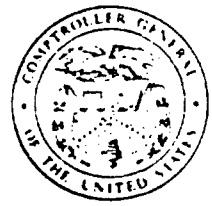
DECISION



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

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FILE: B-181560 DATE: NOV 19 1975 97706

MATTER OF: Ultra Special Express

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DIGEST:

Comptroller General decision of October 1, 1975, sustained where assigned errors fail to challenge applicability of specific tender provisions underlying disallowance of "prelodge detention" charges.

In its request for reconsideration Ultra Special Express (Ultra) evades the specific legal basis for the decision of October 1, 1975. The claimant fails to deny that the specific tender provisions held to control the obligations of the parties constitute a detention provision, and its applicability is not contested. Although the extensive petition is prefaced by notice that each paragraph of the decision would be addressed in the order of its appearance, an assignment of error to paragraph 12, the paragraph containing the specific tender references is conspicuously absent.

Under the decision the carrier would be entitled to no more than $175, the amount originally collected for transportation charges on the illustrative shipment, Government bill of lading No. E-8690339. The line-haul rates and minimum charges were offered in Attachment 2 of Ultra's Section 22 Tender I.C.C. No. 3; however, the claimant points to various alternative provisions in Heavy & Specialized Carriers Tariff Bureau Tariff 100-E, MF-I.C.C. 26 as bases for claiming entitlement to additional revenue of $1,410, although none shows that the United States contracted to pay on an hourly basis for the transportation services performed here. Paragraph 12 of the decision states:

> "By the terms of item 16 [of the tender], before the carrier will furnish the accessorial service of allowing the consignee to use a vehicle while unloading, in excess of two hours, (1) a request for such service must be made; (2) the request must be noted on the bill of lading; and (3) the request must be initialed by the requesting person. Further, according

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to the terms of Attachment 3, (4) the arrival date and time at destination must be specified, apparently (5) in the presence of the carrier's driver."

Nowhere does claimant show that the conditions precedent to liability for detention charges under those particular tender provisions have occurred. Ultra assigns as error the holding that the two hours free time offered by the carrier begins to run from the date and time designated by Military Ocean Terminal, Bayonne, New Jersey (MOTBY) for unloading at its premises, rather than the time the shipping papers arrive at MOTBY or the carrier telephones for an appointment in advance of unloading.

Ultra's argument that this holding is contrary to our letter, B-181560, dated January 29, 1975, which allowed a claim for detention charges, is based on the erroneous premise that the same facts and issues were involved. Without reviewing the merits of the referenced letter the decision explained that the letter of January 29, 1975, was not a decision on an appeal from a claim settlement which would give the basis for the action taken, but a mere notice of the conclusion reached, its apparent purpose being to apprise the claimant of our conclusion. Since claimant persists in drawing the letter into controversy, claim TK-968285 involved in that letter, was reviewed and the issues and facts were found to be entirely different from those under consideration here. The differences were clearly set forth in paragraph 5 of our decision.

Statements in claimant's petition provide a basis for understanding the sharp factual distinction between the two cases. The shipment involved in the letter consisted of three truckloads. On August 17, 1972, when Ultra's vehicles arrived at Shed 133, Port Newark, New Jersey, the consignee acknowledged receipt of the shipment on the Government bill of lading and unloading began on August 18, 1972. Ultra is urged to take particular note of the fact (which it does not dispute) that the shipment was not completely unloaded from its vehicles until three days after unloading began, because the pier was closed. From the moment the Government began unloading the shipment it undertook an affirmative act appropriating the carrier's vehicles to its own use within the contractual meaning of detention. Thus, the two hours free time commenced at that moment. The question

considered in that case was: when does detention terminate? not when does detention begin? The issue of whether accomplishing the Government bill of lading terminates detention was resolved in claimant's favor and liability of the United States for detention was recognized to run until the shipment was unloaded from the carrier's vehicles.

We adhere to the law as it was applied in that case, except to the extent Ultra was allowed charges for non-business hours, but the record does not show that Ultra's vehicles were detained after unloading had begun, and the contract of carriage is devoid of any suggestion that the United States agreed to pay charges by the hour (in excess of line-haul charges) for the time in which the carrier had exclusive control over the direction of the vehicle and its driver.

Ultra's view of detention covers the chronological gamut of performance of transportation service from the instant loading begins at origin to the termination of unloading at destination, although from the common law genesis of our transportation law, this performance is the essence of the peculiar duties of common carriers to transport safely the property of the public; for the performance of those services here it is clear the Government agreed to pay $175--the amount the carrier originally billed, and Ultra was paid this amount, according to the terms of the contract of carriage. If the contract of carriage provides no basis for liability, there is no basis for payment of a lesser amount than claimed, and whether in Ultra's view the agreed line-haul rates and minimum charges are insufficient to cover the costs of providing the service (a consideration of greater utility when the carrier was determining the prices to offer), cannot alter the duty of the Comptroller General to settle claims for transportation charges according to the terms of the applicable tender. 45 Comp. Gen. 118, 121 (1965).

Whether the agreed transportation charges were compensatory is not a relevant consideration. See B-160345, May 16, 1967. Except where expressly provided by contract, costs resulting from a carrier's methods of conducting operations and compensating its employees, and problems resulting therefrom are for solution by the carrier and are of no concern to the shipper with respect to liability for charges. Of course, the carrier's tendered rates are relevant to the procurement officers of Military

Traffic Management Command (MTMC), as the carrier's prices (rates) represent costs to the United States but that is a matter that is irrelevant in the determination of applicable transportation charges.

Accordingly, and since Ultra's letter of October 6, 1975, contains nothing to warrant a reversal or modification of the decision of October 1, 1975, it is affirmed.

R.F.[redacted]

[Deputy]

Comptroller General
of the United States