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DECISION



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

9473

FILE: B-192856

DATE: March 15, 1979

MATTER OF: Yellow Freight System, Inc.

[Collection of Alleged Overcharge by Freight Carrier]

DIGEST:

1. Presumption that bill of lading correctly described article tendered for transportation is not conclusive; what moved is conclusive, not what was billed.
2. Carrier has burden of proving correctness of transportation charges initially collected on shipment.

Yellow Freight System, Inc. (Yellow Freight), in a letter dated September 7, 1978, requests review by the Comptroller General of the General Services Administration's (GSA) action in collecting an alleged overcharge by deduction from freight charges otherwise due the carrier. A deduction action constitutes a settlement within the meaning of Section 201(3) of the General Accounting Office Act of 1974. 49 U.S.C. § 66(b) (Supp. V, 1975). Under regulations implementing Section 201(3) of the Act, a deduction action constitutes a reviewable settlement action (4 C.F.R. §§ 53.1(b)(1) and 53.2 (1978)); Yellow Freight's letter complies with the criteria for requests for review of such an action. 4 C.F.R. § 53.3 (1977).

GSA's action was taken on a shipment of 40 boxes weighing 2,040 pounds, described on Government bill of lading (GBL) No. P-7343114 as "INSULATING MATERIAL, NOI", and transported by Yellow Freight in June 1976 from the GSA Warehouse, Fort Worth, Texas, to the Naval Air Station, Norfolk, Virginia. The bill of lading also showed the catalog or stock number "5640-00-285-2081." The GAO catalog assigns this number to one of a group of acoustical articles under the generic heading "SOUND CONTROLLING BLOCK." Sound controlling blocks are described as follows:

"White prefabricated tiles for acoustical treatment and interior finishing. 12" sq. * * *.

"1/2" thick. Butt joints beveled. Flame spread index 76-200. Noise reduction co-efficients grade designation shown. 60 to box.

* * * * *

"Random large hole perforations. 5640-00-285-2081 * * *."

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Yellow Freight collected freight charges of \$1,097.93 on the shipment using the rate applicable to insulating material as described in item 103300 of the National Motor Freight Classification NMF100-C (NMFC).

GSA performed a post payment audit which resulted in its issuance of a notice of overcharge for \$939.42. GSA's overcharge action was based on the alleged misdescription of the commodity shipped on the GBL. The written description indicated that the commodity was "INSULATING MATERIAL, NOI" while the stock number indicated that the commodity was "SOUND CONTROLLING BLOCK." GSA concluded that rather than NMFC item 103300, NMFC item 193820, applying to "FIBREBOARD, HARDBOARD or PULPBOARD," properly described the commodity shipped. While rates applicable to insulating materials described in NMFC items 103300 through 103416 are listed as contraband in the general "freight, all kinds" rate provided by Rocky Mountain Motor Tariff Bureau, Inc., U.S. Government Quotation ICC RMBQ 17-B (RMBQ 17-B), of which Yellow Freight is a participating carrier, rates applicable to "FIBREBOARD, HARDBOARD or PULPBOARD" are not. GSA based its overcharge on a rate of \$7.77 per 100 pounds found in item 7521 of RMBQ 17-B.

Yellow Freight protested the notice of overcharge, objecting to GSA's use of a photocopy of the GSA catalog page for stock number 5640-00-285-2081 as its sole authority to determine what commodity was shipped. GSA then obtained a sample of the commodity shipped from the GSA Warehouse in Norfolk, Virginia. The sample, which was forwarded to our Office by GSA, is referred to commonly as acoustical ceiling tile, conforms to the description provided for stock number 5640-00-285-2081, sound controlling block, and was classified by GSA under NMFC item 193820. Accordingly, GSA affirmed the propriety of its overcharge notice and proceeded to collect the overcharge by deduction. Yellow Freight requests review of that action.

In its request for review, Yellow Freight raises two issues. First, it challenges GSA's method of determining what was shipped. Second, it questions GSA's use of NMFC item 193820 as the correct description of the commodity shipped if it was in fact sound controlling block. Yellow Freight argues that the more appropriate description is found in NMFC items 103400, 103403 and 103404 which cover "MINERAL WOOL."

With reference to the first issue, Yellow Freight relies on the description shown on the original bill of lading. The presumption that a bill of lading correctly describes the article tendered for transportation is not conclusive; what moved is conclusive, not what was billed. Penn Facing Mills Co. v. Ann Arbor RR, 182 I.C.C. 614, 615 (1932); Buch Express, Inc. v. United States, 132 Ct. Cl. 772 (1955). Further, the bill of lading description relied on by Yellow Freight is

ambiguous. The general written description of "INSULATING MATERIAL, NOI" conflicts with the description tied to the stock number shown on the bill of lading. The sample of the commodity shipped conforms to the description of sound controlling block, demonstrating that the correct description of the commodity shipped is that provided by the stock number rather than by the written description. Moreover, by weighing the sample (13.6 ounces) we find that this conforms to the weight of each box in the shipment which the record shows to be 51 pounds (60 blocks to a box times 13.6 ounces equals 51 pounds).

With reference to the second issue, Yellow Freight argues that if the commodity shipped was sound controlling block, it should be rated pursuant to the description in NMFC item 103400, etc. These items with a note at 103404 state:

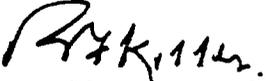
<u>"ITEM</u>	<u>ARTICLES</u>
	* * * * *
	INSULATING MATERIAL GROUP: subject to item 103000
103400	Mineral Wool (clay, rock, slag or glass wool):
103403	Batts, batting, blankets, blocks, sheets, other forms or shapes, see Note, item 103404, in packages
103404	NOTE--(1) Applies whether plain, saturated, or with binder, and whether or not quilted or stitched between or fastened to sheets of cloth, paper, plastic film or foil. (2)Does not apply on acoustical ceiling board; wallboard; building board; or blocks, sheets, or other forms, or shapes, having a recommended usage temperature higher than 700 degrees Fahrenheit, other than batts, batting or blankets.
	* * * * *

Yellow Freight argues that the note in item 103404 which excludes acoustical ceiling board from the description in item 103403 applies only to acoustical ceiling board having a recommended usage temperature higher than 700 degrees Fahrenheit. Acoustical ceiling board with recommended usage temperatures less than 700 degrees, Yellow Freight argues, may be rated pursuant to this description.

Yellow Freight has not provided us with any information on the recommended usage temperatures of the commodity shipped. Further, the punctuation in the note in item 103404 clearly indicates that all acoustical ceiling board is prohibited from description under item 103403. The qualifier "having recommended usage temperature higher

than 700 degrees Fahrenheit" applies to "blocks, sheets or other forms or shapes" other than acoustical ceiling board, wallboard, and building board. As the note in item 103404 expressly prohibits application of item 103403 to acoustical ceiling board, we agree with GSA that NMFC item 193820 applies to the shipment transported under GBL No. P-7343114.

Yellow Freight has the burden of proving the correctness of the freight charges it collected initially. United States v. New York, New Haven & Hartford RR, 355 U.S. 253 (1957); Pacific Intermountain Express Co. v. United States, 167 Ct. Cl. 266, 270 (1964). Thus, as Yellow Freight has failed to prove that the commodity shipped was insulating material rather than sound controlling block and as NMFC item 103403 expressly does not apply to the commodity shipped, GSA's settlement action on the shipment moved under GBL No. P-7343114 is correct and it is sustained.


Deputy Comptroller General
of the United States