

TRANS

12737



DECISION

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

FILE: B-195862

DATE: February 7, 1980

MATTER OF: Yellow Freight System, Inc.

DIGEST:

1. Carrier has burden of proving correctness of transportation charges originally collected on shipment. See cases cited.
2. Presumption that bill of lading correctly describes the article tendered for transportation is not conclusive; important fact is what moved, not what was billed. See cases cited.
3. In reviewing GSA settlements GAO must rely on written record and in the absence of clear and convincing contrary evidence, will accept as correct facts in GSA's administrative report.

By letter dated August 14, 1979, Yellow Freight System, Inc. (Yellow), ^{for} requests review of the deduction action taken by the General Services Administration (GSA) in connection with an alleged overcharge of \$349.83. See 49 U.S.C. 66(b) (1976) and 4 C.F.R. 53 (1978). CN602016
AGC00017

Under Government bill of lading (GBL) No. K-1011240, dated December 13, 1976, 25 "GPX Luggage Carts," weighing 1,150 pounds, were tendered by the Federal Aviation Administration (FAA) to and accepted by Yellow for transportation from the manufacturer, Technibilt Corporation (Technibilt), Burbank, California, to Dulles International Airport, Chantilly, Virginia. Yellow delivered the shipment at destination on December 22, 1976. AGC00003
DLG03820
AGC000893

For this service Yellow billed and was paid transportation charges of \$604.10 on the basis of a class 200 any quantity rating published in item 188560, sub 1, of the National Motor Freight Classification (NMFC)

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applicable " . . . on Carts, . . . NOI, hand, . . . SU (set up), . . . other than nested, loose." On post audit GSA determined and notified Yellow that it had been overpaid \$349.83 on the basis of a class 100 less than truckload (LTL) rating published in NMFC item 188560, sub 5, applicable on " . . . Carts, . . . SU, nested in packages." Enclosed with the notice of overcharge was a letter from the shipper indicating that the "articles were delivered set up." In the absence of refund the alleged overcharge was recovered by deduction action in June 1979.

In support of the charges it collected under GBL No. K-1011240, Yellow submits that the typed notation "25 ea." in the description space of the original copy of the GBL and the encircled handwritten "25" beside the driver's signature both establish that the driver signed for 25 individual pieces and, therefore, that the carts were not nested or in packages. It also contends that the GSA did not present any evidence that the carts were nested, banded and shipped in packages as provided in NMFC Item 110, Sec. 13(a).

It is well established that the carrier has the burden of proving the correctness of charges collected on freight shipments. 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). And reliance by Yellow on the description of the carts in the GBL is misplaced. The presumption that a bill of lading correctly describes the articles tendered for transportation is not conclusive; the important fact is what moved, 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).

We agree with Yellow that the information initially furnished by the shipper and used by GSA to support its overcharge does not adequately establish that the carts were "in packages" as defined in section 5 of item 680 of the NMFC. However, GSA has obtained additional information supporting the use of a rate applicable to

luggage carts nested or in packages. This includes a commercial bill of lading, prepared by Technibilt, and marked "25 Carts, Hand NOI, SU Nested In Packages" (underlining added), which carries the same signature and shipment date as GBL K-1011240. Based upon its examination of the shipment record, GSA has determined that both refer to the same shipment.

GSA also obtained a letter dated October 12, 1979, in which the Chief of the Property Management Branch of GAA at Dulles International Airport, states that during a 10-year period several orders of these carts have been received, each "with the luggage carts nested together, banded in groups." Copies of these documents will be sent to Yellow.

GSA also furnished photographs which establish that the space occupied by the carts is, in fact, reduced by at least one-third when they are nested, as required by NMFC Item 110, Sec. 13(a).

Based on this additional evidence, we agree with GSA that NMFC item 188560, sub 5, applies to the shipment transported under GBL K-1011240.

In resolving disputed questions of fact, GSA follows the long-established rule of the Government's accounting officers to accept the statements of fact furnished by the administrative office in the absence of convincing evidence to the contrary. 41 Comp. Gen. 47, 54 (1961); 51 *id.* 541, 543 (1972); 57 *id.* 155 (1977). This is because in its audit of paid transportation bills and examination and settlement of claims [49 U.S.C. 66(a)] GSA must rely solely on the written record with no opportunity to obtain sworn testimony, cross-examine witnesses, or use more formal fact finding procedures. See 41 C.F.R. 101-41.604 (1976).

In reviewing GSA claim settlements authorized by 49 U.S.C. 66(b), our Office also must rely solely on the written record. In the absence of clear and convincing contrary evidence, we will accept as correct

the facts set forth in GSA's administrative report.
57 Comp. Gen. 155, supra.

GSA's settlement action on the shipment transported
under GBL No. K-1011240 is correct and it is sustained.

A handwritten signature in cursive script, reading "Milton J. Fowler".

For the Comptroller General
of the United States