

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

April 21, 2005

GSBCA 16578-RELO

In the Matter of MARK BURNETT

Mark Burnett, Moscow, Russia, Claimant.

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

PARKER, Board Judge.

Mark Burnett, a Department of State Foreign Service Officer, has requested that the Board review his agency's decision to assess charges in the amount of \$2735.84 for shipping household effects in excess of the allowable weight limit in connection with his 2003 transfer from London, England, to Moscow, Russia. For the reasons discussed below, we affirm the agency's decision.

Background

In October and November 2003, Mr. Burnett had four separate shipments of household effects transported to Moscow -- three from London and one from Washington, D.C., where Mr. Burnett had been on a long-term language training assignment. Mr. Burnett's main complaint concerns the shipment from Washington, D.C. According to the agency, the packing company conducted a pre-move survey of the effects to be shipped from Washington, D.C., and estimated that the effects weighed 750 pounds. Subsequent to the survey, Mr. Burnett requested and received approval for construction of individual wooden crates for thirty-one paintings. These crates were moved along with the rest of Mr. Burnett's household effects.

The actual weight of the Washington, D.C., household effects, including the thirty-one wooden crates, turned out to be 1780 pounds which, when combined with the weight of the other three shipments, totaled 8349 pounds. This was 1149 pounds over the maximum weight limit of 7200 pounds. The agency charged Mr. Burnett for moving the excess weight, and he has challenged that assessment.

Discussion

The Department of State's Foreign Affairs Manual (FAM) allows a transferred employee to ship up to 7200 pounds of household effects when the new post of duty provides adequate furnishings. 6 FAM 161.5-1(b). The regulation goes on to state:

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). In addition:

Employees or their agents should furnish shipping and storage maximum weights and written instructions concerning articles to the packer or carrier. Packers should not fail to contact the employee for disposition instructions in the event effects exceed the weights specified. Employees should obtain written acknowledgment of their instructions. Failure to put instructions in writing will seriously jeopardize an employee's case if an excess shipment occurs and documentary evidence of instructions must be presented.

Id. 162.3-1(b). There is no evidence in the record that Mr. Burnett provided such instructions to the packer or carrier.

Mr. Burnett maintains that the agency should pay the excess charges because it failed to inform him that the actual weight of the shipment from Washington, D.C., exceeded the packer's estimate. If he had known, according to Mr. Burnett, he could have placed additional items in storage to stay within the total 7200-pound limit. To support his position, Mr. Burnett relies on two provisions of the FAM. The first states that "[w]hen possible, the transportation office should advise the employee of excess transportation charges before effects are shipped." 6 FAM 162.3(b). The second, *id.* 162.3-3(a), states that "[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."

Mr. Burnett's reliance on these two provisions of the FAM 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 limit transferred employees to 7200 pounds of household effects where furniture is provided at the new post and 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 the allowance," does not obligate the agency to pay for the excess weight, as Mr. Burnett 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.

Finally, even if the provisions cited by Mr. Burnett could be read as obligating the agency to pay excess weight charges in certain circumstances, those circumstances would not exist here. There were four time-overlapping shipments involved, and there is nothing in the record to show that the agency knew the total weight of the four shipments exceeded the maximum weight allowance. With regard to Mr. Burnett's specific complaint about the agency's failure to inform him of the weight of the Washington, D.C., shipment, there is nothing in the FAM that requires the agency to provide notice that a partial shipment exceeded a pre-move estimate. Finally, even assuming the agency knew that the weight of the Washington, D.C., shipment exceeded the pre-move estimate -- and there is no evidence that it did -- the estimate was no longer valid after the addition of the thirty-one wooden packing crates that Mr. Burnett added subsequent to the estimate.

Decision

The claim is denied.

ROBERT W. PARKER
Board Judge