

DECISION



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

FILE: B-189382

DATE: January 6, 1978

MATTER OF: Navajo Freight Lines, Inc.

DIGEST:

1. Carrier may employ agent to perform transportation services for it.
2. Whether or not an agency has been created is ordinarily question of fact as determined by relations and intentions of parties; facts in this case indicate that alleged pickup carrier acted as agent of claimant carrier when it made pickup at shipper's plant.

Navajo Freight Lines, Inc. (Navajo), in its correspondence of June 14, 1977 (its claim No. 57176), requests a review of a deduction action of \$125.93 taken by the General Services Administration (GSA). A deduction action constitutes a settlement and the review of the settlement is being made by this Office under the provisions of 49 U.S.C. 66(b) (Supp. V, 1975), and 4 C.F.R. 53.3 (1977).

The record shows that Navajo picked up a shipment of electronic equipment, described as freight all kinds, on May 21, 1975, under Government bill of lading (GBL) No. K-1226393, at the Hazeltine Corporation, Avon, Massachusetts, consigned to the Naval Supply Center, Oakland, California. Navajo billed and was paid transportation charges of \$247.77, on its bill No. 1805-75, on August 22, 1975.

GSA, in its audit of transportation charges, determined that a lower rate was available for the Government based on Item 2200 of United States Government Quotation No. I.C.C. RMB 33 (RMB 33). GSA collected the overcharge of \$125.93 by deduction.

Navajo contends that the shipment was picked up by Intercity Transportation Company (Intercity), not Navajo, that Intercity does not participate in RMB 33, and that therefore the rates in RMB 33 do not apply in this case. Navajo further contends that it is illegal for one intercity carrier to pick up a shipment for another intercity carrier. In support of its contention, Navajo has furnished a copy of its freight bill No. 555230, which does indicate that Intercity picked up the shipment on GBL K-1226393, on May 21, 1975.

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The facts in this case indicate that if Intercity picked up the shipment for Navajo it did so as its agent; therefore, the rates used by GSA in its audit apply.

It is well settled in the law that a carrier can employ another carrier as its agent to perform transportation services for it. United States v. Fruit Growers Express Co., 279 U.S. 363 (1929); Terminal Allowance at Minnesota Transfer, 268 I.C.C. 5, 18 (1946); B-136891, November 14, 1977. Thus, contrary to Navajo's contention it is not illegal for one intercity carrier to pick up a shipment for another intercity carrier. Cf. Investigation of Practices - United Warehouse Co., 316 I.C.C. 5, 9 (1962).

The question of whether or not an agency has been created is ordinarily a question of fact and can be determined by the relations and intentions of the parties. 3 Am. Jur. 2d Agency sec. 21 (1962). And the facts in this case indicate that Intercity acted as an agent of Navajo when it made the pickup at Hazeltine Corporation.

The GBL constitutes the contract of shipment and was issued by Navajo under the provisions of section 20(11) of the Interstate Commerce Act, 49 U.S.C. 20(11) (1970). The GBL shows "NAVAJO FREIGHT LINES" under the heading of "Transportation Company," and the same information appears at the bottom of the GBL, followed by a block entitled "Signature of Agent," which is signed for by a driver apparently by the name of "Martin." Thus, the name of "Intercity," does not appear on the GBL at all. In addition, Navajo certified as to delivery on the GBL and billed for the freight charges on its invoice. All these factors combined are indicative of an agency relationship between Navajo and Intercity, if as alleged, Intercity picked up the shipment. See United States v. Mississippi Valley Barge Line Co., 285 F.2d 381 (8th Cir. 1960).

Additional information obtained by this Office also indicates that Intercity must have acted as Navajo's agent. The Traffic Manager at Hazeltine Corporation stated that he called Navajo to pick up the shipment on GBL K-1226393. And the Administrative Office reports that the normal practice would be for the shipper to call the carrier listed on the GBL, in this case, Navajo.

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In addition, the Rocky Mountain Motor Tariff Bureau Tariff No. I.C.C. RMB 118-B, "Points of Service Tariff," shows in item 1310, that Navajo serves all points in the State of Massachusetts. Further, Navajo's operating rights encompass Avon, Massachusetts. (See National Motor Freight Traffic Association Tariff No. S-1. Thus, Navajo has apparently chosen Intercity as its agent for operational purposes because it can serve Avon, Massachusetts, direct.

Based on the present record, GSA's action in collecting by deduction the overcharge of \$125.93 was correct and is sustained.

For the

Paul B. Leuchling
Comptroller General
of the United States