

DOCUMENT RESUME

03066 - [A1953]26]

[Request for Additional Compensation for Transporting Dental Equipment]. B-188091. July 11, 1977. 3 pp.

Decision re: Trans Country Van Lines, Inc.; 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: General Accounting Office Act of 1974 (88 Stat.

1959). 49 U.S.C. 66(b) (Supp. 7). 4 C.F.R. 53.3. 4 C.F.R.

53.1(b)(3). B-187317 (1977). Penn Central Co. v. General

Mills, Inc., 439 F.2d 1338 (8th Cir. 1971).

Review was requested of a prior GSA settlement disallowing a claim for additional transportation charges for transporting dental equipment rather than office furniture and equipment. The carrier's section 22 tender covering office furniture and equipment applied to dental equipment which could be part of a dental office. The prior settlement was sustained. (DJM)

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Trans Country Van Lines, Inc.*

DECISION



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

FILE: B-188091

DATE: July 11, 1977

MATTER OF: Trans Country Van Lines, Inc.

DIGEST: Carrier's section 22 tender covering office furniture, files, fixtures and equipment applies to shipment of dental equipment where equipment is or could be the integral part of a dental office.

Trans Country Van Lines, Inc. (Trans Country), requests review of a letter dated September 16, 1976, from the General Services Administration (GSA) sustaining a Settlement Certificate issued by the former Transportation and Claims Division (TCD) of the General Accounting Office, now a part of GSA. See the General Accounting Office Act of 1974, 88 Stat. 1559, approved January 2, 1975. The review is being made under 49 U.S.C. 66(b) (Supp V, 1975), and 4 C.F.R. 53.3 (1977), since it is apparent that the GSA letter constitutes finality of administrative consideration. See 4 C.F.R. 53.1(b) (3) (1977).

TCD's action was taken on a shipment of dental equipment weighing 22,280 pounds which was transported in November 1971 from Fort Knox, Kentucky, to Forest Park, Georgia, under Government bill of lading (GBL) No. F-9088595. Trans Country billed and was paid \$742.35 on Army Finance Center voucher No. 508895 for transporting the shipment. Its charges were based on the carrier's Section 22 Quotation I.C.C. 150 (Tender 150).

On March 6, 1974, Trans Country issued its supplemental bill or claim No. 1498 for additional transportation charges of \$669.01. This additional amount was based on charges derived from the household goods rates listed in Government Rate Tender I.C.C. 1-V (Tender 1-V). TCD, however, found that the previous charges constructed from Tender 150 were correct and disallowed Trans Country's claim on the basis of quantum meruit principles.

Trans Country protested the settlement asserting that Item 10, subsection 2 of Tender 1-V applied to shipments of "furniture, fixtures, equipment, and the property of hospitals or other establishments," and that dental equipment fell within that classification. Upon reconsideration, TCD concluded that

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even if Trans Country had operating authority to transport the shipment so as to make the quantum meruit principle inapplicable, Tender 150 rates would, nevertheless, apply if the shipment were classified as "office furniture."

Trans Country again protested, this time to GSA, asserting that dental equipment fell within the specific provisions of Tender 1-V, Item 10, subsection 2 which expressly applies to "hospital equipment." Further, Trans Country contended that quantum meruit principles were only applicable as a basis for rate construction when the carrier was without operating authority to transport the commodity in question.

On review, GSA concluded that while Trans Country did indeed have the requisite operating authority, "DENTAL EQUIPMENT" was embraced by the Tender 150 commodity description.

Tender 1-V applies only in the absence of an applicable individual tender as filed by the carrier. B-186928, March 28, 1977. Thus, if Tender 150 filed by Trans Country is found not applicable, the transportation charges would be based on the household goods rates listed in Tender 1-V.

In order to determine which tariff or tender, if any, to apply, it is necessary to ascertain the identity of the articles shipped. The bill of lading description of the articles shipped is prima facie evidence of identity and is entitled to considerable weight in determining the applicable quotation. Southern Pacific Transportation Co. v. United States, 454 F.2d 740, 744 (Ct. Cl. 1972).

The shipment contained various kinds of dental equipment. GBL No. F-9088595 shows that "MISCELLANEOUS DENTAL EQUIPMENT AS LISTED ON CONTINUATION SHEETS" was shipped. The continuation sheets show that the shipment consisted of such items as dental cabinets, dental machines (dental operating units), dental operating lights and dental chairs. The GBL continuation sheets also show that each of the pieces of equipment was ultimately destined for one of five different military installations.

The commodity description in Tender 150 reads in part, "OFFICE FURNITURE, FILES, FIXTURES AND EQUIPMENT . . ." It is clear that the commodity shipped may be accurately described as

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fixtures and equipment. Therefore, it is necessary to determine whether the meaning of the word "office" as used in the Tender 150 commodity description is so restrictive as to specifically exclude dental office fixtures and equipment from its normal meaning.

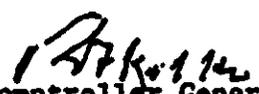
The term "office" as it applies here is defined in Websters Third New International Dictionary 1567 (1966) as,

" . . . [A] place where a particular kind of business is transacted or a service is supplied: . . . as the place in which a professional man (as a physician or lawyer) conducts his professional business . . ."

A basic principle of construction to aid in ascertaining the meaning of a contract or other written instrument is that the meaning of general words or terms will be restricted by more specific descriptions of the subject matter. See Restatement (Second) of Contracts sec. 229(e) (1973); L. Simpson, Contracts 209 (2d ed. 1965). The Tender 150 commodity description, however, contains no language which would serve to limit the word "office" to a narrower definition than its all inclusive meaning.

Even if the Tender 150 commodity description remains ambiguous when applied to the shipment transported under GBL No. F-9088595, it long has been the rule that ambiguities in tariffs or in Section 22 quotations like Tender 150 are to be resolved against the carrier and in favor of the shipper. Penn Central Co. v. General Mills, Inc., 439 F.2d 1338 (8th Cir. 1971); C & H Transportation Co. v. United States, 436 F.2d 480, 482 (Ct. Cl. 1970); United States v. Great Northern Ry., 337 F.2d 243, 246 (8th Cir. 1964). See B-187327, January 27, 1977.

Trans Country's section 22 tender covering office furniture, files, fixtures and equipment, therefore, applies to the shipment of dental equipment, and Tender 150 is the applicable basis for computation of the transportation charge. Accordingly, the GSA action in sustaining the settlement certificate disallowing Trans Country's claim is correct and is sustained.


Deputy, Comptroller General
of the United States