

DOCUMENT RESUME

03001 - [A2073146]

[Claim for Additional Compensation for Transporting Items Not Listed in Tender]. B-188097. July 19, 1977. 6 pp.

Decision re: Trans Country Van Lines, Inc.; by Paul G. Dembling (for Elmer B. Staats, Comptroller General).

Issue Area: Federal Procurement of Goods and Services (1900).
Contact: Office of the General Counsel: Transportation Law.
Budget Function: General Government: Other General Government (306).

Organization Concerned: Interstate Commerce Commission; United Aircraft Corp.: Hamilton Standard Div., Windsor Locks, CT.
Authority: General Accounting Office Act of 1974 (88 Stat., 1959; 49 U.S.C. 66 (b) (Supp. V.)); 4 C.F.R. 53.3, 53.4. Interstate Commerce Act, as amended, sec. 217 (b) (49 U.S.C. 22; 49 U.S.C. 317 (b)). 49 U.S.C. 66. D-181137 (1974). B-186928 (1977). 49 C.F.R. 1056.1.

Request was made by a common carrier for a review of a prior disallowance of a claim for additional charges of \$1,444.84 for transporting aircraft propellers and other equipment not listed in original tender. However, as claimant had Interstate Commerce Commission operating authority to transport "household goods" but not other items, they should be paid quantum meruit based on its household goods tender or quotation rates. Disallowance of claim for additional compensation was sustained. (Author/DJH)

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Publication

DECISION



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

03001

FILE: B-188097

DATE: July 19, 1977

MATTER OF: Trans Country Van Lines, Inc.

DIGEST: Where offer in Tender 1-W is conditioned to apply "only in absence of an applicable Tender", existence of applicable individual Tender 150 prevents acceptance of Tender 1-W.

Where household goods carrier transports goods without Interstate Commerce Commission operating authority, carrier should be paid quantum meruit based on its household goods tender or quotation rates.

Trans Country Van Lines, Inc. (Trans Country), by letter dated December 20, 1976, requests review by the Comptroller General of the United States of the settlement action taken by the former Transportation and Claims Division (TCD) of the General Accounting Office, now a part of the General Services Administration (GSA), on its claim for transportation charges. See Section 201 of the General Accounting Office Act of 1974, 88 Stat. 1959, approved January 2, 1975, 49 U.S.C. 66(b) (Supp. 1975) and 4 C.F.R. 53.3 and 53.4 (1977).

In the settlement TCD disallowed Trans Country's claim on carrier bill No. 3381 for \$1,444.84, representing additional transportation charges allegedly due it for transporting Government property for the Department of the Air Force under Government bill of lading (GBL) No. H-0751389, dated January 26, 1973.

The Government property, weighing 28,480 pounds, was shipped by the Hamilton Standard Division of the United Aircraft Corporation, Windsor Locks, Connecticut, to Wright-Patterson Air Force Base, Dayton, Ohio. The commodities described on the GBL fall into three general categories: electrical equipment and appliances, hand tools and tool cabinets, and airplane propeller blades. For transporting this shipment, Trans Country originally collected \$1,063.82. 49 U.S.C. 66 (1970). These charges were based on Trans Country's Tender I.C.C. #150, sub #5 (Tender 150), a reduced rate quotation offered to the Government under Section 22 of the Interstate Commerce Act, as amended, 49 U.S.C. 22 (1970), made applicable to motor carriers by Section 217(b) of that Act, 49 U.S.C. 317(b) (1970).

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Trans Country presented a claim for additional transportation charges of \$1,444.84, based on Government Rate Tender I.C.C. No. 1-W (Tender 1-W), another reduced rate tender published by the Movers' and Warehousemen's Association of America, Inc., Agent. It contended that the propeller blades described on the GBL were not within the purview of the commodity description in Tender 150. This claim was disallowed by TCD on the grounds that Trans Country had no operating authority to transport propeller blades, hand tools and tool cabinets, and that pursuant to our decision of July 5, 1974, B-181137, to Trans Country, the charges were to be constructed on a quantum meruit basis from Tender 150.

