



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

October 28, 2008

CBCA 1166-RELO

In the Matter of VINCENT A. LeDUC

Vincent A. LeDuc, Daphne, AL, Claimant.

Anne Schmitt-Shoemaker, Deputy Director, Finance Center, Army Corps of Engineers, Millington, TN, appearing for Department of the Army.

POLLACK, Board Judge.

Vincent LeDuc was billed \$3286.59 by the United States Army Corps of Engineers (Corps) for excess weight of household goods (HHG) arising out of his move from Union, Kentucky, to Mobile, Alabama. According to the Corps, the HHG were initially weighed at 21,460 pounds, later re-weighed, and based upon the re-weigh, reduced to 21,120 pounds. Since the weight exceeded 18,000 pounds, Mr. LeDuc was charged for the excess. Mr. LeDuc challenges the accuracy of both the initial weight and the re-weigh, asserting that when he had moved to Union, Kentucky, his HHG weighed well under 18,000 pounds and that during his residency in Kentucky he disposed of items rather than accumulated additional items. In support, he provided weight tickets for the move to Kentucky in 2005, which showed the HHG to be 15,600 pounds. More significantly, Mr. LeDuc challenges the weights assigned to the goods on a separate, and we find more convincing, basis. He identifies significant discrepancies in the supporting data which the Government has used to establish the claimed weight. Those discrepancies raise significant questions as to the accuracy of the weight assigned by the carrier and accepted by the Corps.

The HHG in question were not immediately transferred from Mr. LeDuc's residence to his new station. Instead, on August 29, 2007, the HHG were moved from his residence to a site in Theodore, Alabama, where on September 4, 2007, they were placed into storage in transit (SIT). It is unclear from the record how or when the initial weight was assigned.

Despite Board requests to the Corps, we have been provided no backup data as to the initial assigned weight and less than credible backup as to the re-weigh.

The initial HHG weight was assigned at some point between pickup at Mr. LeDuc's residence on August 29 and delivery to the SIT facility on September 4, 2007. The bill of lading provided by the Government shows that the goods were shipped to Alabama on August 30 and arrived at the delivery site, the SIT facility, on September 4. Block 20 of the form shows Kessler Air Force Base (AFB) as the responsible Government entity and shows that the carrier assigned a weight of 21,460 to the HHG. It is noteworthy that block 26 of the bill of lading provides, "REWEIGH REQUIRED - BEFORE EFFECTING DELIVERY TO RESIDENCE OR PLACING IN STORAGE, THE CARRIER SHALL NOTIFY THE PPSO SPECIFIED IN BLOCK 20." As addressed in more detail below, the HHG were not re-weighed at the time they were placed into the SIT facility.

During the time frame that the HHG were at the SIT facility, the carrier submitted two separate bills to the Government, one dated October 15, 2007, and the other October 22, 2007. In most respects the bills were identical, and each showed a weight of 21,460 pounds. Apparently, due to uncertainty as to where to send the bill, one bill was sent to Defense Finance and Accounting Service-Indianapolis Center and the other to the Corps directly. Both bills were signed by B Day, on behalf of the carrier. What differs as to the bills is that the October 22 bill to the Corps had two separate signatures for B Day, each written in different handwriting. Additionally, nothing on either bill reflected a weighing date or how the assigned weight was reached.

At some time after the HHG arrived at the SIT facility, Mr. LeDuc was advised of the assigned weight and requested a re-weigh. The Corps does not contest the timeliness of his request. Accordingly, timeliness is not an issue.

The Corps and Mr. LeDuc agree that the HHG were delivered to Mr. LeDuc's residence in Mobile on November 12, 2007. It appears that the HHG were picked up from the SIT facility on that same date. Mr. LeDuc says that two trucks were used for the delivery. Neither the Government nor the carrier has contested that point. This is significant because the supporting data provided for the re-weigh included weights from three, not two, trucks. The entry of weight for the third truck has not been adequately explained.

