DECISION

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

40942

FILE: B-180133 DATE: July 15, 1974 95248

MATTER OF: Wells Cargo, Inc.

DIGEST: Application of commodity rates in carrier's tariff is determined solely by whether nature of articles transported is such that use of low-bed equipment is required; tariff requirement for bill of lading notation by shipper showing request for low-bed equipment construed as directory only and not as condition precedent to application of the rates.

Wells Cargo, Inc., by letter dated November 20, 1973, asks for review of five settlements which disallowed its claims for additional charges for services rendered under Government bills of lading (GBLs) C-7938582, D-1612508, D-4244089, F-4657839, and F-4665217, our claim files TK-923746, TK-946339, TK-910262, TK-923744, and TK-935584.

The shipments in question consisted of heavy machinery or other articles of excessive size or weight and were transported by the carrier in low-bed equipment. Charges originally were billed by the carrier at distance commodity rates applicable on shipments requiring the use of low-bed equipment, as published in Section 4 of Wells Cargo, Inc. Local and Joint Freight Tariff No. 1-B, MF-I.C.C. No. 4. The commodity description in Section 4 is followed by a parenthetical reference to Rule 141 of the tariff which provides, among other things, that when low-bed equipment is requested and furnished the shipper shall endorse on the bill of lading or shipping order "Low-bed Equipment Requested."

This notation does not appear on the GBLs in question and after the carrier's original bills were paid in full, Wells Cargo submitted supplemental bills for additional charges, based on the class rates in Section 1 of its tariff, on the ground that the commodity rates in Section 4 were inapplicable because the GBLs did not bear the requisite notations. The settlements here under review disallowed these supplemental claims and the

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question is whether the notation provision in the tariff is directory only or whether it constitutes a condition precedent to the application of the distance commodity rates contained in Section 4.

It is well-settled that where tariff provisions require the making of a particular notation on the bill of lading as a condition precedent to the use of a rate, the shipper is bound by such provisions. Embassy Distributing Co., Inc. v. Western Carloading Co., 280 I.C.C. 229, 234 (1951); American Licorice Co. v. Chicago, M. & St. P. Ry. Co., 95 I.C.C. 523 (1925). However, the tariff provisions must be specific and unambiguous in their terms respecting the application of the rate upon fulfillment of a condition precedent on the part of the shipper. Stanley Home Products v. Interstate Motor Freight System, 67 M.C.C. 732, 734 (1956). For reasons set forth below, it is our opinion that the tariff provisions here in question, when read together as a whole, do not specifically or unambiguously identify the notation requirement as a condition precedent to the application of the distance commodity rates in Section 4 of the tariff.

Section 1 of Tariff No. 1-B, containing the class rates which Wells Cargo now claims were applicable to these shipments, provides:

> "RATES NAMED IN THIS SECTION DO NOT APPLY TO THE TRANSPORTATION OF ARTICLES REQUIRING THE USE OF SPECIAL LOW-BED EQUIPMENT AS DESCRIBED IN ITEM NO. 2100 HEREOF. FOR RATES SEE ITEM NO. 2100."

The title page of Section 4 of Tariff No. 1-B identifies the rates contained therein as:

> "DISTANCE COMMODITY RATES APPLICABLE ON SHIPMENTS REQUIRING THE USE OF LOW-BED EQUIPMENT"

and further provides:

> "RATES PUBLISHED IN THIS SECTION DO NOT ALTERNATE WITH RATES PUBLISHED IN OTHER SECTIONS OF THIS TARIFF, BUT APPLY IN LIEU OF RATES IN OTHER SECTIONS FOR THE MOVEMENT OF SHIPMENTS DESCRIBED IN ITEM NO. 2100 OF THIS SECTION.

Item No. 2100 of Section 4, under the caption "DISTANCE COMMODITY RATES APPLICABLE ON SHIPMENTS REQUIRING THE USE OF LOW-BED EQUIPMENT," provides:

"COMMODITIES: HEAVY MACHINERY OR OTHER ARTICLES OF EXCESSIVE SIZE AND/OR WEIGHT REQUIRING THE USE OF LOW-BED EQUIPMENT. (SEE RULE NO. 141.)"

Rule No. 141 purports to be a definition of low-bed equipment and service. It provides:

"(A) THE TERM 'LOW-BED EQUIPMENT' MEANS A TRAILER OR A SEMI-TRAILER, WITH WHEELS ATTACHED, HAVING A LOAD CARRYING BED OR PLATFORM NOT MORE THAN 45 INCHES ABOVE THE GROUND OR STREET LEVEL.

"(B) LOW-BED EQUIPMENT WILL BE FURNISHED ONLY WHEN IT IS REQUIRED AND ORDERED BY THE SHIPPER TO TRANSPORT SHIPMENTS OF UNUSUALLY HEAVY OR BULKY ARTICLES.

"(C) WHEN LOW-BED EQUIPMENT IS REQUESTED AND FURNISHED THE SHIPPER SHALL ENDORSE ON THE BILL OF LADING OR SHIPPING ORDER: 'LOW-BED EQUIPMENT REQUESTED.'"

We do not see how these provisions, read together, can be fairly said to offer a shipper a choice of rates dependent upon whether the shipper does or does not endorse the bills of lading in the language specified. Rather, it seems to us, the application of the distance commodity rates is determined solely by whether the nature of the articles transported is such that the use of low-bed equipment is required.

Rule No. 141 explicitly provides that low-bed equipment will be furnished only when it is required and ordered by the shipper. It is indisputable that low-bed equipment was furnished for these shipments and, in accordance with the tariff provisions, it must be concluded that the equipment was required and ordered else it would not have been furnished by the carrier.

We think a fair reading of the tariff provisions as a whole shows that the application of the commodity rates in Section 4

is determined solely by whether the nature of the articles transported is such that the use of low-bed equipment is required. Since this factor alone governs the application of the rates, it follows that the requirement for shipper indorsement on the bill of lading or shipping order is directory only and is not intended as a condition precedent to the application of the Section 4 rates. See United Welding Co. v. Baltimore & O.R. Co., 196 I.C.C. 79, 80 (1933); American Pipe & Construction Co. v. Alton & Southern R.R., 284 I.C.C. 797, 799 (1952).

The settlements in question were consistent with the construction of the tariff set forth above. Accordingly, they are sustained.

R.F. KELLER

Deputy Comptroller General
of the United States