



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

June 9, 2022

CBCA 7258-RELO

In the Matter of CHARLES N.

Charles N., Claimant.

Megan E. Parker, Office of Assistant Chief Counsel, Customs and Border Protection, Department of Homeland Security, Indianapolis, IN, appearing for Department of Homeland Security.

RUSSELL, Board Judge.

Claimant, an employee with Customs and Border Protection (CBP), was authorized relocation benefits in connection with his transfer from Nassau, Bahamas, to Houston, Texas. At issue is whether he is entitled to reimbursement for the cost of shipping his personally-owned vehicle (POV) using a non-U.S.-flagged vessel and associated customs broker fees.

Background

A. CBP Guidance to Claimant Prior to the Shipment of His POV

In June 2021, CBP authorized claimant reimbursement for expenses related to his relocation from his duty station in Nassau, Bahamas, to a new station in Houston, Texas. After or around the time of receiving authorization, claimant inquired whether he could be reimbursed if he shipped his POV himself. In response, CBP explained that claimant could arrange for his own shipping, but he would only be reimbursed up to the amount that the Government would have incurred, estimated to be \$9652.05, and only for allowable expenses.

However, CBP did not inform claimant that the Cargo Preference Act of 1954 (Cargo Preference Act), applicable to the shipment of his POV, barred reimbursement for expenses

he would incur by shipping his POV by sea on a non-U.S.-flagged vessel. The Cargo Preference Act states, “An officer or employee of the United States Government traveling by sea on official business overseas or to or from a territory or possession of the United States shall travel and transport personal effects on a vessel documented under the laws of the United States if such vessel is available, unless the necessity of the mission required the use of a foreign vessel.” 46 U.S.C. § 55302(a) (2018). “The Administrator of General Services shall prescribe regulations under which agencies may not pay for or reimburse an officer or employee for travel or transportation expenses incurred on a foreign vessel in the absence of satisfactory proof of the necessity of using the vessel.” 46 U.S.C. § 55302(b).

Someone at CBP knew about the Cargo Preference Act because the record shows that, in September 2020, well before claimant sought guidance on shipping his POV, CBP had requested a determination from the Maritime Administration (MARAD), the Department of Transportation agency responsible for the administration of the Cargo Preference Act, as to whether circumstances warranted providing CBP a waiver of the Cargo Preference Act’s requirement that federal employees use U.S.-flagged vessels to transport their personal effects when traveling for official business. In instances when U.S.-flagged vessels might be unavailable, and an agency would like the option of using a non-U.S.-flagged vessel for over-water transportation services for shipping an employee’s personal effects and POV, the agency may submit a Determination of Non-Availability (DNA) request to MARAD.¹

B. CBP’s Decision on Claimant’s Travel Voucher and Claimant’s Response

In October 2021, claimant submitted a travel voucher for reimbursements of \$1444.35 and \$586.50, amounts that he incurred for shipping his POV in early September 2021 and the associated customs broker fees, respectively. CBP denied claimant’s request for reimbursement. In an email, CBP explained that the Cargo Preference Act requires that employees’ household goods shipments be transported under a U.S.-flagged vessel and that claimant, in shipping his POV, had not complied with this requirement.

In challenging CBP’s decision denying his claim, claimant asserts that he relied on guidance provided by the agency prior to shipping his vehicle himself, and no one mentioned that he had to ship his vehicle using a U.S.-flagged vessel. He additionally asserts that the manner by which he shipped his household goods was consistent with 46 U.S.C. § 55305(b), which requires the United States to take steps to ensure that fifty percent of its procured or

¹ In its September 2020 DNA request, CBP requested use of a non-U.S.-flagged vessel for a shipment from New Jersey to the Bahamas. MARAD denied this DNA request, finding that MARAD’s market survey showed that a U.S.-flagged vessel was available for transportation services during the relevant period for the shipment.

contracted-for items be transported on privately-owned, U.S.-flagged vessels, because fifty percent of his household goods were shipped on the U.S.-flagged vessel used by CBP for relocation services. He noted that the rate charged by the non-U.S.-flagged vessel for shipment of his POV was reasonable and actually saved the Government money because the non-U.S.-flagged vessel's shipping rate was \$3000 less than what the available U.S.-flagged vessel would have charged. He added that the U.S.-flagged vessel would have taken considerably longer to ship his vehicle and that using the non-U.S.-flagged vessel was a personal benefit to him because he was able to avoid renting a vehicle at the extremely high, pandemic-level rates existing at the time of his return to the United States. He states that other CBP officers received approval to use non-U.S.-flagged vessels to ship their personal effects and that he should not be held responsible for the cost of shipping his POV because he was only following his employer's advice.

