

7191
DECISION



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

FILE: B-190947

DATE: AUG 1 1978

MATTER OF: The Mason and Dixon Lines, Inc.

DIGEST:

Carrier not entitled to freight charges based on capacity load rule whether 40-foot or 27-foot trailers used because shipment would not have occupied full visible capacity of those trailers as required by rule; furthermore, 27-foot trailer, if used, has smaller loading areas than those defined in rule.

The Mason and Dixon Lines, Inc. (Mason and Dixon), in letters dated December 7, 1977, requests the Comptroller General of the United States to review the General Services Administration's (GSA) action on seven of its bills for transportation charges. See Section 201(3) of the General Accounting Office Act of 1974, 49 U.S.C. 66(b) (Supp. V, 1975). GSA, after auditing the bills, notified Mason and Dixon of overcharges totaling \$9,374.76 which in the absence of refund were collected by deduction. 49 U.S.C. 66(a). Under regulations implementing Section 201(3) of the Act, deduction actions constitute reviewable settlement actions 4 C.F.R. 53.1(b)(1) and 53.2 (1977) 7; Mason and Dixon's letters comply with the criteria for requests for review of those actions. 4 C.F.R. 53.3 (1977).

The settlement actions were taken on seven shipments of blocking bolsters shipped between April 14, and July 23, 1975, from the Northrop Corporation Aircraft Division, Palmdale, California, to the General Electric Company, Lynn, Massachusetts. The shipments were routed "WESTERN GILLETTE-DESERT EXPRESS PICKUP" and were delivered by Mason and Dixon on Government bills of lading Nos. K-5566170, K-5569468, K-5569523, K-5569499, K-5569406, K-5566161 and K-5569593.

The bills of lading indicate that each shipment consisted of eight blocking bolsters weighing 3,200 pounds which occupied 1,080 cubic feet of space in the carrier's trailer. On four of the bills of lading, the box labelled, "if this shipment fully loads the car or truck used, check yes," was checked.

Mason and Dixon billed and was paid freight charges on each shipment based upon the class 85 truckload rating and the 14,000-pound minimum weight published in item 40850, sub. 1, of National Motor Freight Classification (NMFC) ICC NMF 100-A. Upon audit,

GSA determined that the charges should be based upon the actual weight, 3,200 pounds, and the class 100 less than truckload (LTL) rating published in the same item. It issued notices of overcharge explaining that basis to Mason and Dixon; in the absence of refund the overcharges, totaling \$9,374.76, were collected by deduction.

Mason and Dixon alleges that each vehicle was loaded to full capacity and contends that each shipment is subject to a minimum charge for capacity loads, the basis upon which it collected its freight charges.

GSA believes that on each shipment the minimum charge for a capacity load does not apply and that the applicable charges should be based on the LTL rating and the actual weight, the basis used on its notices of overcharge.

The rule governing the minimum charge for capacity loads is contained in Item 610-5 of Rocky Mountain Motor Tariff Bureau Tariff 20-G, which provides in pertinent part:

"MINIMUM CHARGE - CAPACITY LOADS
(Subject to Notes 1 thru 5)

- (1) When any shipment that is subject to LTL, Volume, or Truckload rates is tendered to the carrier and occupies the full visible capacity of one or more vehicles, the minimum charge for that quantity of freight loaded in or on each vehicle will be the charge based on the truckload or volume minimum weight, at the truckload or volume rate applicable.

* * * * *

Note 1 - The terms 'occupies the full visible capacity', 'loaded to capacity' or 'capacity load' refers /sic / to the extent each vehicle is loaded and means /sic /:

- (a) That quantity of freight which, in the manner loaded so fills a vehicle, that no additional article in the shipping form tendered identical in size to the largest article in the shipment can be loaded in or on the vehicle; or
- (b) That maximum quantity of freight that can be legally loaded in or on a vehicle because of the weight or size limitations of state or regulatory bodies.

Note 2 - The term 'vehicle' as used in this item means a trailer, or combination of trailers of not less than 2400 cubic feet capacity, or with 310 square feet of floor space if flat bed or open top equipment is requested or furnished, propelled or drawn by a single power unit and used on the highways in the transportation of property. On request of the shipper, the carrier shall endeavor to furnish the largest vehicle available. The shipper will have the right to refuse the vehicle offered, but once loading has begun, provisions of this item will apply.

(Notes 3 - 5 not relevant here)"

GSA reports that a trailer of at least 40 feet in length would be needed to meet the 2,400 cubic feet capacity requirement of Note 2 and that a vehicle of this size has a capacity of approximately 2,496 cubic feet. Mason and Dixon has offered no evidence that the vehicles used met this requirement. It merely states that the origin carrier advised it that the shipment was a capacity load, and that on some of the GBLs it is noted that the vehicle involved was fully loaded.

In response to an inquiry by GSA as to how the bolsters were loaded, and requesting photographs of 35- and 40-foot trailers loaded with eight bolsters, Northrop Corporation, the shipper, replied:

"Enclosed is photo of blocking bolster, cradles or carriers. Shipment consisted on eight carriers and was loaded on a 27 ft. van. They are loaded two high, two wide, and two long, using 20 ft. 10 in. of floor space.

* * * * *

"It is hard for me to understand how Mason Dixon Lines can claim that eight units fully load a 40 ft. van when the dimensions are shown on the Government Bill of Lading.

* * * * *"

Although a 27-foot van was used for the demonstration photograph, it is unclear from Northrop's response whether 27- or 40-foot vans were used for the seven shipments. However, for the reasons discussed below, we conclude that the capacity load rule would be inapplicable in either case.

Paragraph (1) of Item 610-5 indicates that the minimum charge for a capacity load applies when the shipment as tendered to the carrier "occupies the full visible capacity of . . . the vehicle". Note 1 of Item 610-5 defines the term "occupies the full visible capacity" to mean "That quantity of freight which, in the manner loaded so fills a vehicle, that no additional article in the shipping form tendered identical in size to the largest article in the shipment can be loaded in or on the vehicle". Emphasis supplied.

If 40-foot vans in fact had been used, the vehicles would not have been fully loaded in accordance with the definition in Item 610-5. As shown on the bills of lading, each blocking bolster measures 135 cubic feet. They were shipped in units of eight, occupying a total of 1,080 cubic feet of trailer space. Thus, eight blocking bolsters would have occupied less than half of the cubic capacity of a 40-foot trailer. Regardless of the method of loading, an additional "article in the shipping form tendered" (a bolster) could have been placed in a 40-foot trailer.

If 27-foot trailers had been used, Note 2 of Item 610-5 would preclude the use of the capacity load rule. According to GSA, a 27-foot trailer has a capacity of approximately 1,780 cubic feet; its dimensions then would be less than the 2,400 cubic feet minimum required by Note 2 for the capacity load rule to apply.

Moreover, if 27-foot trailers had been used it appears that there would have been sufficient space for an "additional article in the shipping form tendered" (a bolster) to have been loaded into the 27-foot trailer. Thus, if these shipments had been loaded on a 27-foot trailer they would fail to meet the requirements of both Note 1 and Note 2 of the capacity load rule in Item 610-5. See B-189252, November 15, 1977.

Based on the present record, GSA's settlement actions on the seven shipments were correct and are sustained.

~~R. V. KELLEY~~

Deputy Comptroller General
of the United States