



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

January 12, 2012

CBCA 2557-RELO

In the Matter of CHARLES H. NOONAN

Charles H. Noonan, Guayaquil, Ecuador, Claimant.

James E. Hicks, Senior Attorney, Drug Enforcement Administration, Washington, DC, appearing for Department of Justice.

DANIELS, Board Judge (Chairman).

Neither estimating errors by movers nor untimely issuance of travel orders by agencies has any impact on the requirement that transferred employees pay the cost of shipping household goods which weigh more than the amount which may be shipped at agency expense.

Background

Charles H. Noonan was transferred by the Drug Enforcement Administration (DEA) from Florida to Ecuador in August 2010. The agency authorized shipment of 7200 pounds of Mr. Noonan's household goods (HHG) at government expense, noting that the employee's housing in Ecuador would be furnished. DEA alerted the employee to an agency-issued handbook which cautioned that the employee would be responsible for all costs associated with excess weight of his goods.

Prior to the move, the carrier assigned to transport Mr. Noonan's HHG surveyed his goods and estimated that they weighed about 7200 pounds. As the carrier's personnel packed the goods, however, they increased the estimate to 8000 pounds, and when they actually weighed the items, they reported the weight as 11,664 pounds.

According to Mr. Noonan, a series of misadventures occurred at about this time. Due to delays in issuing his orders, he says, the time which was available for coordinating the move with the carrier was compressed; by the time the goods were actually weighed, he was in Ecuador. The carrier's representative offered to ship the goods for the cost of transporting 7200 pounds plus \$2000; Mr. Noonan's wife accepted the offer as to the excess weight and left for Ecuador herself. An officer of the carrier then told the employee that the representative had not been authorized to make the offer; the officer offered instead to pay Mr. Noonan the cost of airfare for himself or his wife to return to Florida and repack the goods. A DEA transportation official advised that the employee could not accept the second offer, however.

Ultimately, the carrier repacked Mr. Noonan's goods, removing items which were identified by his relatives in Florida, reducing the weight to 8491 pounds. Mr. Noonan asked that some items be put back into the shipment, and the final weight of goods transported to Ecuador was 9128 pounds. Of this amount, 1928 pounds were in excess of the 7200 authorized by the agency, and that constitutes 21.1% of the total shipment.

The carrier billed DEA \$19,088.66 for moving Mr. Noonan's goods from Florida to Ecuador. The agency determined that \$400 was charged inappropriately and paid the carrier \$18,688.66 for the move. The agency holds the employee responsible for 21.1% of the cost, or \$3947. Mr. Noonan maintains that due to mistakes made by the agency, in delaying issuance of his travel orders, and the carrier, in mis-estimating the weight of his goods, he should be excused from making this payment.

Discussion

Under statute, an agency which transfers an employee to a new duty station, in the interest of the Government, must pay "the expenses of transporting, packing, crating, temporarily storing, draying, and unpacking [the employee's] household goods and personal effects" – but only those goods and effects "not in excess of 18,000 pounds." 5 U.S.C. § 5724(a)(2) (2006). The Administrator of General Services is charged with prescribing regulations necessary for the administration of this law. *Id.* § 5738(a)(1). The Administrator has provided, in the Federal Travel Regulation, that "[w]hen quarters are furnished or partly furnished by the Government OCONUS [outside the continental United States], [an] agency may limit the weight of HHG . . . that can be transported to that location." DEA has limited

that weight to 7200 pounds¹ and has cautioned employees, in a handbook and in briefings, that they are responsible for any excess weight of goods they wish to have shipped.

Mr. Noonan does not question the weight of the household goods he had shipped to Ecuador. He objects to payment for transportation of the items in excess of 7200 pounds on equitable grounds. Agency officials made his move difficult, he contends, by not issuing travel orders until shortly before he had to report to his new duty station, effectively forcing him to leave the country before all matters relating to the shipment could be concluded. The carrier's poor estimates of the weight compounded his problems, he continues; had the estimates been accurate, he could have made informed decisions before leaving as to which items to ship.

Unfortunately for the employee, even if his contentions of poor treatment are true, he cannot prevail. The weight limitation is firm and cannot be relaxed. *Michael V. Torretta*, CBCA 1521-RELO, 09-2 BCA ¶ 34,168 (collecting cases regarding 18,000 pound limitation); *Toma* (expressing same principle regarding 7200 pound limitation). The employee has not shown that late issuance of orders forced him to move more goods than he otherwise would have moved – and although the carrier's offers to limit the financial consequences of the move proved abortive, the carrier did afford the employee time to remove items from the shipment before actually moving the goods. Although DEA may wish to review its procedures for issuing travel orders, the Board cannot do so; we settle claims, but do not conduct investigations. *Robert P. Kropik*, CBCA 2435-RELO, 11-2 BCA ¶ 34,852. We have held many times that erroneous estimates by carriers as to the weight of goods being shipped do not alter the Government's obligations under statute and regulations regarding payment for a shipment. *E.g.*, *Kropik*; *James C. Chupik*, CBCA 2185-RELO, 11-1 BCA ¶ 34,733; *Sam Hankins*, CBCA 1309-RELO, 09-1 BCA ¶ 34,124.

¹ This is the same weight authorized by the Department of State for shipment of the household goods of foreign service officers to posts where furnishings are provided. *Raymond Daniel Toma, Jr.*, CBCA 1499-RELO, 09-2 BCA ¶ 34,152 (citing 14 Foreign Affairs Manual 613.1(a)(1), (2)).

Decision

The claim is denied.

STEPHEN M. DANIELS
Board Judge