In its response to this claim, CBP does not dispute that claimant was eligible to arrange for the transport of his POV rather than use the agency's relocation service contractor. However, the agency argues that it does not have the authority to reimburse claimant for the expenses associated with shipping his POV on a non-U.S.-flagged vessel absent an express waiver from MARAD. CBP additionally characterizes the customs broker fees, charged by a U.S.-based company, as related or incidental to the POV shipping and therefore not reimbursable under the Cargo Preference Act. The agency also states that the fees are properly characterized as "miscellaneous expenses," and because the agency had already paid claimant the maximum amount to which he was entitled for these types of expenses, the Board should deny his request for reimbursement of the customs broker fees.

Discussion

A. POV Shipping Costs

When a federal employee travels from an official station outside of the continental United States to one within the continental United States, federal agencies have discretion to pay or reimburse an employee for the cost of shipping a POV. 41 CFR 302-3.101 tbl. C (2021); *see also* 41 CFR 302-9. For shipment by sea, the Cargo Preference Act requires agencies to use U.S.-flagged vessels for transportation of relocating employees and their personal effects unless a determination is made that use of a foreign vessel is necessary to advance an agency's mission. 46 U.S.C. § 55302(a). CBP's denial of claimant's request for reimbursement of expenses related to transporting his POV on a non-U.S.-flagged vessel was consistent with the Cargo Preference Act.

Claimant argues that he should not be held personally responsible for the transportation expenses for a number of reasons, each of which is addressed in turn. First, claimant argues that he should not be held responsible for the incurred expenses because,

prior to shipping his POV, he did not receive any advice from agency officials alerting him to the requirement to use a U.S.-flagged vessel. The record does reflect that claimant diligently attempted to ensure that his arrangements for transporting his POV comported with agency requirements. Regrettably, the advice that he received on this issue ultimately turned out to be incomplete to claimant's financial detriment. The agency informed claimant that he could ship his vehicle and be reimbursed up to the amount that the Government would have incurred and that the agency could only reimburse allowable expenses. However, the record does not show that any CBP official on whom claimant relied for advice specifically disclosed, prior to the shipment of his POV, the requirement regarding the use of U.S.-flagged vessels. CBP's action here is particularly troubling since, prior to claimant seeking advice on shipping his POV, CBP had expressly sought a waiver of the Cargo Preference Act's requirement that federal employees ship their personal effects using a U.S.-flagged vessel. Yet, the agency did not inform claimant of this requirement until it was too late – i.e., not until after claimant submitted his voucher for reimbursement with the supporting invoice identifying the non-U.S.-flagged carrier that he used.

It is unfortunate that claimant incurred expenses in good faith reliance on what turned out to be deficient advice from CBP officials. Regardless of how CBP's mistake is characterized (e.g., inadvertent, careless, bureaucratically-rooted, or just sloppy), the mistake is a costly one for claimant.² Nevertheless, "it is well-settled law that the Government cannot be bound by the erroneous advice or action of its agents." *Andrew J. Duff*, GSBCA 15721-RELO, 02-2 BCA ¶ 32,033; *see also Charles J. Shedrick*, CBCA 5066-RELO, 16-1 BCA ¶ 36,566 ("[R]eceipt by claimant of inadequate or erroneous information is not a basis for granting his claim."). Accordingly, by law, we cannot grant claimant the relief that he is requesting.

Second, claimant argues that he should be reimbursed for the expense of shipping his POV because the manner by which he shipped his vehicle comported with 46 U.S.C.

² The agency notes that claimant may seek relief under the Meritorious Claims Act, 31 U.S.C. § 3702(d). That statute authorizes the Administrator of General Services to recommend that Congress take action for legal or equitable reasons to make an employee whole on a claim that may not be paid by using an existing appropriation. The statute provides in pertinent part that "the official responsible . . . for settling [a] claim shall report to Congress on a claim against the Government that is timely presented under this section that may not be adjusted by using an existing appropriation, and that the official believes Congress should consider for legal or equitable reasons." *Id.*; *see also Brian L. Korzak*, CBCA 3366-RELO, 13 BCA ¶ 35,440. Under 31 U.S.C. § 3702(d), the Administrator of General Services is the "official responsible" for settling employees' relocation claims against the Government.

