

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

August 31, 2004

GSBCA 16361-RELO

In the Matter of GEORGE B. BROWN

George B. Brown, Falls Church, VA, Claimant.

Vickie Smith, PCS Travel Supervisor, National Business Center, Bureau of Land Management, Denver, CO, appearing for Department of Interior.

HYATT, Board Judge.

Claimant, George B. Brown, asserts that he should not be required to reimburse his employing agency, the Department of Interior's Bureau of Land Management (BLM), for the costs of transporting household goods in excess of 18,000 pounds.

Mr. Brown relocated from Spokane, Washington, to Washington, D.C. in September 2002. His household goods were shipped via Government bill of lading using Allied Van Lines and Berger Transfer & Storage. The household goods were loaded onto the moving truck on August 31, 2002. The truck was weighed the same day it was loaded. The household goods were delivered to commercial storage facilities on September 5, 2002. Thereafter, a partial delivery was made on October 23, 2002; the remainder of the household items were sent to a private storage warehouse in November 2002.

According to the storage company, Berger, the partial delivery of six boxes weighed 1300 pounds. Mr. Brown disputes this, explaining that the boxes contained mostly clothing and other personal items, and weighed far less than the stated amount. In addition, Mr. Brown states that at the time of the second delivery in November, Berger was notified in writing on the delivery receipt that many items appeared to be missing. Berger eventually responded that it had checked its warehouse and had not located any of the missing items.

Allied billed BLM for the shipment of 20,040 pounds of household goods. The bill was supported by weight tickets showing the weight of the goods loaded in Spokane. BLM then notified Mr. Brown that he was responsible for the amount of \$437.56, which represented the cost of shipping weight in excess of 18,000 pounds. Upon receiving the bill

from BLM, Mr. Brown informed the agency of his view that the charges for excess weight were unwarranted because many of his household goods had not been delivered at all. In addition, he questioned whether the shipment was overweight since the original estimate had been only about 12,000 pounds.

BLM paid Allied's charges and billed Mr. Brown for the proportionate cost of shipping weight in excess of 18,000 pounds. BLM also billed Mr. Brown for storage charges attributable to the excess weight of household goods.

Discussion

Mr. Brown has challenged BLM's actions in billing him for the portion of the shipping charges attributable to the excess weight that was transported from Spokane to Washington, D.C., and then stored commercially. His principal objection is that somewhere along the way, a large number of items that he shipped went missing. He feels strongly that if there ever was any excess weight, he should not be billed for its shipment and storage since it was never delivered. He notes that the original estimate for his household goods was 12,000 pounds, and also contends that the inaccuracy of the weights provided by the moving and storage companies is further supported by the initial delivery of the alleged 1300 pounds from storage, which was actually nowhere near that weight.

The agency responds that the moving company's bill is supported by official weight tickets. The partial delivery made in October is also supported by a weight ticket showing the delivery was 1300 pounds. The agency points out that, although Mr. Brown contends that the goods delivered in October weighed less than 200 pounds, he has no countervailing documentation to rebut the moving company's ticket. Moreover, and more to the point, the agency points out that the actual weight of the goods delivered in October is not especially germane to the principal dispute at hand -- which relates to the weight of household goods transported from Spokane to the Washington, D.C., area and subsequently stored.

When an agency transfers an employee from one permanent duty station to another in the interest of the Government, the Government is responsible for the costs of transporting and storing not more than 18,000 pounds net weight of the employee's household goods. 5 U.S.C. § 5724(a)(2) (2000). This statutory limitation is implemented in the Federal Travel Regulation (FTR), which applies to most civilian employees of the Federal Government. 41 CFR 302-7.2 (1999). Because the Government cannot pay for moving any more than 18,000 pounds of household goods, the employee whose goods are moved is responsible for reimbursing the Government for the costs attributable to any weight in excess of 18,000 pounds. Richard D. Grulich, GSBCA 15800-RELO, 02-2 BCA ¶ 31,891. As the Board has frequently noted, these rules leave no room for compromise -- if the shipment exceeds 18,000 pounds, the employee must absorb the cost associated with the additional weight. E.g., James R. Wyatt, Jr., GSBCA 16038-RELO, 04-1 BCA ¶ 32,573; George W. Currie, GSBCA 15199-RELO, 00-1 BCA ¶ 30,814; Robert K. Boggs, GSBCA 14948-RELO, 99-2 BCA ¶ 30,491.

Moreover, the opportunities for obtaining relief by proving the weight of the shipment was inaccurate are severely constrained. Michael J. Kunk, GSBCA 14721-RELO, 99-1 BCA ¶ 30,164 (1998). In the absence of proven error or fraud, the carrier's reported weight is

deemed to be accurate. As we stated in Kunk, the employee may only avoid liability for the cost of transporting weight alleged to be in excess of 18,000 pounds "where the Government's assessment of costs is based on charges proven by clear and substantial evidence to be marred by error." 99-1 BCA at 149,283 (citing Jerry Jolly, GSBCA 14158-RELO, 98-1 BCA ¶ 29,518 (1997) (record contained persuasive documentary evidence that mover's charges were based upon unreliable weight data); Robert G. Gindhart, GSBCA 14288-RELO, 98-1 BCA ¶ 29,405 (1997) (mover's charges were based on weight of household goods which became waterlogged during shipment)). Here, the agency has provided the weight tickets, and Mr. Brown has not supplied any evidence that the scale used to weigh the shipment was inaccurate.

Indeed, Mr. Brown's real complaint is that he is being billed for the transport and storage of household goods in excess of 18,000 pounds when, apparently, somewhere along the way a large number of items disappeared and were never delivered to him. Although we can understand Mr. Brown's frustration with these charges, when he never actually received all of the items shipped, he is still liable for the cost of shipping and storing excess weight. We are not able to reduce the amount of the bill. As we have explained in similar circumstances, Mr. Brown's remedy is to file a claim for the items that were lost, damaged or stolen, under the Military Personnel and Civilian Employees' Claims Act, 31 U.S.C. § 3721. Victor G. Herington, GSBCA 15914-RELO, 03-1 BCA ¶ 32,187. The authority to settle claims under this act is vested in the head of each agency, and not with the Board.

CATHERINE B. HYATT
Board Judge