical to the Government, the employee is not entitled to ship a POV at Government expense. See Jaret A. Langston, GSBCA 15327-RELO, 01-2 BCA ¶ 31,513; Norman Lahr, GSBCA 15123-RELO, 00-2 BCA ¶ 31,012.

Here, the authorizing official at Customs approved shipment of the second vehicle, presumably after considering the facts and circumstances of claimant's move. There is no indication that a cost comparison, as required by the regulations, was performed, however. The main problem, moreover, is that both the FTR and the internal Customs Service guidelines contemplate that shipping the POV would be in conjunction with paying for commercial transportation for the claimant and his family. Under the criteria for performing the cost comparison, it would not be possible to derive a financial advantage to approving shipment of a second vehicle when the moving employee and family will drive to the new duty station in another POV rather than use commercial transportation. In short, the regulations as drafted simply do not contemplate these circumstances. As we have recently observed in interpreting a similar situation involving the shipment of a POV:

If regulations issued by the Administrator [of the General Services Administration] do not cover a situation such as

[claimant's], then the simple answer to [the] request is that it must be denied.

Margaret A. Johnson, GSBCA 15414-RELO, 01-2 BCA ¶ 31,448. Under the regulations, the local office had no authority to authorize commercial shipment of Mr. Duff's second vehicle. Although it is unfortunate that Mr. Duff incurred expenses in reliance on improperly authorized orders, it is a well-settled rule of law that the Government cannot be bound by the erroneous advice or action of its agents. E.g, Edward J. Curran, GSBCA 15447-RELO, 01-1 BCA ¶ 31,403; Jeniece K. Stanfield, GSBCA 15281-RELO, 00-2 BCA ¶ 30,954.

In closing, we note that this case does seem to present extenuating circumstances, particularly since Mr. Duff's request to ship the second vehicle was approved and he relied on this approval. While Customs is entitled to demand repayment of transporting Mr. Duff's POV to Jacksonville, it may wish to consider exercising the authority it has under law to waive repayment of this cost if it concludes that collection would be "against equity and good conscience and not in the best interests of the United States" and if there is no indication of "fraud, misrepresentation, fault, or lack of good faith" on the part of the person whose debt is requested to be waived. 5 U.S.C. § 5584(a)(2)(A) (2000). Pursuant to this statute, the head of the agency from which the claim arose may waive a debt of \$1500 or less. See, e.g., Jennings W. Bunn, Jr., GSBCA 15656-TRAV (June 10, 2002); Brian Johnson, GSBCA 15316-RELO, 01-1 BCA ¶ 31,337; Gerald A. Sherman, GSBCA 13791-TRAV, 97-2 BCA ¶ 29,299. The exercise of this authority is committed entirely to the discretion of the Customs Service, however, and is not within the purview of this Board's review function.

CATHERINE B. HYATT
Board Judge