



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

April 30, 2013

CBCA 3208-RELO

In the Matter of GREGORY W. SLAYTON

Gregory W. Slayton, Hanover, NH, Claimant.

Dorothy P. Patton, Office of the Legal Adviser, Department of State, Washington, DC, appearing for Department of State.

DANIELS, Board Judge (Chairman).

Gregory W. Slayton served the United States as Consul General to Bermuda from 2005 to 2009. Upon the completion of his tour of duty, the Department of State had his household goods shipped home from Bermuda. Mr. Slayton asks us to review two determinations made by the department regarding this shipment – first, that he must pay the Government \$20,776.43 for transporting goods which weighed more than 12,000 pounds, and second, that the Government’s liability for losing goods valued at \$79,973.30 is limited to \$40,000.

Background

Under State Department regulations, a chief of mission (such as Mr. Slayton) is allowed to ship 12,000 pounds of household goods at government expense when he is sent to or from a post of duty. 14 Foreign Affairs Manual (FAM) 613.1. When Mr. Slayton went to Bermuda in 2005, his goods weighed 14,333 pounds, and he paid for the cost of shipping the amount in excess of 12,000 pounds. While he was at the post, Mr. Slayton gave to Bermudian charities dozens of items of furniture (including a brass bed and a baby grand piano) and hundreds of books.

When his goods were shipped back to the United States in 2009, the State Department says that they weighed 17,175 pounds – 4790 more than the amount allowed.¹ This surprised Mr. Slayton for two reasons: first, because he had disposed of so many heavy items that he had shipped to Bermuda, and second, because in Bermuda, representatives of the moving company and the members of his staff who supervised them had assured him that the goods weighed less than 12,000 pounds. The department demanded that he pay the cost of shipping the excess weight, \$20,776.43.

The shipment from Bermuda was placed into storage in the United States. When it was removed from storage and delivered to his new home, Mr. Slayton had another unpleasant surprise: nineteen large boxes, mostly filled with valuable items, had been lost, and many items which were not his were within the boxes that were delivered. Among the items which were mistakenly shipped to him were several heavy items like an iron bed frame, desks, filing cabinets, bureaus, and tables, as well as dozens of one- and two-gallon cans of paint. Mr. Slayton asked the department what he should do with these items. He did not receive a response, so he gave away or otherwise disposed of them.

Mr. Slayton pursued the matters of the excess weight and lost items administratively. In November 2012, he finally received a determination from the department. The department persisted in its demand that he pay the cost of shipping the excess weight. It accepted Mr. Slayton's valuation of the missing items, \$79,973.30 (depreciated value), and paid him \$40,000 on his claim for the total valuation.

Discussion

Excess weight

The Secretary of State is authorized by statute to pay the costs of transporting the furniture and household and personal effects of a member of the Foreign Service when such an individual is being transferred to a post of duty or to his home upon separation from the Service. 22 U.S.C. § 4081(11) (2006). The Secretary has established rules regarding this transportation in the Foreign Affairs Manual. Because the FAM is a regulation which has been promulgated under the authorization of statute, it has the force of law and its

¹ The total weight was only 4790 pounds more than the amount which could be shipped at government expense, rather than 5175, because Mr. Slayton's unaccompanied baggage weighed 385 pounds less than the amount allowed. As permitted by 14 FAM 613.4, the department added these 385 pounds to the allowance for shipment of his household goods.

requirements may not be waived by the agency or the Board. *Bonnie Coates*, GSBCA 14681-RELO, 99-1 BCA ¶ 30,363. As noted earlier, the FAM limits the weight of goods which may be shipped for a chief of mission to 12,000 pounds.

The weight of shipped goods is most appropriately demonstrated by certified weight tickets. We have held that the burden of proving that such weights are incorrect “is exceedingly heavy and rests on the claimant. Agency determinations of net weight will be set aside only where a claimant can show clear and substantial evidence of error or fraud.” *Evan F. Meltzer*, CBCA 1536-RELO, 09-2 BCA ¶ 34,272 (quoting *Robert G. Gindhart*, GSBCA 14288-RELO, 98-1 BCA ¶ 29,405 (1997)); *Kathleen A. Kern*, CBCA 1107-TRAV, 08-1 BCA ¶ 33,863 (same).

Despite the heavy burden, several claimants have made the requisite showing. They include *Gindhart* (mattresses were waterlogged); *Jerry Jolly*, GSBCA 14158-RELO, 98-1 BCA ¶ 29,518 (1997) (data provided by mover was “open to serious question” because weight entries were changed without explanation); *Michael V. Torretta*, GSBCA 16560-RELO, 05-1 BCA ¶ 32,928 (weight tickets were for three trucks, but goods were delivered in two); *Vincent A. LeDuc*, CBCA 1166-RELO, 08-2 BCA ¶ 33,997 (same); *Gerard Paul Husson*, CBCA 1560-RELO, 09-2 BCA ¶ 34,220 (weight determined by “weight reconstructions” which were not credible); and *Mark Gmitro*, CBCA 1321-RELO, 09-1 BCA ¶ 34,064 (agency failed to rebut allegations that the weight included someone else’s goods, as well as claimant’s).

Here, the State Department has not provided certified weight tickets, so we do not know of the department’s basis for concluding that Mr. Slayton’s goods weighed 16,790 pounds. The lack of tickets weakens the department’s case. Even if they had been provided, however, we could not accept the contention that Mr. Slayton’s goods weighed the alleged amount. This is because his situation is very much like the one in the last decision cited, *Gmitro*. The claimant has asserted that the shipment he received included numerous heavy items which were not his, and the department has failed to rebut that assertion. As we held in *Gmitro*, “[w]ithout a justification to support the calculation of the weight of the household goods, the agency has no grounds for collecting any money from the employee.”

Lost items

Claims for loss or damage to a government employee’s property incident to a transfer of assignment are resolved under the Military Personnel and Civilian Employees’ Claims Act, 31 U.S.C. § 3721. This statute vests settlement authority for such claims in the head of the agency involved, not this Board. It also provides that the agency head’s settlement is “final and conclusive.” Consequently, we have no authority to consider Mr. Slayton’s claim

for loss of his property. *Donnell Brown*, CBCA 2671-RELO, 12-1 BCA ¶ 34,996; *Roxanna E. Zamora*, GSBCA 16741-RELO, 06-1 BCA ¶ 33,165 (2005); *Charles A. Miller*, GSBCA 13679-RELO, et al., 97-1 BCA ¶ 28,865; *see also Flowers v. United States*, 75 Fed. Cl. 615, 633-34 (2007), *aff'd*, 321 F. App'x 928, 932 (Fed. Cir. 2008) (“final and conclusive” settlements under the Act are not subject to judicial review). We do note, however, that this statute permits the head of an agency to pay “not more than \$40,000 for a claim against the Government” which is made under the Act, unless “the claim arose from an emergency evacuation or from extraordinary circumstances.” 31 U.S.C. § 3721(b); *see also* 5 U.S.C. § 5522(a) (further defining the last terms with regard to departures from foreign posts)).

STEPHEN M. DANIELS
Board Judge