Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

February 13, 2003

GSBCA 15914-RELO

In the Matter of VICTOR G. HERINGTON

Victor G. Herington, Crestwood, KY, Claimant.

Cynthia R. Blevins, Acting Deputy Director, Finance, United States Army Corps of Engineers Finance Center, Millington, TN, appearing for Department of the Army.

DANIELS, Board Judge (Chairman).

The Army Corps of Engineers transferred Victor G. Herington from Florida to Kentucky in June 2001. Mr. Herington's household goods were shipped, at Army expense, in two truckloads, one in June and the other in July. The weight of the goods totaled 27,220 pounds, and the total shipping charge was $10,034.37. The Army has billed Mr. Herington for the portion of the charge attributable to the weight in excess of 18,000 pounds – $3,398.86. Mr. Herington recognizes that he is obligated to pay this amount, but asks us to reduce his debt to the agency by the total of three separate charges that he believes were improperly assessed.

We can well appreciate why Mr. Herington is upset at the thought of paying an additional, significant sum for his move. The shipment of the goods was clearly handled badly by the carrier and/or the carrier's agents who transported the items. The movers engaged by the agency insisted on repacking in different boxes numerous items which the employee had already packed, and many of those items were lost or damaged in transit. The Army has paid $3,447 for the loss and damage, and while Mr. Herington accepted this amount, he believes that the value of the goods lost and the damage to other goods was more than $6,000. In addition, the movers sent to transport the goods a truck which was too small to hold them all, so a second truck was required, and that second vehicle not only took nearly a month to make its way to the employee's new home, but also was packed so poorly that many of its contents were damaged. Further, while the agency and the mover responded to Mr. Herington's questions with businesslike precision, they showed no compassion for an individual who had clearly been impacted adversely by the mover's actions.

We can also appreciate Mr. Herington's concern about the need for agencies to monitor the work of their contractors, to ensure that they perform appropriately the duties for

which the taxpayers are paying them. He raises good questions regarding the inefficiency of the movers and the possible impact of that inefficiency on the rates at which the agency was charged for the shipments.

Nevertheless, we have no authority to review the principal matters raised by this employee. When a federal civilian employee asks us to consider issues relating to official travel and transportation, and relocation incident to transfers of official duty station, we may only settle monetary claims. Even among monetary claims, we have no authority if provision for settlement is made in another law. 31 U.S.C. § 3702(a)(3) (2000). Thus, we may not make a general management review of an agency's relocation activities, or even a management review of actions taken with regard to a specific employee's relocation. Nor may we consider claims by employees for loss or damage of household goods shipped by an agency, since the Military Personnel and Civilian Employees' Claims Act, 31 U.S.C. § 3721, vests in agency heads final and conclusive settlement authority regarding those claims. Dale G. Luckman, Jr., GSBCA 14874-RELO, 99-2 BCA ¶ 30,431; Paul W. Johnson, GSBCA 13815-RELO, 98-1 BCA ¶ 29,407 (1997); Charles A. Miller, GSBCA 13679-RELO, et al., 97-1 BCA ¶ 28,865.

Our claims settlement authority does allow us to consider whether Mr. Herington's debt to the Army should be reduced by the amount of three charges which the employee believes were improperly assessed.

We begin this analysis by agreeing with the employee that the agency has calculated the amount of the debt correctly. Under statute, when an agency transfers an employee from one permanent duty station to another, in the interest of the Government, one of the items for which it must pay is "the expenses of transporting, packing, crating, temporarily storing, draying, and unpacking [the employee's] household goods and personal effects not in excess of 18,000 pounds net weight." 5 U.S.C. § 5724(a)(2). Under regulation, when an agency ships an employee's goods and those 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) (2000); see also JTR C8115-A (June 1, 2001); Marion T. Silva, GSBCA 15673-RELO, 02-1 BCA ¶ 31,815. Here, the total weight of the shipment was 27,220 pounds, so the excess over 18,000 was 9,220 pounds. The ratio 9,220 divided by 27,220, multiplied by the total charges of $10,034.37, yields a reimbursement due from the employee of $3,398.86.

Mr. Herington seeks to have the Government pay for the cost of excess boxes packed by the movers ($568.55), a charge for a long carry by the movers (for handling freight not adjacent to the vehicle at the origin or destination) ($507.98), and an amount for the second, or "overflow," shipment ($1,700). We note initially that even if we were to reduce the total shipping charge by any of these amounts, Mr. Herington would only save the portion of the reduction which is attributable to the excess weight. For example, if we were to determine that the movers were not entitled to the $507.98 long carry charge, $507.98 would be deducted from the total charges, but Mr. Herington's bill would be reduced by only $507.98 times the ratio 9,220 divided by 27,220, or $172.06. As we examine the items separately, we conclude that this is an academic concern because none of the deductions is justified.

With regard to the first item, the boxes packed by the movers, the tender of service under which Mr. Herington's goods were transported allowed the movers to take the action they did. This tender states:

> The carrier is liable and responsible for all packing. The carrier has the responsibility to inspect all prepacked goods to ascertain the contents, condition of the contents, and that only articles not otherwise prohibited by the carrier's tariff/tender are contained in the shipment. Furthermore, when it is determined by the carrier that goods require repacking, such packing will be performed by the carrier.

Defense Transportation Regulation DOD 4500.9-R, pt. IV (Personal Property) (Aug. 1999), app. AZ, ¶ 18.a. Although it is unfortunate that the carrier repacked Mr. Herington's goods poorly, and that many of the goods were subsequently damaged, the carrier was within its rights to perform the repacking.

As to the second item, the long carry, Mr. Herington notes that an Army quality control inspector in Kentucky wrote that a "long carry was unnecessary [evidently, as to the second delivery], as a truck from the company that delivered the [household goods] had no problems." The difficulty with this position, as the carrier points out, is that the charge was imposed for a long carry at the origin of the shipment (Florida), rather than at the destination (Kentucky). Mr. Herington has presented no evidence that a long carry was unnecessary in Florida.

We do not understand how Mr. Herington established a charge of $1,700 for the second shipment of his goods. The line-haul charge imposed was made solely on the basis of weight, and the total weight of the goods would have been the same whether the goods were transported in one truck or two. If moving the goods in two trucks was more costly than moving them in one would have been, the impact has been borne by the carrier. There is no justification for making a deduction in the total simply because two trucks were used for the move.

Decision

The claim is denied.

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STEPHEN M. DANIELS
Board Judge