§ 55305(b). He notes that this section requires the United States to take steps to ensure that fifty percent of its procured or contracted-for items are transported on privately-owned, U.S.-flagged vessels. Claimant believes that he complied with this provision because fifty percent of his household goods were shipped on the U.S.-flagged vessel used by CBP for relocation services. However, § 55305(b) applies to the shipment of cargo procured, contracted for, or obtained by the United States for its own benefit or that of a foreign country. It does not apply to situations such as we have here, where shipment of a federal employee's private vehicle is at issue. As discussed above, it is section 55302 of the Cargo Preference Act that applies to this claim.

Additionally, claimant asserts that CBP has compensated other employees under similar circumstances. Any such payments, mistaken or otherwise, made to other employees do not change our ability to grant the requested relief, which is barred by statute. Claimant also argues that shipping his vehicle on a non-U.S.-flagged vessel resulted in conveniences for him and saved the Government money. However, neither personal convenience nor potential savings for the Government justify reimbursement of expenses that are statutorily unauthorized. *See, e.g., Charles J. Shedrick.*

B. Customs Broker Fees

Relying on the Cargo Preference Act, CBP first argues that the Board should deny claimant's request to be reimbursed for the customs broker fees, asserting that these fees were related to claimant's transportation of his POV on a non-U.S.-flagged vessel. CBP next characterizes the customs broker fees as miscellaneous moving expenses which should be paid from an employee's foreign transfer allowance. CBP asserts that claimant's request for reimbursement of the broker fees should be denied because claimant has already been paid \$750, the maximum lump sum amount provided under his relocation expense authorization for miscellaneous moving expenses. CBP argues that the broker fees here are comparable to automobile registration, driver's license, and similar fees which, under the DSSR, are miscellaneous expenses. *See DSSR 242a(5).* We disagree with both of CBP's arguments.

Although the Cargo Preference Act requires federal employees to use a U.S.-flagged vessel to ship their personal effects unless the Government's mission requires otherwise, nothing in the provision suggests that claimant cannot be reimbursed for the customs broker fees which he would have incurred even if he had used a U.S.-flagged vessel to ship his POV. CBP's website defines customs brokers as "private individuals, partnerships, associations or corporations licensed, regulated and empowered by [CBP] to assist importers

and exporters in meeting Federal requirements governing imports and exports.”³ The fees at issue here were charged and invoiced by a U.S.-based customs broker for its services facilitating clearance of claimant’s POV through customs, not the non-U.S.-flagged shipper for transporting the POV. Therefore, we find that reimbursing claimant for the customs broker fees would not be contrary to 46 U.S.C. § 55302(b).

“The DSSR [Department of State Standardized Regulations] implements the provisions of the Overseas Differentials and Allowances Act, which is codified in chapter 59 of title 5 of the United States Code.” *Mary M. Kay*, GSBCA 15816-RELO, 03-1 BCA ¶ 32,061 (2002). “The purpose of the Act [is] to improve and strengthen overseas activities of the Government by establishing a uniform system for compensating all Government employees stationed overseas, regardless of the agency by which they were employed.” *Id.* “The authority to promulgate regulations implementing this Act is delegated to the Secretary of State.” *Id.* The DSSR allows agencies, at their discretion, to provide their employees with a foreign transfer allowance for “extraordinary, necessary and reasonable expenses, not otherwise compensated for, incurred by [the] employee incident to establishing him or herself at any post of assignment in a foreign area.” DSSR 241.1a (Jan. 2022).

We find the DSSR’s foreign transfer allowance section inapposite to this claim. This allowance is provided to compensate or reimburse an employee for expenses incurred when establishing himself or herself in a foreign area. DSSR 241.1(a). Claimant did not incur the customs broker fees as the result of establishing himself in a foreign area but, instead, incurred the fees incidental to his return to a post in the continental United States. Accordingly, the DSSR’s provision is not a bar to claimant being reimbursed for the customs broker fees.

Decision

For reasons stated herein, the Board denies the claim for shipping costs and grants the claim for the customs broker fees in the amount of \$586.50.

Beverly M. Russell
BEVERLY M. RUSSELL
Board Judge

³ https://www.cbp.gov/trade/programs-administration/customs-brokers/becoming-customs-broker?language_content_entity=en#:~:text=Customs%20brokers%20are%20private%20individuals,requirements%20governing%20imports%20and%20exports.