

DECISION



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

FILE:

B-183940

MATTER OF:

Sea-Land Service, Inc.

DATE: AUG 27 1975

57015
97451

DIGEST:

When ocean carrier has issued joint tender with a motor or rail carrier and the motor or rail carrier is subject to 3-year statute of limitations under 49 U.S.C. 66 and that time period has expired, the ocean carrier's claim for the applicable transportation charges is barred.

Sea-Land Service, Inc. (Sea-Land), by letter dated September 25, 1974, requests review of the action taken by the Transportation and Claims Division (TCD) of the General Accounting Office on its claims for transportation charges of \$3,012.15. TCD returned Sea-Land's claim invoices to that carrier by letter of October 11, 1973, and June 24, 1974, because the claim was not received in the General Accounting Office prior to the expiration of the 3-year statute of limitations in 49 U.S.C. 66 (Supp. III 1973).

Sea-Land points out that the two transportation shipments for which their claim for transportation charges is made involve foreign ports and took place prior to the 1972 amendment of 49 U.S.C. 66, Pub. L. 92-550. Sea-Land contends that the applicable code provision is 31 U.S.C. 71a (1970), with its 10-year limitation period, and that Sea-Land is not time barred.

TCD determined that the two claims for transportation charges were barred from consideration here by Section 322 of the Transportation Act of 1940, as amended, 49 U.S.C. 66 (Supp. III 1973). A similar decision involving a subsidiary of Sea-Land was rendered May 14, 1974, B-178546, and pertained to shipments from Puerto Rico to the United States.

Certificate in Lieu of Lost U.S. Government Bill of Lading (GBL) F-5378532 shows that the original bill of lading was issued on February 4, 1970, to cover the transportation of a shipment of chilled meat from Rochester, New York, to Rotterdam, Netherlands. The record also shows that the shipment was tendered to Beaney Transport Limited, thence Sea-Land, marked "FOR: EXPORT - THRU BILL," and the tariff or special rate authority is shown as Sea-Land Service, Inc., Freight Tariff #138.

B-183940

The second shipment involves a Certificate in Lieu of Lost U.S. Government Bill of Lading F-0238104 which shows that the original bill of lading was issued on April 9, 1969, covering a shipment of freight all kinds from Columbus, Ohio, to Kaiserslautern, Germany. The shipment was tendered at origin to the Baltimore and Ohio Railroad Company and routed via "B & O c/o Reading Co. c/o Central R.R. (C.R.N.J.) of N.J. c/o Sea-Land Service." The tariff authority is shown as Sea-Land Tender 567E.

Prior to October 25, 1972, Section 66 of Title 49, U.S. Code provides:

"Payment for transportation of the United States mail and of persons or property for or on behalf of the United States by any common carrier subject to the Interstate Commerce Act, as amended, or the Civil Aeronautics Act, shall be made upon presentation of bills therefor, prior to audit or settlement by the General Accounting Office * * *. Provided further, That every claim cognizable by the General Accounting Office for charges for transportation within the purview of this section shall be forever barred unless such claim shall be received in the General Accounting Office within three years (not including any time of War) from the date of (1) accrual of the cause of action thereon, or (2) payment of charges for the transportation involved, or (3) subsequent refund for overpayment of such charges, or (4) deduction made pursuant to this section, whichever is later." (Emphasis added.)

The 1972 amendment of Section 66 of Title 49, Pub. L. 92-550, expanded the definition of overcharges to encompass all modes of transportation and all means of contractual arrangements or exemptions from regulations. Thus, it is true, as Sea-Land contends, that prior to the 1972 amendment charges for ocean carriage were not subject to the 3-year limitation period provided in 49 U.S.C. 66.

However, both the rail and motor carriers participating in these joint rail/water and motor/water movements are common carriers subject to Part I and Part II of the Interstate Commerce Act, 49 U.S.C. 1, 49 U.S.C. 301 (1970). Accordingly, their rates and charges may be established and changed only in accordance with the procedures fixed by the Interstate Commerce Act. See Matson Navigation Co. - Container Freight Tariffs, 7 F.M.C. 480, 487 (1963). The jurisdiction of the Interstate Commerce Commission extends to combined motor/rail/water services and the extent of

B-183940

participation is not the determining factor as to whether motor/rail/water services constitute through route service. Sea-Land Service, Inc. v. Federal Maritime Commission, 404 F.2d 824 (D.C. Cir. 1968); Alaska Steamship Company v. Federal Maritime Commission, 399 F.2d 623 (9th Cir. 1968).

That Sea-Land is subject to the Interstate Commerce Act is further substantiated by the fact that Sea-Land's tender 138-A and 567E, applicable here, were issued pursuant to Section 22 of the Interstate Commerce Act, 49 U.S.C. 22 (1970). And both tenders contain the following language:

"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, * * *"
(Emphasis added).

In addition, both Sea-Land tenders contain, under the heading of "FILING WITH REGULATORY BODIES," the following statement:

"Carrier(s) certifies (certify) that, where required, the requisite number of copies of this tender is being filed concurrently with the Interstate Commerce Commission in accordance with Section 22(2), of the Interstate Commerce Act, or with other regulatory agencies as appropriate."

By becoming a party to the Section 22 quotation, the ocean carrier, Sea-Land, may be regarded as falling within the meaning of the phrase "common carrier subject to the Interstate Commerce Act," in 49 U.S.C. 66. See United States v. Francis, 320 F.2d 191, 195 (9th Cir. 1963), wherein the court stated:

"By becoming a party to the Loretz (Section 22) Quotation, appellee must be considered to be within the meaning of the Section 322 phrase 'common carrier subject to the Interstate Commerce Act.' Appellee having voluntarily become bound as a carrier 'subject to the Interstate Commerce Act,' cannot now claim it is not so bound. We hold he has waived any claim he is excluded under Section 322."

The through GBL, which is the contract of carriage, upon which Sea-Land bases its claim, covered transportation from New York to the Netherlands, and from Ohio to Germany. It is a well accepted

B-183940

rule that a single cause of action on an entire claim or demand based upon a contract cannot be split or divided for the purpose of maintaining separate suits on the various individual parts, nor can a party divide the grounds of recovery and maintain successive actions for the cause of action thereon. Von Der Ahe Van Lines, Inc. v. United States, 358 F.2d 999 (Ct. Cl. 1966).

Thus, Sea-Land could not seek reimbursement for the portion of carriage within the United States under the 3-year statute of limitations and reimbursement for the ocean transportation costs between the United States and Europe under the 10-year statute of limitations, 31 U.S.C. 71a supra. Since the claim could not be split, and since a portion of the carriage was subject to the Interstate Commerce Act, the 3-year statute of limitations contained in 49 U.S.C. 66 would apply to the entire claim.

Accordingly, the 10-year limitation provision in 31 U.S.C. 71a (1970) is not applicable, and TCD's action in returning Sea-Land's claims is sustained.

R.F. KELLER

Acting Comptroller General
of the United States