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DECISION



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

FILE: B-187317

DATE: November 30, 1977

MATTER OF: Navajo Freight Lines, Inc., Reconsideration

DIGEST:

Where Section 22 Quotation defines vehicle for application of "a per vehicle used rate" and carrier did not furnish vehicle within definition, it seems reasonable that overflow provision of same Quotation would then apply.

Navajo Freight Lines, Inc. (Navajo), in its correspondence of April 15, 1977, Navajo Claim No. 049668, requests reconsideration of our decision of January 27, 1977, B-187317. In the decision we sustained the General Services Administration's (GSA) action in disallowing Navajo's claim for refund of freight charges of \$1,183.20. See 4 C.F.R. 53 (1977).

GSA's action was taken on a shipment of freight all kinds weighing 36,720 pounds which was transported in September 1972 from West Hartford, Connecticut, to Nebo, California, under Government bill of lading (GBL) No. F-8825134. The shipment was picked up on two trailers, a 40-foot trailer loaded with 28,440 pounds and a 26-foot trailer loaded with 8,280 pounds.

GSA determined in its audit of transportation charges that the lowest rate applicable to the shipment is derived from applying a \$6 rate in Item 2375 of Rocky Mountain Tariff Bureau Quotation 19-A (Quotation 19-A) to both the 28,440 pounds transported on the 40-foot trailer and the 8,280 pounds transported on the 26-foot trailer.

GSA contended that Item 2375 was subject to Item 975 of Quotation 19-A; Navajo contended that it was not. Item 975 is a so-called "overflow provision," which provides the basis for rates to be applied when the freight tendered as one shipment cannot be loaded on one vehicle.

Navajo again states that Item 2375 contains an exception which precludes the application of Item 975. Navajo contends that:

"* * * recognition be given the encircled "1" of item 2375 as it is published with the rate and all provisions of a tariff must be accorded consideration with the encircled

B-187317

"1" in item 2375 a definite exception to item 975 as is provided at top of page 5th 223-c-1, item 2375, no reason to ever go to item 975 at all."

The heading of Item 2375 states: "RATES IN CENTS PER 100 POUNDS, subject to truckload minimum weights as indicated and subject to Item 975 (except as noted)." The "min. wt. (pounds)" (Minimum weight in pounds) column of Item 2375 shows a weight of 28,000 and 38,000 pounds, both preceded by a circled reference "1". At the bottom of the item, circled reference "1" is defined as "Minimum weight per vehicle used." Thus, it is Navajo's contention that circled reference "1" is the exception referred to in the phrase "(except as noted)", that the minimum weight of 28,000 pounds applies to each of the vehicles furnished by Navajo, and that one need not refer to Item 975 at all.

In our decision of January 27, 1977, we found that when applied to the shipment transported under GBL No. F-8825134, items 2375 and 975 of Quotation 19-A were ambiguous and we resolved the ambiguity against the carrier and in favor of the shipper. We also stated that:

"We are aware of the fact that the qualification appearing at the top of the page containing item 2375 of Quotation 19-A contains the parenthetical phrase 'Except as noted.' But we find no exception in item 2375 to the use of item 975. And in any event the exception lacks the necessary specificity of expression, a lack which raises a question concerning the interpretation of Quotation 19-A, a question which must be resolved in favor of the shipper. United States v. Missouri Pacific R.R., 250 F.2d 805, 807 (5th Cir. 1958)."

Thus, Navajo's contention has been answered.

We note that Navajo overlooks another tariff item that is applicable here.

Item 110 of Quotation 19-A, under the heading of "Definitions," states that:

"Wherever the term 'trailer,' 'trailers,' 'vehicle' or 'vehicles' is used, such term will have reference to either a trailer which does not exceed forty (40) feet in length or two (2) trailers, each of which does not exceed twenty-eight (28) feet in length."

By that definition, the 26-foot trailer furnished by Navajo, and then loaded with 8,280 pounds, does not qualify as a vehicle and the minimum

B-187317

weight of 28,000 pounds per vehicle used required by the circled reference "1" would not apply on the 26-foot trailer furnished. Since the minimum weight of 28,000 pounds per vehicle used does not apply to the part of the shipment moved in the 26-foot trailer, it seems reasonable that the overflow provisions of Item 975 would then apply.

We also note that Item 975 defines a vehicle for the purpose of applying the overflow provision as "A tractor and a semi-trailer combined." Thus, the equipment furnished by Navajo is specifically provided for in Item 975, a fact which further substantiates the basis of the rates found applicable by GSA.

Accordingly, our decision of January 27, 1977, sustaining GSA's action in disallowing Navajo's claim, is correct and is sustained.

Deputy

R. J. K. 1/27/77
Comptroller General
of the United States