

DOCUMENT RESUME

01992 - [A1172156]

[Payment for Shipment of Goods on Foreign-Flag Ships]. B-188186.
April 21, 1977. 4 pp.

Decision re: District Containerized Express; by Robert F.
Keller, Deputy Comptroller General.

Issue Area: Personnel Management and Compensation (300).
Contact: Office of the General Counsel: Transportation Law.
Budget Function: General Government: Other General Government
(806).

Authority: Merchant Marine Act of 1936, sec. 901 (46 U.S.C.
1241(a)). 31 U.S.C. 82d. 52 Comp. Gen. 83. 31 Comp. Gen.
351. 31 Comp. Gen. 356. 4 C.F.R. 52.2.

GAO Authorized Certifying Officer, Laura C. Palmer,
requested a decision on the propriety of certifying for payment
two vouchers for freight charges due on two shipments of
privately owned vehicles on foreign-flag ships. The use of
American-flag ships is mandatory unless it can be proved that it
was necessary to use a foreign-flag ship. This is generally
accomplished by demonstrating that an American-flag ship either
was not available or could not perform the service. There was no
justification for payment of claims. (Author/SC)

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Michael Hordell
Transp.

DECISION



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

FILE: B-188186

DATE: April 21, 1977

MATTER OF: District Containerized Express

DIGEST: Section 901 of the Merchant Marine Act of 1936, 46 U.S.C. § 1241(a) (1970), makes use of American-flag ships mandatory unless it can be proven that it was necessary to use foreign-flag ship. Generally, this is accomplished by demonstrating that an American flag ship either was not available or could not perform the services.

Parties dealing with Government are charged with knowledge of and are bound by statutes and lawfully promulgated regulations. Burden is on party to notify party's agent of the various statutes and regulations.

Mrs. Laura C. Palmer, an authorized certifying officer of the U.S. General Accounting Office (GAO), has requested an advance decision on the propriety of certifying for payment two vouchers totaling \$2,025. The vouchers were presented for payment by District Containerized Express (District) and cover the freight charges allegedly due on two shipments of privately owned vehicles (POV) tendered to District for transportation from Frankfurt, Germany, to Bladensburg, Maryland. District's bill numbers are DCE-895 and DCE-865.

Mrs. Palmer, as an authorized certifying officer, is entitled to an advance decision by the Comptroller General on the question of law whether the freight charges should be certified for payment. 31 U.S.C. 82d (1970). And as required by our procedures, Mrs. Palmer has submitted the original vouchers (bills) presented for certification. 52 Comp. Gen. 83 (1972).

District's bill No. DCE-895 for \$1,050 is supported by (1) District's invoice showing a flat charge of \$1,050 for door-to-door through transportation services; (2) Government bill of lading No. K-0283565, dated July 14, 1976, which

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authorized District to ship a POV owned by a GAO staff member from Frankfurt, Germany, to Bladenburg, Maryland; (3) an ocean bill of lading No. 217, dated July 25, 1976, which shows that District's agent in Germany tendered the POV to Wallenius Lines, a foreign-flag carrier, which transported it on the Atlantic Saga from Bremen, Germany, to Baltimore, Maryland; and (4) an unsigned form titled "Justification Certificate For Use of a Foreign Flag Vessel" which states that it was necessary to use a foreign-flag ship because "There were no American carriers Available for 3 (three) weeks. Therefore A Foreign Flag was used to expedite shipment."

District's bill No. DCE-865 for \$975 covers a similar shipment. Papers supporting the voucher show that District's agent in Germany tendered to POV to Wallenius on June 15, 1976, under ocean bill of lading No. 207, and that the POV was transported to Baltimore aboard the Atlantic Span. The unsigned justification certificate reads in part: "There were no American Carriers available for 21 (twenty-one) days. Therefore a foreign flag was used to expedite shipment."

Section 901 of the Merchant Marine Act of 1936, 46 U.S.C. § 1241(a) (1970) provides:

"Any officer or employee of the United States traveling on official business overseas or to or from any of the possessions of the United States shall travel and transport his personal effects on ships registered under the laws of the United States where such ships are available unless the necessity of his mission requires the use of a ship under a foreign flag: Provided, That the Comptroller General of the United States shall not credit any allowance for travel or shipping expenses incurred on a foreign ship in the absence of satisfactory proof of the necessity therefor."

The wording of Section 901 makes the use of American-flag ships mandatory and restricts the use of foreign-flag ships to those situations where it can be satisfactorily proven that the use of the foreign-flag ship was necessary. Here

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inconvenience to the employee or officer, reasonable delays and minor economies are not factors which normally justify preference for a foreign-flag ship over those operating under the American flag. 31 Comp. Gen. 351, 356 (1952). Generally, the necessity for use of a foreign-flag ship means that an American-flag ship either was not available or could not perform the needed services.

Regulations issued by GAO implementing Section 901 require carriers to support each bill for payment of transportation services furnished in whole or in part by a foreign-flag ship with a certificate signed by an authorizing officer containing the reasons for the use of the foreign-flag ship. 4 C.F.R. 52.2 (1976).

The foreign-flag ship used for the shipment covered by District's bill No. DCE-895 left Bremen around July 25, 1976. Contrary to the assertion in the unsigned justification certificate ("no American carrier available for 3 weeks"), the Maritime Administration has informed us that two American-flag ships left Bremen on August 8th and 11th and provided direct containership service to Baltimore.

The foreign-flag ship used for the shipment covered by District's bill No. DCE-865 left Bremen on or about June 15, 1976. Again, contrary to the assertion in the justification certificate (21-day delay), the Maritime Administration reports that American-flag ships sailed from Bremen May 25, and June 15, 1976, and arrived in Baltimore on June 5, and June 26, 1976.

We have been informally advised that District has been furnishing transportation services to the United States for over three years. By this time, it should have had knowledge of the requirements of Section 901 and its agents should have been advised accordingly. Moreover, parties dealing with the Government are charged with knowledge of and are bound by statutes and lawfully promulgated regulations.

In each case the record shows no justification for the use of a foreign-flag ship and in each case District billed a flat transportation charge which precludes separating the cost of the ocean transportation from the cost of the land segments of the transportation. Thus, District's original

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bills Nos. DCZ-895 and DCE-865 can not be certified for payment and will be retained here.

Atkinson
Deputy Comptroller General
of the United States