

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

February 25, 2004

GSBCA 16313-RELO

In the Matter of JAIME V. MERCADO

Jaime V. Mercado, Wake Forest, NC, Claimant.

Robert Cooke, Chief, Fiscal Services Branch, Food Safety and Inspection Service, Department of Agriculture, Washington, DC, appearing for Department of Agriculture.

DeGRAFF, Board Judge.

Claimant challenges the agency's determination of the weight of his household goods. Because claimant has not established the agency's determination was erroneous, we deny the claim.

Background

In July 2002, the United States Department of Agriculture (USDA) issued a travel authorization to one of its employees, Jaime V. Mercado, in connection with his transfer from a permanent duty station in Ohio to a new permanent duty station in Raleigh, North Carolina. Among other things, the travel authorization provided USDA would arrange to ship and provide temporary storage for up to 18,000 pounds of Mr. Mercado's household goods.

According to a survey made before Mr. Mercado moved, his household goods weighed approximately 30,000 pounds. USDA told Mr. Mercado the results of the survey and explained he would be liable for the cost of shipping and storing more than 18,000 pounds.

In late July, the moving company selected by USDA picked up Mr. Mercado's goods in Ohio, using two trucks. According to weight tickets, the empty weight of the first truck was 16,700 pounds and the weight as loaded was 21,440 pounds, and the empty weight of the second truck was 35,760 pounds and the weight as loaded was 54,260 pounds. Thus, according to the weight tickets generated in late July 2002, the total weight of Mr. Mercado's household goods was 23,240 pounds.

The moving company transported Mr. Mercado's household goods to North Carolina, and placed them in storage until September 4, 2002. On this date, the goods were loaded into one truck and transported to Mr. Mercado's new residence, where they arrived at approximately 8:00 in the morning. At Mr. Mercado's request, the moving company drove the loaded truck to a public scale and weighed it. The driver and his three helpers were in the cab of the truck when it was weighed. There is no weight ticket to establish the weight of the truck that morning. Although Mr. Mercado wanted to be present when the truck was weighed after being unloaded, it was approximately 9:00 in the evening before the movers finished unloading the truck. At that hour, the nearest open public scale was in Richmond, Virginia. The driver had to have the truck in New Jersey the following morning and said he needed a break before beginning the drive north. If Mr. Mercado wanted to see the truck weighed while it was empty, the driver said, he could be at the public scale in Richmond around 2:00 or 3:00 in the morning. Mr. Mercado did not feel this was a reasonable suggestion. We do not know the empty weight of the truck used to deliver Mr. Mercado's household goods on September 4.

USDA billed Mr. Mercado for the shipment, storage, and delivery of 5240 pounds (23,240 - 18,000) of household goods. Mr. Mercado was not convinced his household goods actually weighed 23,240 pounds. He was concerned because four men were in the cab of the truck when it was weighed on the morning of September 4, and perhaps men remained on the trucks when they were weighed in July. Also, he was concerned because he did not know how much fuel was in the truck when it was weighed in July. In addition, he was concerned because he could not be present to see the empty truck weighed on September 4. Finally, he found it hard to believe the weight of his household goods exceeded 18,000 pounds because, he said, he moved fewer possessions to North Carolina than he moved to Ohio in 1997, and his goods did not weigh 18,000 pounds at that time. The moving company agreed the driver and his helpers should not have remained in the cab of the truck while it was being weighed. In an attempt to alleviate Mr. Mercado's concerns, the moving company voluntarily reduced the weight of the shipment by 2000 pounds. USDA subsequently determined Mr. Mercado was responsible for the shipment, storage, and delivery of 3240 pounds of household goods (23,240 - 18,000 - 2000).

Mr. Mercado asked us to review USDA's decision to charge him for shipping, storing, and delivering 3240 pounds of household goods. Mr. Mercado does not believe he should be responsible for any charges associated with a weight in excess of 18,000 pounds.

