

DECISION

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

60335

FILE: B-185014

DATE: DEC 30 1975

MATTER OF: Gambia Airways Ltd.

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DIGEST:

1. Due to accounting delays, voucher for transportation charges was received in CAO after the applicable statute of limitations had run. See 49 U.S.C. § 66 (1970). As GAO is not authorized to waive statutorily imposed time limitations on payment of transportation claims, Transportation and Claims Division settlement denying payment is sustained.
2. Agent for authorized carrier must submit bills in name of authorized carrier. 4 C.F.R. 52.38 (1975).

This refers to a letter dated June 28, 1975, addressed to The Charge d'Affairs, American Embassy, Banjul, The Gambia, from Gambia Airways Ltd. (Gambia). Gambia requests assistance in collecting payment for transportation charges under Gambia Airways invoice No. 118. The transportation was authorized by Government bill of lading No. F-7779052, dated October 24, 1971, which covered a shipment of air baggage/personal effects from McLean, Virginia, to Bathurst, Gambia. Air Waybill 026-16148985 was issued October 24, 1971, by Pan American World Airways, Inc., to cover this transportation, with Piedmont Airlines to transport to New York, Pan Am to Dakar and Air Nigeria to Bathurst. It thus appears that the only service performed by Gambia was to transport the shipment from the airport in Gambia to its final destination. Gambia Airlines Ltd. is not mentioned on any official documentation connected with the transportation, except for its own invoice and forms issued after the transportation was complete.

However, it has submitted the abovementioned invoice, as well as Public Voucher for Transportation Charges, Form 1113, undated, as evidence of its claim for payment of the entire cost of the transportation. This claim was received by our Transportation and Claims Division on December 12, 1974. By letter of March 21, 1975, our Transportation and Claims Division advised Gambia that pursuant to 49 U.S.C. § 66 (1970), its claim

was barred by the statute of limitations contained in that provision and thus that it was without authority to consider the claim. As Gambia's letter of June 28, 1975, forwarded to this Office by the Department of State, questions that action, we here consider it as a request for reconsideration of the action.

It appears from the record that Gambia Airways Ltd. was acting as agent for Pan Am. Gambia Airways advises us of this status through its letterhead where it clearly states that it acts as general sales agent for Pan Am. It had in its possession as well the Pan Am Air Waybill and requested payment under a transportation contract with Pan Am. Pan Am received an inter-line settlement for substantially all charges for the transportation movement from Air Afrique, which acts as a clearinghouse for transportation payments. Gambia's letterhead also mentions Air Afrique as a principal for whom Gambia acts as agent. Thus, the carriers involved appear to have settled their share of the charges and have passed the documentation on to Gambia for payment. As such, an agency relationship between Gambia and Pan Am, the principal carrier to whom the Government bill of lading was issued, appears to have arisen.

As agent for Pan Am, Gambia is subject to the same statute of limitations as its principal. That, in this case, is 49 U.S.C. § 66 (1970), which bars payment by this Office of any claim for transportation charges such as those here in question

"unless such claim shall be received in the General Accounting Office within three years * * * from the date of (1) accrual of the cause of action thereon."

A cause of action for transportation charges against the United States accrues upon the completion of the transportation. The date the shipment is delivered to the consignee is the date of completion. The statute of limitations begins to run from that date. United States v. Wilder, 13 Wall. 254 (U.S. 1871); Baggett Transportation Company v. United States, 319 F.2d 864 (Ct. Cl. 1963).

In the instant case, the date of completion of the service is November 3, 1971, the date the goods were received by the

U.S. Charge d'Affairs in Gambia. As the claim was received by the General Accounting Office on December 12, 1974, more than three years after completion of the service, we are without authority in law to pay this claim.

Additionally, the documentation was not submitted in the name of a principal to the contract of carriage as specified in 4 C.F.R. 52.38 (1975). As such, it was the responsibility of the agency involved to have advised Gambia Airways Ltd. of the procedure to follow in submitting claims. See subsection (c) of the above regulation. However, the regulations of this Office [4 C.F.R. 54.6 (1975)] specifically provide that

"* * * a claimant may file a claim direct with the Transportation Division, General Accounting Office, particularly if the applicable statutory period of limitations is about to expire."

We appreciate the explanation that a lengthy accounting problem encountered in this case caused the claim to be submitted after the statute of limitations had run. But we are unable to waive this provision of law. Compare United States v. Garbutt Oil Co., 302 U.S. 528 (1937); John Finn v. United States, 123 U.S. 227 (1887); Munro v. United States, 303 U.S. 36 (1938). We would be violating the law if we were to consider this claim on its merits.

As the foregoing relates solely to administrative action regarding this claim, it in no way precludes Gambia from pursuing whatever other remedies might be available to settle this outstanding account. Again, while we regret the delay in handling this matter, this Office has no power to review the claim any further. Thus, the determination of our Transportation and Claims Division is sustained.

R. F. Keller

Deputy Comptroller General
of the United States