Trans Country filed a protest of the settlement with TCD. It asserted that because the shipment did not consist wholly of electronic equipment, an exception in Tender 1-W did not preclude the use of other rates in Tender 1-W as a basis for the additional transportation charges, and that because hand tools, tool cabinets and propeller blades were not within the purview of this commodity description in Tender 150, Tender 1-W provided the proper basis for the rate computation. TCD, however, concluded that its earlier settlement was correct.

Trans Country filed another protest with GSA to which TCD's functions had been transferred. GSA sustained the original TCD settlement.

It is GSA's present position that Trans Country had operating authority to transport that part of the shipment consisting of electrical instruments and appliances, and that the applicable rates on that part of the shipment are those in Tender 150. However, since Trans Country had no operating authority to transport the balance of the shipment (hand tools, tool cabinets and propeller blades), GSA states that the compensation due Trans Country for that part of the shipment must be computed on the basis of quantum meruit, measured by the lower of the Tender 150 or Tender 1-W rates.

We agree with GSA.

GBL No. H-0751389 shows among other commodities that electrical instruments and appliances were shipped. This part of the shipment clearly is covered by the commodity description in Tender 150, which reads:

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"OFFICE FURNITURE, FILES, FIXTURES AND EQUIPMENT, LINK TRAINERS, FLIGHT SIMULATORS, RADAR SETS, ELECTRONIC EQUIPMENT, COMPUTERS, MISSILES, SPACECRAFT AND/OR PARTS THEREOF, AND/OR COMPONENTS, SCIENTIFIC INSTRUMENTS AND ARTICLES OF SECRET NATURE WHEN SO CLASSIFIED BY THE MILITARY AND SPECIFIED ON THE GOVERNMENT BILL OF LADING EXCEPT ARTICLES, EQUIPMENT AND INSTRUMENTS WHICH REQUIRE THE USE OF TEMPERATURE AND/OR HUMIDITY CONTROLLED EQUIPMENT."

A specified condition of the offer in Tender 1-W is that it applies to domestic shipments of household goods "only in the absence of an applicable individual Tender as filed". Since Trans Country's Tender 150 is an "applicable individual Tender," the specific nonapplicability requirement in Tender 1-W has not been met. B-186928, March 28, 1977. Therefore, the rates in Tender 150 apply in ascertaining the charges for that part of the shipment consisting of electrical instruments and appliances.

Trans Country is authorized by the ICC to transport household goods as defined in the ICC regulations between certain points and places in interstate commerce. As noted in B-131137, supra:

"It is established law that carriers regulated by the Interstate Commerce Commission cannot transport commodities not listed or enumerated in their certificates of public convenience and necessity. * * * Section 206 of the Interstate Commerce Act, 49 U.S.C. 206 (1970), unequivocally forbids carriage of goods without the necessary certificate, and the fact that the transportation is for the United States does not alter this prohibition. * * *"

Accordingly, if any of the commodities actually transported by Trans Country do not fall within the definition of "household goods" as defined in the ICC regulations, infra, Trans Country must be deemed to have been without operating authority to transport the nonconforming part of the shipment moving under GBL No. H-0751389.

The term "household goods" is defined and interpreted in this ICC regulation (49 C.F.R. 1056.1):

"(a) Household goods. The term "household goods" means (1) personal effects and property used or to be used in a dwelling when a part of the equipment or supply of such dwelling; (2) furniture, fixtures, equipment, and the property of stores, offices, museums, institutions,

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hospitals, or other establishments, when a part of the stock, equipment, or supply of such stores, offices, museums, institutions, hospitals, or other establishments; and (3) articles, including objects of art, displays, and exhibits, which because of their unusual nature or value require the specialized handling and equipment usually employed in moving household goods.

