

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

December 5, 2005

GSBCA 16737-RELO

In the Matter of MICHAEL S. ROSS

Michael S. Ross, Kingston, Jamaica, Claimant.

Paul B. Dean, Office of the Legal Adviser, Department of State, Washington, DC,
appearing for Department of State.

PARKER, Board Judge.

Michael S. Ross, a Department of State Foreign Service Officer, has requested that the Board review his agency's decision to assess charges in the amount of \$1862.02 for shipping unaccompanied air baggage (UAB) in excess of the allowable weight limit. The shipment occurred in connection with Mr. Ross' October 2004 transfer from Astana, Kazakhstan, to Kingston, Jamaica. For the reasons discussed below, we affirm the agency's decision.

Background

Pursuant to his transfer, Mr. Ross was authorized to ship 7200 pounds of household effects and 600 pounds of UAB. At the time the UAB was packed, Mr. Ross was given an inventory by the packers stating that the UAB was estimated to weigh "556." According to Mr. Ross, the inventory did not state whether the weight was measured in kilograms or pounds.

In fact, the UAB weighed 1193 pounds -- 593 pounds in excess of the maximum. The agency billed Mr. Ross for the excess weight, and he has asked the Board to review that

decision. Mr. Ross believes that he should not have to pay for the excess weight because the agency failed to notify him that the shipment was overweight.

Discussion

The Department of State's Foreign Affairs Manual (FAM) allows a transferred employee to ship UAB for himself and his eligible family members, with a maximum weight allowance that varies according to the number of persons traveling. Because Mr. Ross traveled with two family members, he was authorized to ship a maximum of 600 pounds of UAB. 6 FAM 148.2-1(a).¹ The FAM also provides:

Employees are responsible for any transportation, demurrage, storage, customs cartage, or other costs incurred by them or their agents which are not authorized by laws and regulations governing the shipment of effects or unaccompanied air baggage (UAB) at U.S. Government expense.

Id. 162.3(a). "Employees should know their shipment limitations and the net weights involved." *Id.* 162.3-1(a).

Mr. Ross maintains that the agency should pay the excess charges because it failed to inform him that the actual weight of the UAB shipment from Astana exceeded the packer's estimate. To support his position, Mr. Ross relies on a provision in the FAM that states, "[I]f a shipment is known to be in excess of the allowance, it is not to be forwarded by the originating post until the employee is notified of the excess weight, is informed of the difference to be paid for the cost of shipping, and is told which options may be exercised." 6 FAM 162.3-3(a).

Mr. Ross' reliance on this provision is misplaced. Read as a whole, it is clear that the FAM places the responsibility for ensuring that a shipment does not exceed applicable weight limitations squarely on the shoulders of the employee:

The regulations . . . state specifically that employees are responsible for any excess costs not authorized by the regulations. In addition, employees are responsible for informing the packer or carrier of the maximum weights and providing written instructions regarding what to do if the shipment exceeds the weight specified. The fact that the regulations also state that the agency will notify an employee "when possible" "if a shipment is known to be in excess of

¹Subsequent to Mr. Ross' transfer, the Department of State re-numbered the FAM. The regulations discussed in this opinion now appear at 14 FAM 611-613.

the allowance,” does not obligate the agency to pay for the excess weight, as [the claimant] maintains. We read these provisions as stating that the agency will attempt to assist transferred employees where possible, rather than as a total reversal of the regulatory scheme.

Mark Burnett, GSBCA 16578-RELO, 05-1 BCA ¶ 32,958.

Finally, even if the provision cited by Mr. Ross could be read as obligating the agency to pay excess weight charges in certain circumstances, those circumstances would not exist here. Mr. Ross was informed by the packer that the UAB was estimated to weigh “556,” in a country in which use of the metric system is the standard, yet he failed to investigate whether the number referred to pounds or kilograms. Certainly, Mr. Ross bears substantial responsibility for shipping 1193 pounds of UAB, which works out to approximately 542 kilograms.

Decision

The claim is denied.

ROBERT W. PARKER
Board Judge