

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

March 23, 2004

GSBCA 16350-RELO

In the Matter of MICHAEL L. RIVERA

Michael L. Rivera, Buffalo, NY, Claimant.

Shirley L. Autry, 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 Michael L. Rivera from one permanent duty station to another during 2003. The Corps asserted a claim against Mr. Rivera for payment of some of the charges incurred to transport his household goods to his new station. At the employee's request, we review the claim.

Background

In June or July of 2003, a representative of the carrier selected by the Corps to move Mr. Rivera's goods inspected the employee's home and estimated the weight of his belongings. The estimate was that Mr. Rivera had 18,000 pounds of household goods and 3,000 pounds of professional books and papers. When the employee actually moved, the weight of the entire shipment was found to be 21,240 pounds.

After the move was accomplished, the Corps sent Mr. Rivera a bill in the amount of \$3,647.13, apparently intended to reflect the portion of the shipping charges relating to weight in excess of 18,000 pounds. Mr. Rivera objected to payment on three grounds: (1) He was never advised that he might have to pay any portion of the charges. Had he known that his belongings weighed more than the poundage for which the Government was liable, he would have been able to sell or give away items he no longer needed. (2) Thirteen of his items were shipped in heavy, wooden crates provided by the mover, and the total weight of the crates was approximately five hundred pounds. The employee should not be responsible for any charges associated with the weight of the crates. (3) Professional books and papers, with an estimated weight of 3,000 pounds, were among the belongings shipped. Might this fact have some impact on the allocation of costs?

In response, the Corps said that it is required to bill a transferred employee for shipping household goods which weigh more than 18,000 pounds, and that is all it did here. Later, an agency accountant told Mr. Rivera that an error had been made in calculating the amount he owes, and that the correct amount is \$1,485.33. The accountant did not explain the nature of the error or how the original or corrected amount was calculated.

Discussion

It is true that, as the Corps points out, statute limits an agency's liability for transporting a transferred employee's household goods to the expenses of moving goods "not in excess of 18,000 pounds." 5 U.S.C. § 5724(a)(2) (2000). This law is the beginning of our analysis, however, not the end, as the agency seems to believe. The statute must be construed "[u]nder regulations prescribed under section 5738 of this title [5 of the United States Code]." *Id.* § 5724(a). Those regulations are, as to this matter, the Federal Travel Regulation (FTR), which is issued by the Administrator of General Services. We review the Corps' determinations and Mr. Rivera's contentions in light of the FTR and the Defense Department's own rules which implement and supplement the FTR, the Joint Travel Regulations (JTR).

Under the relevant regulations, if the agency takes responsibility for the shipment of household goods – as happened here – it pays the carrier's entire bill and, if the goods weigh more than 18,000 pounds, collects from the employee "the cost of transportation and other charges applicable to the excess weight." 41 CFR 302-7.200 (2003); see also JTR C8010-B.1 (July 1, 2003) ("excess weight charges" are "the employee's financial responsibility"). Based on the very limited information provided by the Corps, we have no way of knowing what that cost is for the shipment of Mr. Rivera's belongings. The agency has not told us the amount of the carrier's bill or the way in which it calculated either of the two charges it has assessed against the employee (\$3,647.13 or \$1,485.33). Without any justification for any particular amount, the agency currently has no grounds for collecting any money from the employee.

If the Corps attempts to produce a justification, it must evaluate two of Mr. Rivera's three reasons for challenging the claim in analyzing what charges, if any, the employee must pay.¹ First, the net weight of a shipment of household goods does not include the weight of

¹The first reason advanced by the employee, lack of prior notification, has no merit. The 18,000-pound limit, which is prescribed by statute, is unforgiving. Regardless of when an employee is notified that his goods weigh more than this amount, he must pay the costs for shipping the portion of the items attributable to the excess weight. 41 CFR 302-7.2; JTR C8100 ("*NOTE: Under no circumstances shall the Government pay any expenses associated with excess weight.*"); Ira A. C. Peets, GSBCA 15294-RELO, 00-2 BCA ¶ 31,058; Robert K. Boggs, GSBCA 14948-RELO, 99-2 BCA ¶ 30,491; John F. Tefft, GSBCA 14740-RELO, 99-1 BCA ¶ 30,292. We find somewhat disconcerting Mr. Rivera's contention that if he had been informed, prior to the move, that he would have to pay for shipping some of his belongings, he would have sold or given away many of the items. In effect, the employee has told us that he was happy to have the Government pay for shipping items which were of
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crating material. 41 CFR 302-7.12; JTR C8105-A.1. In determining the net weight of Mr. Rivera's shipment, the Corps must either accept his estimate of five hundred pounds as the weight of crating material used in his move or make a more precise estimate on its own, and then subtract the amount estimated from the actual weight shipped.

Second, the Corps should consider whether it desires to pay for shipment of some or all of Mr. Rivera's professional books, papers, and equipment (PBP&E) as an administrative expense. See 41 CFR 302-7.4, -7.302; JTR C8120-A. Shipments of PBP&E are not subject to the 18,000-pound limit, so the weight of any PBP&E transported at agency expense should be deducted from the total to determine the net weight for the purpose of allocating costs of the shipment of the household goods alone. 41 CFR 302-7.5; JTR C8120-A. Detailed rules for shipments of PBP&E are specified at 41 CFR 302-7.303 and JTR C8120-B. James R. Wyatt, Jr., GSBCA 16038-RELO (Feb. 4, 2004). Critical among them is the requirement that an appropriate agency official certify that the PBP&E are necessary for the performance of the employee's duties at the new official station and that these or similar items would have to be obtained at Government expense if they were not transported to that location. Whether the agency should pay for transporting PBP&E is a matter within the agency's discretion. Mariano G. Aguilar, Jr., GSBCA 15903-RELO, 03-1 BCA ¶ 32,178. The determination should normally be made in advance of a move. Mr. Rivera's situation is unusual, however, in that the mover's representative, in preparing his estimates, distinguished between household goods and PBP&E, and that distinction is critical to the allocation of costs associated with moving items weighing in excess of 18,000 pounds, yet neither the employee nor the agency focused on the matter until after the move had been completed. Because of these circumstances, if all the prescribed conditions are met, we would not object to a determination by the Corps, even at this late date, that the agency should incur as an administrative expense the costs of transporting some or all of Mr. Rivera's PBP&E. We note that the JTR permits the use of a constructive weight for PBP&E "in unusual instances when it is impractical or impossible to obtain separate weights." JTR C8120-C.4.

STEPHEN M. DANIELS
Board Judge

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so little consequence to him that he would not have chosen to pay for shipping them himself. This is a violation of the "prudent traveler rule," which states that an employee "must exercise the same care in incurring expenses that a prudent person would exercise if traveling on personal business." 41 CFR 301-2.3; see Nicholas R. Delaplane, GSBCA 14961-RELO, 99-2 BCA ¶ 30,489.