(b) Interpretation of the definition in paragraph (a) of this section. Paragraph (a)(1) of this section shall not be construed to include property moving from a factory or store, except such property as the householder has purchased with intent to use in his dwelling and which is transported at the request of, and the transportation charges paid to the carrier by the householder. Paragraph (a) (2) of this section shall not be construed to include the stock-in-trade of any establishment, whether consignor or consignee, other than used furniture and used fixtures, except when transported as an incident to the removal of the establishment, or a portion thereof, from one location to another. Paragraph (a)(3) of this section shall not be construed to include any article, whether crated or uncrated, which does not, because of its unusual nature or value, require the specialized handling and equipment usually employed in moving household goods."

Nothing in the bill of lading or in the nature and value of that part of the shipment designated as "PROPELLER BLADES AIRPLANE OTHER THAN HELICOPTER IN CRATES OR BOXES; CABINETS, TOOL, STEEL, ON WHEELS; TOOLS HAND OTHER THAN POWER" permits a finding that subparagraph 3 of paragraph (a) of the ICC "household goods" definition, as it pertains to a request or requirement for special handling, would apply to those commodities. Indeed, there appears to have been no reason why a general commodity or heavy hauler carrier could not have transported the tools and propeller blades which comprised the bulk of the shipment. As we stated in B-181137, supra:

"A household goods carrier may not assume from a mere request for transportation services that any item which does not fall within the first two subparagraphs of the definition of household goods * * * must fall within the third subparagraph and therefore require specialized services. The need for such services depends on the nature of the item and not on its characterization by either shipper or carrier."

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For the propeller blades, hand tools, tool cabinets and the other miscellaneous items included in the shipment to qualify as household goods under subparagraph 2 of the ICC definition, they must have been moved "pursuant to the removal of the establishment, or a portion thereof, from one location to another." The shipment moved from a private corporation to a military installation where, apparently, testing was to occur. Nothing in the record suggests that the shipment was made pursuant to the removal of an establishment or portion thereof.

"Household goods", as defined in subparagraph 1 of the ICC Regulation, "means personal effects and property used or to be used in a dwelling when a part of the equipment or supply of such dwelling."

Trans Country points out that the packing slip prepared by Hamilton Standard designates the tools and tool cabinets as personal property. Again, nothing in the record suggests that the tools or cabinets were a part of the equipment or supply of a dwelling. Accordingly, we find that that portion of the shipment moving under GBL No. H-0751389 which is designated "CABINETS, TOOL, STEEL, ON WHEELS" AND "TOOLS, HAND OTHER THAN POWER" does not fall within the definition of household goods and that Trans Country was without operating authority to transport it.

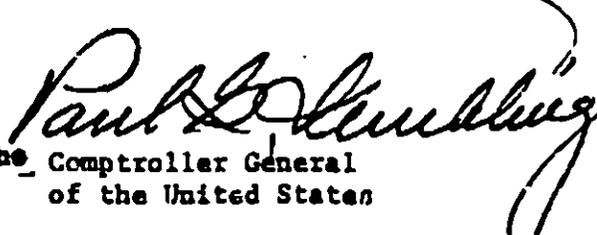
Further, it is clear that "PROPELLER BLADES AIRPLANE OTHER THAN HELICOPTER * * *" cannot be classified as personal effects or property within the meaning of subparagraph 1. Therefore, Trans Country likewise lacked the necessary operating authority to transport that remaining portion of the shipment and compensation will be based on the principles of quantum meruit measured as outlined in B-181137, supra.

That decision concerned the transportation of steel shipping containers, set up. Since Trans Country's household goods operating authority did not cover shipments of steel containers, set up, we held that the contract of carriage was unenforceable, but that Trans Country could recover a quantum meruit for its services because the shipper had received the benefit of those services. We said that the quantum meruit should be based on the usual or going rates of other duly authorized carriers for the same or similar services. Where there are no going rates of household goods carriers for the carriage of commodities not included in the ICC's authorized description of household goods, quantum meruit is measured by the rates in the carrier's tenders.

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Accordingly, the charge for the part of the shipment for which Trans Country was without operating authority likewise must be based on Tender 150.

Trans Country already has collected on this shipment charges based on the rates in Tender 150. Thus, the settlement disallowing Trans Country's claim for additional transportation charges of \$1,444.94 is sustained.


For the Comptroller General
of the United States