Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

September 10, 2004

GSBCA 16451-RELO

In the Matter of JERRY C. WEST

Jerry C. West, Boerne, TX, Claimant.

Joseph E. Ross, Associate Chief Counsel, Office of the Chief Counsel, Drug Enforcement Administration, Washington, DC, appearing for Department of Justice.

DANIELS, Board Judge (Chairman).

Jerry C. West, an employee of the Drug Enforcement Administration (DEA), was transferred in May 2003 from one permanent duty station to another. His household goods were moved, pursuant to a Government bill of lading, by a carrier selected by the agency. The goods weighed 23,260 pounds – somewhat more than the 18,000 pounds whose transportation was the agency's financial responsibility. Mr. West maintains that because he was assured by the carrier's representative that the cost of moving the excess weight would be "no more than a couple hundred dollars," and because the agency did not provide to him in advance the formula it would use to determine his share of the total shipping charges, he may not be charged more than $200. DEA insists on recovering from Mr. West $2635, a sum it calculated using a formula established in the agency's Transportation Standard Operating Procedure.

DEA's position is clearly correct. Statute limits an agency's liability for transporting a transferred employee's household goods to the cost of moving no more than 18,000 pounds. 5 U.S.C. § 5724(a)(2) (2000); see 41 CFR 302-7.2 (2002). The cost of transporting any additional goods the employee may need to have moved is to be paid by the employee. The formula used by DEA for determining that cost requires the employee to pay the percentage of the carrier's total charges which is reflected in the fraction, excess weight divided by total weight. This formula "has consistently been recognized as an appropriate and equitable method for deriving the portion of shipping costs attributable to excess weight and thus to be borne by the employee." John C. Bland, GSBCA 16094-RELO, 04-1 BCA ¶ 32,431 (2003). DEA correctly applied the formula here.

If the agency did not advise Mr. West, in advance, of the existence of the Standard Operating Procedure which includes the formula, as the employee asserts, that would not

affect the outcome of this case. Employees are advised to read and comprehend an agency's established rules, for those rules are to be followed whether affected employees are familiar with them or not. Michael L. Rivera, GSBCA 16350-RELO, 04-1 BCA ¶ 32,615. If the carrier's representative told Mr. West that moving the excess weight would cost "no more than a couple hundred dollars" – something the representative denies – that would not affect the outcome, either. An agency's issuance to a carrier of a Government bill of lading creates a contract between the agency and the carrier, for it is an effective acceptance of the carrier's tariff offer. The employee is not a party to that contract, and the contract vests no rights in him – even if the carrier's representative makes representations to the employee when acting under the contract. David O. Garner, GSBCA 15631-RELO, 01-2 BCA ¶ 31,637. Nor can a carrier's erroneous or inaccurate advice bind the Government to spend money in violation of statute or regulation, as Mr. West would have the DEA do by paying far more than the amount calculated through application of its formula. George W. Currie, GSBCA 15199-RELO, 00-1 BCA ¶ 30,814.

Mr. West's claim is denied.

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STEPHEN M. DANIELS
Board Judge