Discussion

If Mr. Mercado's household goods weighed more than 18,000 pounds, he is responsible for the costs attributable to the weight in excess of 18,000 pounds. According to the federal statute that governs Mr. Mercado's claim, when an agency transfers an employee from one permanent duty station to another in the interest of the Government, the Government is responsible for the costs of transporting and storing not more than 18,000 pounds net weight of the employee's household goods. 5 U.S.C. § 5724a(a)(2) (2000). The statutory limitation is implemented in the Federal Travel Regulation, which applies to all civilian employees of the Federal Government. 41 CFR 302-7.2(a) (2003). Because the Government cannot pay for moving and storing any more than 18,000 pounds of household goods, the employee whose goods are moved is responsible for reimbursing the Government

for the costs attributable to any weight in excess of 18,000 pounds. 41 CFR 302-7.200, -7.201.

USDA's determination regarding the weight of Mr. Mercado's household goods is based upon the weight tickets contained in the record, minus an allowance of 2000 pounds made by the moving company in order to address Mr. Mercado's concerns regarding the weight of his shipment. In order to convince us to set aside the agency's determination, Mr. Mercado must show clear and substantial evidence of error or fraud. Richard D. Grulich, GSBCA 15800-RELO, 02-2 BCA ¶ 31,891 (citing cases). As we have explained, the burden of proving error or fraud is exceedingly heavy. Jayme A. Norris, GSBCA 13663-RELO, 97-2 BCA ¶ 29,049.

We do not find clear and substantial evidence of error or fraud as would be needed in order to set aside the agency's determination that Mr. Mercado's household goods exceeded 18,000 pounds by at least 3240 pounds. Weight tickets generated in July 2002, when Mr. Mercado moved from Ohio, show his household goods weighed 23,240 pounds. Using weight tickets is an acceptable means for determining the weight of a shipment. 41 CFR 302-7.12.

Mr. Mercado suspects his household goods weighed less than 18,000 pounds when he moved from Ohio because, he says, his goods weighed less than 18,000 pounds when he moved to Ohio several years earlier. However, the weight of Mr. Mercado's household goods when he moved to Ohio does not overcome the evidence provided by the weight tickets created in July 2002. Douglas V. Smith, GSBCA 14655-RELO, 99-1 BCA ¶ 30,171 (1998) (citing cases).

Many of Mr. Mercado's suspicions regarding the weight of his goods stem from the moving company's actions on September 4, 2002, when his household goods were delivered to his house in North Carolina. Although the moving company did not bill USDA on the basis of the weight of the truck on September 4, the moving company attempted to relieve Mr. Mercado's concerns by deducting 2000 pounds from the 23,240 pounds shown on the July weight tickets. If there was an irregularity in the weights shown on the July weight tickets – for example, if anyone was in the cab of either of the trucks when they were weighed in July, or if the trucks were weighed with different amounts of fuel in them – a deduction of 2000 pounds would produce a generous estimate of the weight attributable to the passengers and fuel. The moving company's adjustment to the weight of the shipment provides a reasonable basis for USDA's adjustment to the weight it used in order to determine Mr. Mercado's household goods exceeded 18,000 pounds. See Robert G. Gindhart, GSBCA 14288-RELO, 98-1 BCA ¶ 29,405 (1997).

Mr. Mercado calls our attention to regulations regarding the transportation of household goods by motor carriers. According to these regulations, no one should be in a vehicle when it is weighed and the fuel tanks are supposed to be full each time a vehicle is weighed. Also, the shipper (defined as the person who owns the goods being shipped) is supposed to be given a reasonable opportunity to be present when a shipment is weighed and charges are supposed to be based upon the reweigh weight when a reweigh is requested. 49 CFR 375.7 (2002). None of these provisions helps Mr. Mercado, however. Mr. Mercado has provided no support for his speculation that when the trucks were weighed in July 2002

either someone remained in the trucks or the moving company did not have the fuel tanks properly filled. Although Mr. Mercado does not believe he was given a reasonable opportunity to be present when the empty truck was weighed on September 4, we are not so sure this is the case, given the length of the driver's work day and the location of an open public scale. In addition, the weight of the truck on that day was not used by the moving company as the basis for its charges. Finally, the lack of a reweigh weight does not relieve Mr. Mercado of the charges for excess weight where the amount of the excess is established by weight certificates and not overcome by clear and substantial evidence of error or fraud. Donald MacLeod, B-214373 (Jan. 3, 1985).

Because the statute says agencies will pay for shipping and storing no more than 18,000 pounds of household goods, Mr. Mercado is liable for the cost of shipping and storing household goods in excess of this weight. We deny the claim.

MARTHA H. DeGRAFF
Board Judge