



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

May 18, 2009

CBCA 1499-RELO

In the Matter of RAYMOND DANIEL TOMA, JR.

Raymond Daniel Toma, Jr., Mt. Pleasant, SC, Claimant.

Lara A. Ballard, Attorney-Adviser, U.S. Department of State, Washington, DC,
appearing for Department of State.

BORWICK, Board Judge.

Claimant, Raymond Daniel Toma, Jr., a member of the United States Foreign Service, contests the Department of State's (agency's) assessment of a charge resulting from claimant's excess-weight shipment of household effects (HHE) from Dublin, Ireland, to Charleston, South Carolina, in connection with claimant's PCS transfer. In assessing the charge, the agency correctly applied the governing regulation, the Foreign Affairs Manual, (FAM). Consequently, we sustain the agency's determination.

Background

On or about May 19, 2008, the agency authorized claimant's transfer from Dublin, Ireland, to Charleston, South Carolina, and granted claimant shipment of 7200 pounds of HHE from the post.¹ On or about May 29, 2008, the agency issued an international government bill of lading (ITGBL) which provided for a shipment limitation of 7200 pounds net weight.

¹ The authorization also granted claimant an additional shipment of 10,800 pounds of HHE from permanent storage, but any HHE shipment from storage is not at issue here.

Claimant was due to depart Dublin on July 23, so he scheduled a pack-out from July 9 through July 11. Claimant says that about one month before the pack-out, the agency moving coordinator estimated the weight of claimant's HHE to be 6825 pounds. The agency says that in making this estimate, the moving coordinator used a methodology based on shipment volume, commonly used in inter-European moves, rather than the standard method required by the agency's tender of service for ITGBLs, which is based on the weight of the HHEs. The moving coordinator concluded that the shipment volume was 685 cubic feet and that each cubic foot of HHE would weigh seven pounds.

There is a factual dispute concerning additional statements made about the weight of the shipment during the pack-out. The agency says, based upon an e-mail message from the moving coordinator, that the moving coordinator told claimant that his shipment would be overweight. Claimant denies that the moving coordinator conveyed any such information to him. However, the moving coordinator did inventory and informally weigh the individual HHE items during the pack-out without totaling the weight; the list, dated July 11, 2007, is in the record. The agency says this list was signed by claimant. The total net weight of the items listed was approximately 10,771 pounds.

After the move, the agency examined whether claimant's HHE shipment was within the 7200 pound weight limitation, and, if not, the amount of claimant's responsibility for the overweight. The agency says that based upon a "calibrated stationary scale," it determined the "official origin weight" to be 10,529 pounds. The agency thus determined an overweight of 3329 pounds (10,529 - 7200) and assessed claimant \$5418.25. The gross weight of the shipment was 12,875 pounds.

The agency has presented to the Board two certified weight certificates consistent with the agency's original determination. The first one, from the move coordinator, shows a net weight of the HHE at Dublin to be 4776.8 kilograms, or 10,531 pounds (rounded), with a gross weight of 5840.8 kilograms or 12,876 pounds. The second re-weigh at Charleston, S.C., shows a gross weight of 13,325 pounds.

Claimant sought relief from the overweight assessment, stating in an e-mail message to agency officials:

Again, I was told I would be underweight. I relied on that, not having any idea that this estimate had no correspondence to reality and not even suspecting that this may have been an attempt by some party somewhere to make a little extra money. As such, I effectively ceased my efforts to reduce my holdings at this point.

On or about November 6, 2008, the agency refused to grant claimant relief from the assessment. Claimant then submitted a claim to this Board.

Discussion

Statute grants the Secretary of State the authority to pay the travel-related expenses of members of the Foreign Service and their families. 22 U.S.C. § 4081 (2006). The Foreign Affairs Manual implements that statutory authority. *Panfilo Marquez*, GSBCA 16287-TRAV, 04-1 BCA ¶ 32,617.

For transfer of a member of the Foreign Service, the FAM provides a shipment allowance for HHE of 18,000 pounds net weight and a limited shipment allowance of 7200 pounds net weight when a post provides adequate furnishings. 14 FAM 613.1 (a)(1), (a)(2). The FAM provides:

employees are responsible for any transportation . . . costs incurred by them or their agents which are not authorized by laws and regulations governing the shipment of effects.

14 FAM 612.3. The FAM also states that “employees should know their shipment limitations and the net weights involved.” 14 FAM 612.3-1.

In short, under the FAM, the Government will pay for shipment of 18,000 pounds of HHE or a limited shipment of 7200 pounds of HHE when adequate furnishings are provided at the post. Employees are responsible for the costs of shipping HHE that are above the weight limits. The combined effect of these provisions of the FAM is to put squarely on the employee the responsibility of ensuring that a shipment of HHE meets the applicable weight limitations. *Mark Burnett*, GSBCA 16578-RELO, 05-1 BCA ¶ 32,958; *see also Robert Weisberg*, CBCA 667-RELO, 07-2 BCA ¶ 33,608.

Here, claimant states that he should be relieved of the overweight assessment because he was provided erroneous estimates by the moving coordinator. However, in construing analogous provisions of statute and the Federal Travel Regulation applicable to civilian employees of the executive branch, the general standard is that the Government is not bound to pay beyond statutory or regulatory limitations based upon erroneous estimates of third parties. *Sam Hankins*, CBCA 1309-RELO, slip op. at 4, (Apr. 8, 2009) (*citing David K. Walterscheid*, CBCA 1360-RELO, 09-1 BCA ¶ 34,044 (2008)).

Claimant also argues that he was never informed by movers or anyone else that he was in danger of being overweight. However, the packers did prepare an HHE inventory list, on

July 11, 2008, with the estimated weight of each item. There is no explanation from claimant why he could not have derived the estimated total weight from that list and then culled items from the shipment.

The agency correctly applied the provisions of the FAM. The Board denies the claim.

ANTHONY S. BORWICK
Board Judge