DECISION

THE COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

26211

FILE: B-210561 **DATE:** September 13, 1983

MATTER OF: Theron M. Bradley, Jr.

DIGEST:

Employee of Department of Energy who moved his household goods incident to a transfer and knew he would be liable for excess weight charges, claims the difference between the overweight charges as represented to him based on rates effective in May and the overweight charges actually charged the Department under new rates effective in June when the shipment was made. The overweight charges the mover billed the Department were correct and the mover was required by the Interstate Commerce Act to collect them. Since the Department was required by the Federal Travel Regulations to collect from the employee any excess weight charges it paid, there is no basis for allowance of the claim.

The question in this case is whether Mr. Theron M. Bradley, Jr., an employee of the Pittsburgh Naval Reactors Office, Department of Energy, must pay the difference between the cost of moving his overweight household goods as represented to him based on the mover's rates which were in effect in May 1982 and the cost the mover actually charged based on rates in effect in June 1982 when the shipment was made. Since the cost differential was based on rates properly submitted to the General Services Administration under the Centralized Household Goods Traffic Management Program and contained in a rate tender filed with the Interstate Commerce Commission, the mover was required by the Interstate Commerce Act to collect it from the Naval Reactors Office, and that office was required by the Federal Travel Regulations (FTR) to collect it from the employee. Therefore, there is no basis for the allowance of Mr. Bradley's claim for the amount collected from him. The equities warrant reporting the claim to Congress under 31 U.S.C. § 3702(d).

122319
026624

The authorized certifying officer, Pittsburgh Naval Reactors Office, Department of Energy, presented the question.

Mr. Bradley was transferred in January 1982 from Washington, D.C., to Idaho Falls, Idaho. He made two shipments of household goods incident to that transfer totaling over 23,000 pounds. The first shipment, weighing 6,120 pounds, was made in January 1982. The second shipment, which weighed 17,000 pounds and moved between Washington and Idaho Falls in June 1982, is the subject of this dispute. Mr. Bradley knew that the weight of his household goods still in Washington, when combined with the weight of the first shipment, was over the 11,000-pound limit prescribed in para. 2-8.2, FTR (November 1, 1981) that could be transported on his behalf at Government expense. When he talked with the Naval Reactors Office's transportation officer about the procedures to be used in moving his household goods in the Centralized Household Goods Traffic Management Program, he was interested in minimizing costs because he knew that he would be paying the costs of the excess weight over 11,000 pounds. He states that in reliance on the discussions with the transportation officer and the mover about costs, he decided how much of the household goods to sell and how much to pay to move.

The Centralized Household Goods Traffic Management Program, implemented by 41 C.F.R. subpart 101-40.2, requires each agency to obtain a cost comparison for each Government-financed household goods move and determine on a cost basis whether reimbursement will be provided according to the commuted rate system described in para. 2-8.3a of the FTR or whether the goods will be shipped by Government Bill of Lading (GBL) under the actual expense method described in para. 2-8.3b of the FTR. The Naval Reactors Office performed the cost comparison in mid-May 1982, and determined to ship the goods by GBL. Mr. Bradley, after discussions with the transportation officer, selected the available mover with the lowest rate ($19.68 per hundred pounds) filed under the Centralized Household Goods Traffic Management Program on the basis of the cost comparison. The Naval Reactors Office then issued a GBL to the mover in May to effect the move in mid-June. The selected mover billed

in July for the move on the basis of a rate of $41.93 per hundred pounds, which more than doubled the cost of the excess weight for Mr. Bradley. The General Services Administration, the agency with which movers participating in the Centralized Household Goods Traffic Management Program file rates, verified the $41.93 rate as being the applicable rate in effect at the time the shipment moved in June.

Although the $19.68 rate per hundred pounds that the Naval Reactors Office and Mr. Bradley used for planning purposes in mid-May was the applicable low rate for the movers that were available under the Centralized Household Goods Traffic Management Program in May, the movers at that time under the Program were allowed to change their rates each month. A rate change filed under the Program with the General Services Administration near the end of the month would become effective the first working day of the next month, and that is what happened in this case. After the cost comparison and planning arrangements had been made in mid-May, the mover filed a rate change later in May which became effective in June when Mr. Bradley's household goods were actually moved. Mr. Bradley argues that the mid-May planning arrangements based on the $19.68 rate were the basis of his decision to ship as much of his household goods as he did, and he points out the inequity of having to pay on the basis of a rate that more than doubled without his being informed by his agency or the mover about the change of circumstances.

The rates that the mover files with the General Services Administration under the Centralized Household Goods Traffic Management Program are also filed with the Interstate Commerce Commission, and the contract of carriage is governed by the Interstate Commerce Act, as amended, 49 U.S.C. § 10101 et seq. (Supp. IV, 1980). That Act is a complex regulatory scheme requiring many things of movers, one of which is to collect only the charges shown in tariffs or rate tenders filed with the Interstate Commerce Commission. See Interpretation of Government Rate Tariff for Eastern Central Motor Carriers Assn. Inc., 323 I.C.C. 347, 352 (1964). The charges the mover billed to the Naval Reactors Office are the applicable ones shown in a rate tender filed

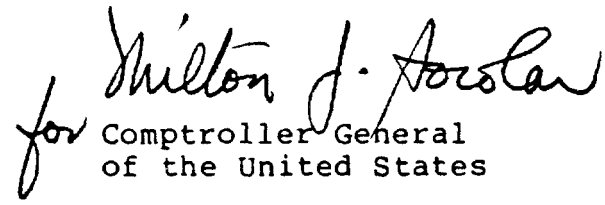
with the Commission, as verified by the General Services Administration, and were correctly collected by the mover. The Court of Claims stated the general rule as follows:

> "Even though a carrier might erroneously quote a price to be charged for shipment of goods, the shipper or consignee is nevertheless liable for the actual published tariff rate and not the price erroneously quoted to it. This is true despite the fault of the carrier."

Union Pacific Railroad Co. v. United States, 490 F.2d 1385, 1391 (Ct. Cl. 1974).

Under 5 U.S.C. § 5724(a), as implemented in para. 2-8.2, FTR, the Government may not pay the expense of shipping in excess of 11,000 pounds of Mr. Bradley's goods. Mr. Bradley is responsible under para. 2-8.3b(5), FTR, for paying the difference between those charges paid by the Naval Reactors Office and his entitlement of 11,000 pounds. Accordingly, since the mover charged the Government the correct amount for moving Mr. Bradley's household goods under the applicable rate tender filed with the Interstate Commerce Commission, and since the Government was required to collect from Mr. Bradley the charges for the weight in excess of 11,000 pounds, there is no basis for us to allow the claim for the difference between the applicable and the represented overweight charges.

However, as indicated above, the matter is being reported to Congress pursuant to 31 U.S.C. § 3702(d).



for Comptroller General
of the United States