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

B-176289

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Trans Country Van Lines, Inc.
International Terminal
3300 Veterans Highway
Bohemia, Long Island, New York 11716

Attention: Larry Binenfeld
Audit Control

Gentlemen:

Reference is made to your letter of August 13, 1973, file 7301-R-21-873, requesting reconsideration and review of two deduction actions taken from revenues otherwise payable to your corporation taken in connection with a shipment of electronic equipment from the General Electric Company, Syracuse, New York, to Eglin Air Force Base, Florida. The shipment was on a commercial bill of lading and in connection with which shipment Government bill of lading D-0836089 subsequently also was issued. The first deduction in the sum of $674.55 was effected on September 3, 1969. The second deduction, in the sum of $1,743 you say, was made on July 24, 1973.

In order to determine if the second reported deduction of $1,743 was proper, we must first review the legal basis of the earlier deduction of $674.55. This initial deduction resulted because of some question whether the Government bill of lading (GBL) or the commercial bill of lading was the effective legal documentation covering the shipment of the electronic equipment.

Our records show a commercial bill of lading was issued in reference to the shipment on July 7, 1967, and that later a GBL bearing a notation "Converted from attached Commercial Bill of Lading * * *" was issued on December 6, 1967.

In auditing the charges on the GBL our Transportation and Claims Division discovered that the Government was charged at the commercial tariff rate, rather than the reduced Government rate provided by Trans Country's Tender No. 50. A notice of overcharge was issued for the difference between the two rates amounting to $674.55, and in the absence of a voluntary refund

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of the amount, the $674.55 was recovered by deduction from the revenues otherwise payable to you.

In order to make a determination of whether the commercial or the Government bill of lading was the effective documentation for the shipment, it is necessary to examine the notations on the Trans Country commercial bill of lading. The only notation on the commercial bill of lading concerning a possible conversion to a GBL is an "X" located in a box preceding the letters "GBL," as it appears below:

"TOTAL CHARGES [ ] CHGE [ ] PPD [ ] C.O.D. [X] G.B.L. [ ] "

It was your position that the "X" was a typographical error and did not purport to constitute an intention of a conversion to a GBL. You further contended that the "X" is ambiguous and could also be interpreted to mean a "C.O.D." shipment since the box preceding "G.B.L." follows "C.O.D.". While this ambiguity as to the meaning of the inverted "X" is attributable to an apparent defect in the Trans Country commercial bill of lading, the real question is whether such notation is sufficient to notify the carrier that it was the intention of the carriers to convert the commercial to a Government bill of lading. In your letter of June 10, 1972, you indicated that the notation failed to meet the requirements of Trans Country Tender No. 50, section 10. That section, outlining the scope of the offer reads as follows:

> "I AM (WE ARE) AUTHORIZED TO AND DO HEREBY OFFER ON A CONTINUING BASIS TO THE UNITED STATES GOVERNMENT, HEREINAFTER CALLED THE GOVERNMENT, PURSUANT TO SECTION 22 OF THE INTERSTATE COMMERCE ACT, OR OTHER APPROPRIATE AUTHORITY, THE TRANSPORTATION SERVICES HEREIN DESCRIBED, SUBJECT TO THE TERMS AND CONDITIONS HEREIN STATED. THE PROPERTY TO WHICH RATES HEREIN APPLY MUST BE SHIPPED BY OR FOR THE GOVERNMENT (1) ON GOVERNMENT BILLS OF LADING, (2) ON COMMERCIAL BILLS OF LADING ENDORSED TO SHOW THAT SUCH BILLS OF LADING ARE TO BE EXCHANGED FOR GOVERNMENT BILLS OF LADING AT DESTINATION, OR (3) ON COMMERCIAL BILLS OF LADING ENDORSED WITH THE FOLLOWING LEGEND: 'TRANSPORTATION HEREUNDER IS FOR THE GOVERNMENT, AND THE ACTUAL TRANSPORTATION COSTS PAID TO THE CARRIER(S) BY THE SHIPPER OR RECEIVER IS TO BE REIMBURSED BY THE GOVERNMENT.'"

You thereafter indicate that you did not receive the GBL from the consignee at time of delivery, but instead were sent the GBL by the shipper six months after the fact.

Also in 5 GAO 3050.10, our regulations provide that:

> "* * * When property for the account of the United States unavoidably moves on a commercial bill of lading or commercial express receipt under circumstances not authorized by 5 GAO 3017, the words 'TO BE CONVERTED TO A GOVERNMENT BILL OF LADING' must be placed on the original commercial document and on all copies thereof in a conspicuous manner. The original commercial document must be immediately forwarded by the shipper to the Government official who authorized the shipment or may, by agreement with the carrier receiving such shipment, be surrendered to the carrier, or its agent, to accompany the shipment or, at the discretion of the carrier, to be transmitted to destination by such other means as the carrier may elect."

General transportation principles dictate that where a tariff requires the making of a particular notation on the bill of lading as a condition precedent to the use of a rate, such rate may not be applied if the notation is not made as required by tariff. See Good-Hopkins Lumber Co. v. Great Northern Ry. Co., 51 I.C.C. 99 (1918); Embassy Distributing Co., Inc. v. Western Carloading Co., 280 I.C.C. 229, 234 (1951); and Winthrop Laboratories Div., Sterling Drug v. Lorn's, 325 I.C.C. 654 (1964).

Thus the question is whether the "X" preceding "G.B.L." on the commercial bill of lading reasonably apprises the carrier that there is to be a conversion to a GBL. In deciding this issue we recognize the fact that the commercial bill of lading was actually converted to a Government bill of lading, but this does not in itself waive the defect of the omission of the required bill of lading endorsement. In light of the fact that the location of the "X" could give rise to two interpretations, neither of which indicate a clear intention to convert to a Government bill of lading, that a commercial tariff was specified on the commercial bill of lading rather than a quotation 22 tariff, and because the commercial bill of lading was not converted at destination, it is our opinion that the notations on the commercial bill of lading did not substantially comply with the Government regulations and Trans Country's tariff.

Accordingly, we have today instructed our Transportation and Claims Division, on verification of the second deduction of $1,743 you report was made, to refund the sum of $674.55 representing the amount of the first improper deduction. In light of this decision,

we find that the Government bill of lading was without effect as to the shipment and the amount paid thereon represents a clearly erroneous payment which was required to be refunded. See United States v. Wurts, 303 U.S. 414 (1938); United States v. Munsey Trust Company, 332 U.S. 234 (1947); Cherry Cotton Mills v. United States, 327 U.S. 536 (1946). Also we are unaware of any statute of limitations which would preclude us, at this time, from recovering amounts paid out in error on a bill of lading which was inoperative, under which no service was rendered the United States, and as to which shipment the carrier was already paid the freight charges due it by the consignor.

Sincerely yours,

Paul G. Dembling

For the Comptroller General
of the United States