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Robert Heitman

Transp.

DECISION



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

FILE: B-177400, B-183352

DATE: December 8, 1976

MATTER OF: Trans Country Van Lines, Inc.

DIGEST: Carrier's claim for transportation charges for waiting time, extra driver, driver overtime and return of extra driver is allowed where additional evidence furnished indicates authorized services were performed.

Trans Country Van Lines, Inc. (Trans Country), requests a review of a letter dated September 30, 1976, from the General Services Administration (GSA) sustaining an overcharge on a shipment of electronic equipment transported from Syracuse, New York, to Argentia, Newfoundland, under Government bill of lading No. K-1220882, dated January 8, 1975. The review is being made under the provisions of 49 U.S.C. 66(b) (Supp. V, 1975), and 4 C.F.R. 53.3 (1976), since it is apparent that the letter represents the finality of administrative consideration. See 4 C.F.R. 53.1(6)(3).

The shipment of electronic equipment was tendered to Trans Country for shipment to Argentia, Newfoundland, under the provisions of its Government Rate Tender I.C.C. 185. Trans Country billed the Government and was paid \$46,715.37 for this transportation. GSA issued an overcharge notice for \$2,561.37 against Trans Country based primarily on the lack of adequate proof underlying charges assessed for waiting time, extra driver, driver overtime and the return of the extra driver.

Notes Nr. 1 and 2 of Trans Country's tender, which provide charges for these services, read:

"Note Nr. 1-Driver Services: Will apply during regular hours of service, i.e., Monday through Friday inclusive from 08:00 to 17:00 except on Federal, State or Municipal holidays. Service for all other times will be subject to rates contained in Note 2 herein.

"Note Nr. 2-Extra Driver: Will be provided when requested either by the Government or Consignor

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Representative thereof, subject to availability, and annotated on the Government Bill of Lading or Carrier's Bill of Lading. Charges will be based on 10 hours per day. Charges will be for service from 08:00-17:00 at \$7.25 per hour and \$10.25 per hour from 17:00-08:00. Charges for return from Argentina to Syracuse will be half (1/2) of Extra Driver charges to Argentina, Newfoundland."

Trans Country submitted notarized papers, signed by two of its drivers, purporting to verify the claim for overtime and extra driver. However, this document was not accepted as proof that those services were performed because it was undated, typewritten, and not prepared contemporaneously with the accessorial services Trans Country claims to have performed. It was felt that the best evidence would be a copy of the driver's daily log, Form MSC-59, 49 C.F.R. 395.8 (1975).

The continuation sheet to the Government bill of lading for this particular shipment contains a notation authorizing an extra driver and round the clock attendance with the vehicle. Thus, Trans Country would be due the charges if the services were performed as alleged.

Trans Country advised GSA that it was unable to furnish the driver's logs for this particular shipment because the 12-month time period for their retention (49 C.F.R. 395.8(s); (1975)) had expired and the forms were not available. In lieu of these forms, Trans Country has furnished this Office with additional evidence which indicates that the authorized services were performed.

Trans Country furnished a copy of its Manifest No. 1-12634, which lists the names of the same two drivers who signed the notarized statement and contains various other information that corresponds to the information on the Government bill of lading. In addition, the Supervisor of Traffic for the shipper, the General Electric Company, Syracuse, New York, has furnished a certification to the effect that Trans Country furnished two drivers on January 8, 1975, that the vehicle arrived at Newfoundland on January 12, 1975, that it was not unloaded until January 15, and that both drivers were present at the unloading.

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It is this Office's opinion that the additional evidence furnished by Trans Country supports its claim for charges for waiting time, extra driver, driver overtime and the return of the extra driver and that charges for those services should be allowed, if otherwise correct. See 55 Comp. Gen. 402 (1975). The evidence furnished by Trans Country will be sent to GSA.

GSA should take action on this overcharge which is consistent with this decision.

Deputy


Comptroller General
of the United States