After delivery, the Corps by letter advised Mr. LeDuc of an overpayment, contending that the re-weigh was 21,120 pounds. Mr. LeDuc contested that poundage and as a result, the Corps sought additional information from the carrier, including weight tickets. The company provided eight weight tickets. The tickets, however, had discrepancies which required clarification. Accordingly, a meeting was held with officials of the relocation

company at Kessler AFB on March 5, 2008, in order to clarify concerns raised by Mr. LeDuc. The relocation company addressed both the weighing of items in the SIT facility and the specific weights assigned on the re-weigh and further acknowledged that the better practice would have been to weigh the HHG at the time they arrived at the SIT facility (not done), a procedure not always followed by the company. As to concerns over the tickets, the carrier response was short on specifics, but essentially said that even though there were problems with the tickets, the weight for which the Government was charged was accurate because the weighing company said it was accurate.

The verification for the assigned weight consisted of eight weight tickets. Each showed that the HHG were weighed at the same weighing facility. The first two tickets each show a weight of 5180 pounds. Each is dated November 12, 2007, the date of the move. However, each is signed by a separate weighmaster. Further, the underlying data as to gross weight of the vehicle, as well as the steer axle and drive axle components, differ for each of these tickets even though the vehicle is identified as the same. The next two tickets each show a weight of 6200 pounds. These two are dated November 15, 2007, three days after the move. That, of course, is impossible. Again, each ticket shows a different weighmaster and, as with the first set of tickets, the gross weights and components differ. There is no explanation for how one gets to the gross weight of 6200. Those two tickets are then followed by another set, which each show 3960 pounds. Each shows the weigh date as November 16, 2007, four days after delivery. Again the various component weights on the two tickets differ and are not tied into the claimed weight. Finally, on the last set of tickets, which shows 5780 pounds, again there are different weighmasters, but this time the tickets reflect two different dates. One carries a November 12 date, while the other shows the weighing as of November 14. If we add the 5180, 6200, 3960, and 5780 pounds, we arrive at 21,120 pounds.

While we can arrive at the Corps' total for HHG weight by combining the numbers on selected tickets, for at least two of those weights we are given verification dates that were well after the goods were already delivered to the residence. In a third instance, we have one ticket showing weighing on the delivery date, but another, with the identical weight, showing the weighing as occurring on a date after delivery. Finally, it should be noted that the tickets identify the use of three vehicles (with two sets showing the same vehicle). That is of course problematic, since only two trucks were used.

The carrier has responded to the discrepancy in tickets by assuring the Corps that the weight provided was completely accurate. That assurance, however, was followed by the statement that although the carrier was sure the weights were accurate, the official providing the assurance was unclear as to why the dates were different. The official continued, stating that, unfortunately, the operations manager at the time of the LeDuc transaction was no

longer with the company, so an answer to the discrepancies was difficult to obtain. The carrier said that it contacted the local CAT scale (weighing station) to ask some questions concerning reprinting of tickets (alleged as a possible explanation for the discrepancy in dates). The responding official then noted, "I was not comfortable with the answer but was told that they would try to find a copy of the original ticket and if not they would try to reprint." He then said that could explain the date difference, apparently referring to multiple dates and different trucks.

Notwithstanding concerns with the accuracy of the data, the agency has decided to take the carrier at its word and presume the weight was accurate. The agency so advised Mr. LeDuc, who then asked the Board to settle the agency's claim. In his letter to the Board, he basically laid out many of the facts above.

In attempting to address the case, the Board found the supporting data inconsistent and on its face unreliable. Accordingly, by order dated July 17, 2008, the Board, having what it considered inadequate information and no road map tying various documents together, asked the parties to identify specific documents relied upon to establish weight. We further asked the Corps whether the re-weigh was done on the dates set out on the tickets, and if it was done on a different date, to explain that. The Corps was asked how it reconciled the November 12 delivery date with later dates for weighing. It was also asked how many trucks were used and whether any of the tickets were original weight tickets.

