

DOCUMENT RESUME

C2124 - [A1052045]

[Review of Action Related to Overcharges Based on Shipping Rates]. P-188052. April 14, 1977. 4 pp.

Decision re: E. L. Murphy Trucking Co.; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Transportation Systems and Policies (2400).

Contact: Office of the General Counsel: Transportation Law.

Budget Function: Commerce and Transportation: Ground Transportation (404).

Organization Concerned: General Services Administration.

Authority: 55 Comp. Gen. 958. 42 Comp. Gen. 203. Great Northern Ry. Co. v. United States, 178 Ct. Cl. 226, 244 (1967).

A review was requested of GSA settlement actions related to alleged overcharges on two shipments made under Government bills of lading. No ambiguities were found in the tariff, which provided for nonapplication of rates on shipments of certain dimensions, and GSA was advised to act accordingly.  
(HTW)

02124

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20540**

M. Hordell

Transp.

**FILE: B-188052**

**DATE: April 14, 1977**

**MATTER OF: E. L. Murphy Trucking Company**

- DIGEST:**
1. A tariff should be construed strictly against the carrier who drafted it but a tariff must be given a fair reading and any unreasonable ambiguities cannot be imparted.
  
  2. No ambiguity found in tariff when one tariff item clearly makes rates in tariff inapplicable on shipments having certain physical characteristics and directs tariff user to another tariff for applicable rates on those shipments.

E. L. Murphy Trucking Company (Murphy), in a letter dated December 14, 1976, requests review by the Comptroller General of the United States of settlement actions taken by the former Transportation and Claims Division (TCD) of the General Accounting Office, now a part of the General Services Administration (GSA). See the General Accounting Office Act of 1974, 88 Stat. 1959, approved January 2, 1975. The review is being made pursuant to the provisions of Section 201(3) of that Act, 49 U.S.C. 66(b) (Supp. V, 1975), and of 4 C.F.R. 53.1(b)(1) and 53.2 (1976).

The settlement actions concern two shipments. One was a shipment of gun mount parts, NOI, transported under Government bill of lading (GBL) No. H-1522808, dated January 22, 1973, from Fridley, Minnesota, to Newport, Rhode Island. The dimensions of the shipment were 16' long x 13'4" wide x 9' high.

The other shipment was machinery, NOI, transported under GBL No. H-1523087, dated March 2, 1973, from Fridley, Minnesota, to Philadelphia, Pennsylvania. The dimensions of this shipment were 21' long x 13'5" wide x 11'2-1/2" high.

Murphy states that rates on the shipments are derived from Item 5050 of National Association of Specialized Carriers Tender No. 200.

B-188052

TCD contends that Item 335 of E. L. Murphy Trucking Co. Freight Tariff 1-B, MF-I.C.C. 22 (Tariff 1-B), applies to the shipments. Item 335 states in part:

"Shipments tendered for transportation in excess of eight (8) feet in width will be accepted subject to the following provisions:

. . . Width over 12 feet, but not over 14 feet  
. . . 130 percent of applicable rate . . ."

The application of item 335 resulted in the issuance of a Notice of Overcharge (Form 1003) on each shipment; they totaled \$799.57.

The overcharges were protested by Murphy based on Item 286 of Tariff 1-B which, under the heading "NON-APPLICATION OF RATES", reads:

"Rates named in this tariff will not apply on shipments containing articles, which:

(1) exceed 13 feet in width, . . .

\* \* \* \* \*

"For rates and provisions to apply, see Agent W. A. Hallman's Heavy and Cumbersome Articles Tariff 1, MF-I.C.C. 5."

However, TCD's action was upheld by TCD's Review Branch and upon Murphy's failure to refund the overcharges, they were deducted from other sums owed to Murphy. This resulted in Murphy's claims for \$799.57, which were disallowed by GSA in the settlements here under review.

Murphy contends that Item 286 of Tariff 1-B provides for the nonapplication of the rates in Tariff 1-B on shipments exceeding 13 feet in width, and that therefore Item 335 of Tariff 1-B does not apply to the shipments. The Associated Motor Carriers Tariff Bureau, Inc., agrees; in a letter to Murphy, it states that: ". . . the exceptions to the application of rates in Item 286 distinctly provide that the tariff would not apply on articles exceeding 13 feet in width, notwithstanding any other rules and provisions of the tariff."

B-189052

GSA contends that notwithstanding the existence of Item 286 of Tariff 1-B, Item 335 applies as it provides for a rate of "130% of the applicable rate" on shipments over 12 feet but not over 14 feet wide. GSA concludes that there is an ambiguity in the language of items 286 and 335 of Tariff 1-B, an ambiguity that should be construed against Murphy as the publisher of the tariff.

Several well-established principles of tariff construction control the disposition of this case. A tariff must be given a fair reading and any unreasonable ambiguities cannot be imparted. Great Northern Ry. Co. v. United States, 178 Ct. Cl. 226, 244 (1967). In the interest of both the carrier and the shipper, a tariff should be free of any ambiguity or doubt. When the interpretation of a tariff is the issue, any ambiguity in the tariff provisions which in reasonableness permit misunderstanding and doubt by shippers must be resolved against the carrier, the party preparing the document. A. E. West Petroleum Co. v. Atchison, T. & S.F. Ry. Co., 212 F.2d 812 (8th Cir. 1954); 55 Comp. Gen. 958 (1976); and 42 Comp. Gen. 203 (1962). However, it is important that the ambiguity or doubt be a reasonable one, totally avoiding a straining of the tariff's language. Penn Central Company v. General Mills, Inc., 439 F.2d 1338, 1341 (8th Cir. 1971). Once this is determined to be the case, the lower rate must be applied to the shipment. United States v. Strickland Transp. Co., Inc., 200 F.2d 234 (5th Cir. 1952); Emery Air Freight Corporation v. United States, 499 F.2d 1255 (Ct. Cl. 1974); and Western Grain Co. v. St. Louis-San Francisco Ry., 56 F.2d 160 (5th Cir. 1932).

Adhering to these principles, it seems clear that there is no ambiguity here. Item 286 of Tariff 1-B excludes the application of Tariff 1-B rates when shipments contain articles that possess certain physical characteristics. Once the shipment meets Item 286's specifications, Tariff 1-B rates do not apply and in clear language Item 286 directs the user of the tariff to Agent W. A. Hallman's Heavy and Cumbersome Articles Tariff 1, MF-I.C.C. 5, for the applicable rates and provisions. There would be no need to refer to Item 335 of Tariff 1-B.

Item 335 is not made a nullity by Item 286. Rather, only those shipments with the characteristics described in Item 286 are eliminated from Item 335. In fact, if the two shipments here involved were less than 12 feet wide, rather than over 13 feet wide, the rates in Tariff 1-B would have applied absent other lower applicable rates.

B-188052

Action should be taken by GSA consistent with this opinion.

*R. H. ...*  
Deputy Comptroller General  
of the United States