



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

November 26, 2012

CBCA 2957-RELO

In the Matter of ROBERT M. VALEK

Robert M. Valek, APO Area Europe, Claimant.

Sharon Medley, Director, Transportation Payment Operations, Defense Finance and Accounting Service, Department of Defense, Indianapolis, IN, appearing for Department of Defense.

BORWICK, Board Judge.

Robert M. Valek, claimant, contests the debt assessed by the agency, the Department of the Army, for the excess weight occasioned by his permanent change of station move. Because the agency correctly applied statute, the Federal Travel Regulation (FTR), and the Joint Travel Regulations (JTR), we deny the claim.

Background

On August 30, 2011, claimant was transferred in the interest of the Government from Vicenza, Italy, to Heidelberg, Germany, and was authorized an 18,000 pound shipment of household goods (HHG). Claimant's HHG were moved under a government bill of lading (GBL) in a containerized shipment. The gross and net weight of the shipment were 30,507 and 23,948 pounds, respectively, and included a piano and a wood cabinet.

The agency established a debt for the overweight shipment. It did so by first subtracting from the net weight a 15% packing materials allowance of 3592 pounds, resulting in an adjusted net weight of 20,356 pounds. Crediting claimant with the authorized

18,000 pounds resulted in an excess weight of 2356 pounds. The agency then divided the excess weight by the total net weight and multiplied the resulting ratio (.098380) by the total cost of the invoice (\$22,419.24) to calculate a debt of \$2205.60.

The agency assessed the debt against claimant, and from that assessment, claimant submitted a claim to the Board.¹ Claimant contests the assessment of the debt because of the “excessive packing material which was included in the crates and hence in the weight.” As examples, claimant states that “there were individual crates for the piano, rugs and our kitchen buffet all included in larger crates.”

Discussion

Statute provides that when an agency transfers an employee in the interest of the Government, the Government must pay for the cost of moving HHG, but only those HHG not in excess of 18,000 pounds. 5 U.S.C. § 5724(a)(2) (2006). We have consistently held that the weight limit is firm and cannot be relaxed. The employee is responsible for reimbursing the Government for any excess charges due to an overweight shipment. *See Charles H. Noonan*, CBCA 2557-RELO, 12-1 BCA ¶ 34,929; *Dana Gao Kay*, CBCA 1701-RELO, 10-1 BCA ¶ 34,314 (2009); *Steven P. Shafran*, CBCA 656-RELO, 07-2 BCA ¶ 33,603. The FTR and JTR are to the same effect. *See* 41 CFR 302-7.2, 7.21 (2010), JTR C5154-B, C5175-A.2. In the absence of clear and convincing evidence of error or fraud, the agency determination of weight is binding and may not be overturned. *Sam Hankins*, CBCA 1309-RELO, 09-1 BCA ¶ 34,124.

As for the alleged excess packing materials used by the movers, when an employee ships by GBL, it is not the prerogative of the employee to substitute his or her judgment as to how the move is to be performed. *Kay; Shafran; Wendy J. Hankins*, GSBCA 16324-RELO, 04-2 BCA ¶ 32,686.

In this matter the agency properly applied statute and governing regulations, particularly 41 CFR 302-7.12(c) and JTR C5170 C-2², in crediting claimant with a 15% allowance for the weight of the container, and in the assessment of the debt.

¹ The agency suspended collection of the debt pending the Board’s decision on the claim.

² Those regulations provide that in the case of containerized shipments, the net weight will be 85% of the gross weight less the weight of the container.

Decision

The Board denies the claim.

ANTHONY S. BORWICK
Board Judge