The Corps responded in a letter dated August 28, 2008. It acknowledged that Mr. LeDuc had made a timely re-weigh request. It then explained that it does not arrange or complete the receiving report for the receipt of services, and "[t]herefore, we are unable to support or dispute the original weight or reweigh." It then noted that Kessler AFB and the Blue Grass Army Depot, respectively, had arranged the shipment and certified that the services were received as invoiced. Finally, it said that it was informed by an official at Kessler, that Kessler was unable to verify the transaction at this time due to the age of the transaction and lack of availability of documentation. The Corps then referenced an official of the relocation company and repeated the relocation company position that the tickets were accurate and that the discrepancy in the dates on the weight tickets, versus the actual re-weigh, was due to the date on the ticket being the print date and not the re-weigh date.

Discussion

In *Charles E. Pixley*, GSBICA 16484-RELO, 05-1 BCA ¶ 32,887, the board stated that under applicable statute and regulation, the Government cannot pay for moving any more than 18,000 pounds of household goods and the employee whose goods are moved is responsible for reimbursing the Government for the costs attributable to any weight in

excess of that figure. The board further noted that the rules leave no room for compromise - if the shipment exceeds 18,000 pounds, the employee must pay. See *George W. Currie*, GSBCA 15,199-RELO, 00-1 BCA ¶ 30,814; *Robert K. Boggs*, GSBCA 14948-RELO, 99-2 BCA ¶ 30,491. The board continued, stating that in the absence of proven error or fraud, the carrier's weight is deemed to be accurate. Mere suspicion is not sufficient. *Pixley*, 05-1 BCA at 162,933-34.

Our predecessor, the General Services Board of Contract Appeals (GSBCA), decided only three cases where it found that an employee met the burden of proving the certified weights for the movement of household goods was incorrect. The last of those cases was *Michael V. Torretta*, GSBCA 16560-RELO, 05-1 BCA ¶ 32,928. *Torretta* is similar in many respects to Mr. LeDuc's appeal. In *Torretta*, the board found serious discrepancies in data and inadequate Government explanations as to the assigned weights. Here, the discrepancies exceed those encountered in *Torretta*.

In *Torretta*, the agency had furnished the claimant copies of weight tickets for three trucks, using those tickets to justify the claimed weight. In deciding the appeal, the board concluded that the weight tickets relied upon by the Government could not themselves be relied upon, pointing out that the tickets were for three trucks when only two were used and that a claimed re-weigh presented other issues that made any reliance unjustified. Here, the situation is even more compelling. Not only does the data relied upon reflect three trucks, when only two were used, but additionally, the weight tickets provided are internally inconsistent and carry dates which postdate the delivery of the goods.

In this appeal, the Government was given multiple chances to provide information that had some credibility. What it provided is neither reliable nor credible. Mr. LeDuc is being held to a weight that is based upon faulty data. Further, the agency has admitted it is uncomfortable with the answers from the carrier and the carrier justifies its position, asserting that it simply should be believed. The Government here has not only failed to provide hard data, but the data it has provided raises questions as to how the weights for the HHG were initially and subsequently assigned. If we had been provided reliable data, this case would be resolved in favor of the Government, based on an underlying presumption. However, the Government cannot rely on a presumption where the data supporting its position raises serious issues as to accuracy and reliability.

Mr. LeDuc believed the weight was in error. He properly sought relief. When a new number was provided, he asked for verification. The verification was unreliable. The choice here is to find for the Government and rely on unreliable and unsupported weight tickets, which do not even carry the right date, show a phantom truck, and which even the relocation company and Corps are not comfortable endorsing, or accept Mr. LeDuc's

contentions. On balance, and admittedly this is a rare case, Mr. LeDuc's evidence is far more convincing than that provided by the Government and in our view shows that the Government number was arrived at in error.

Accordingly, we find that Mr. LeDuc has met the heavy burden of proving that the certified weights on which the agency now appears to rely are clearly erroneous and the weight for the HHG moved did not exceed 18,000 pounds. Mr. LeDuc's claim is therefore granted. The bill the agency sent him is invalid.

HOWARD A. POLLACK
Board Judge