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

October 9, 2001

GSBCA 15631-RELO

In the Matter of DAVID O. GARNER

David O. Garner, Rescue, VA, Claimant.

L. P. Kennedy, Director for Army Vendor Pay Support, Indianapolis Center, Defense Finance and Accounting Service, Indianapolis, IN, appearing for Department of Defense.

DANIELS, Board Judge (Chairman).

David O. Garner, previously an employee of the Department of the Army, was transferred in January 1998 from St. Louis, Missouri, to Williamsburg, Virginia. Mr. Garner contests the Army's determination that he owes a portion of the costs of shipping and storing his household goods in conjunction with the move.

Background

The Army decided that Mr. Garner's goods would be shipped most economically under a Government bill of lading (GBL). On December 8, 1997, the agency issued a GBL to Stieferman Bros. Van & Storage, Inc., of St. Louis for shipment of the goods. The GBL lists a specific tariff as authority for the resulting charges.

Later in December, Mr. Garner asked Stieferman Bros., which he knew to be an agency-approved mover, how much it would charge him to move his goods. The firm's vice-president, Ralph Stieferman, surveyed the contents of Mr. Garner's house and on December 22 sent him an offer to transport his belongings to Williamsburg. The offer states: "The price shown below as 'guaranteed price' is the total amount you will pay. Guaranteed price: $7,778.84." The offer explains that if it is accepted, the shipper will not "be required to pay charges according to actual weight." Under the heading "Remarks," it states, "This is a guaranteed, not to exceed bid." Mr. Garner accepted this offer on December 24.

There is no indication that when Mr. Garner called Stieferman Bros., he was aware that the Army had issued a GBL to that firm for shipment of his goods. According to Stieferman Bros., when Mr. Stieferman priced the move for Mr. Garner, he was unaware that

the firm had received the GBL. Mr. Stieferman assumed that Mr. Garner was to pay for the carriage himself.

Stieferman Bros. picked up Mr. Garner's belongings on January 2, 1998, and moved them to Virginia. The goods weighed 21,840 pounds. The firm submitted to the Army two invoices for its work – one for the shipment itself ($8,984.01) and the other for storage and subsequent delivery ($831.06). The Army paid these bills. The mover did not submit any bill to Mr. Garner.

After paying Stieferman Bros., the Army demanded that Mr. Garner reimburse it in the amount of $1,725.73. This amount represents the proportionate share of the total cost attributable to weight in excess of 18,000 pounds.

Discussion

The relevant law regarding shipment of a transferred employee's household goods is straightforward. 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) (1994 & Supp. III 1997). 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 (1997). 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." Id. 301-8.3(b)(5). If a Department of Defense agency decides to use the actual expense method but the employee chooses to make his own arrangements for shipment, "the employee may be reimbursed for actual expenses incurred not to exceed what it would have cost the Government had the shipment been made by GBL." Joint Travel Regulations (JTR) C8001-D.3.c (May 1, 1995) (now at JTR C8210-B).

Applying this law to the facts at hand is not a simple matter. The basic difficulty is that Stieferman Bros. entered into contracts with two different parties for performance of the same work of moving Mr. Garner's belongings from St. Louis to Williamsburg. When the Army issued its GBL to Stieferman Bros., it effectively accepted the mover's offer (expressed in its tariff) to transport the goods and thereby created a contract between the Government and the company. A-Transport Northwest Co. v. United States, 36 F.3d 1576, 1583-84 (Fed. Cir. 1994); Baggett Transportation Co. v. United States, 23 Cl. Ct. 263, 265 (1991), aff'd, 969 F.2d 1028 (Fed. Cir. 1992). When Mr. Garner accepted the firm's offer to move the goods, a contract came into being between him and the company. Further complicating

matters, the two contracts are for the same work,[1] but at different prices – the Government contract is at tariff rates, but the Garner contract is at a fixed "guaranteed price."

Mr. Garner maintains that his contract with Stieferman Bros. should govern payment for the carriage of his goods, and "[s]ince the Army is . . . responsible for payment to the mover, the Army should seek the adjustment with the mover for any overpayment made to [it]." The agency insists that the GBL governs payment and that any dispute between Mr. Garner and Stieferman Bros. resulting from the agreement between those parties should be resolved independent of Government participation.

Under general principles of contract law, both contracts are valid. "A contract to sell specific goods is not invalidated by the fact that the seller has previously sold them to another, a fact that he now overlooks." Arthur L. Corbin, Corbin on Contracts § 1327 (1962). The seller, having sold the same goods twice, is obligated to make both buyers whole – no matter whether it was the seller's negligence or bad faith that caused the second sale to occur. Trans World Airlines, Inc. v. Skyline Air Parts, Inc., 193 A.2d 72 (D.C. 1963).

We have no criticism of the Army'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, Mr. Garner is liable to the Army 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 cited Stieferman Bros. tariff, and the agency's apportionment of the charges is accurate. Thus, Mr. Garner owes the Army the $1,725.73 demanded by the agency. His claim must be denied.

As the agency suggests, however, the employee may have a cause of action against the mover. Stieferman Bros. contracted to transport Mr. Garner's goods for a fixed price, and it has not honored that contract. One would expect Stieferman Bros. to make Mr. Garner whole for any damages resulting from its actions. 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. We cannot help Mr. Garner in a dispute between him and Stieferman Bros. As suggested by the Army, the employee will have to seek elsewhere any relief to which he might be entitled from the mover.

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STEPHEN M. DANIELS

[1]We note that Stieferman Bros. appears to have stored Mr. Garner's goods, and the Army appears to have paid for these services, under a separate agreement. The contracts we discuss in this opinion are those for carriage of the goods only. The employee has not raised any questions which affect the propriety of the charges for storage.

Board Judge