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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20549

[Request for Review of GSA Settlement Actions]

FILE: B-195574

DATE: March 19, 1980

MATTER OF: Yellow Freight System, Inc. *CNG 02016*

AGC 00052

DIGEST:

AGC 00017

1. Where carrier's rate tender specifies origin point of "Los Angeles, California and/or Emeryville, California" and destination point of "Chicago, Illinois," for shipment of empty mailbags by United States Postal Service, and Mailbag Depositories (MBDs) are actually located in Bell, California, and Forest Park, Illinois, "highly unusual circumstances" exist requiring resort to extrinsic evidence to ascertain whether carrier's intent was to include Bell, California, and Forest Park, Illinois, within tender's origin and destination specifications.
2. Intent of carrier, when analyzed in light of circumstances of this case, which included locations of MBDs in terms of tender specifications, intent of Government shipping agent and carrier's agent, Government Bill of Lading, supplements to tender and subsequent documents relating to contract, was to execute valid contract with Government for shipment of empty mailbags from commercial zone of Los Angeles to commercial zone of Chicago, and GSA validly determined that carrier's rate tender was for application.

Yellow Freight System, Inc. (Yellow requests) review of the General Services Administration's (GSA) action on 13 of its bills for transportation services. See 49 U.S.C. 66(b) (1976) and 4 C.F.R. 53.3 (1978). After auditing the bills, GSA notified Yellow of overcharges totaling \$5,721.66, which in the absence of refund were collected by deduction from moneys otherwise due the carrier. 49 U.S.C. 66(a) (1976).

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The record submitted by GSA shows that the overcharges were made on 13 truckload shipments of empty mailbags by the U.S. Postal Service (USPS) from its Mailbag Depositories (MBDs) in Emeryville and Bell, California, to Dayton, Ohio, and its MBD in Forest Park, Illinois, between August 25, 1976, and November 21, 1976.

The controversy concerns whether the rates in Yellow's section 22 Quotation I.C.C. No. 1752, as supplemented (Tender I.C.C. 1752), can be applied on these shipments. The tender included rates from Los Angeles and Emeryville, California, to Chicago, Illinois, and Dayton, Ohio. The record indicates that six shipments moved from Bell to Dayton; four from Bell to Forest Park; and three, from Emeryville to Forest Park. The USPS "Los Angeles" MBD is located at 4747 Eastern Avenue, Bell, California, a suburb of Los Angeles between Los Angeles and Yellow's "Los Angeles" terminal at 9933 Beverly Boulevard, Pico Rivera, California. The USPS "Chicago" MBD is located at 7500 West Roosevelt Road, Forest Park, Illinois, a suburb of Chicago near Yellow's terminal at 4950 West 39th Avenue, Cicero, Illinois. Ten of the Government bills of lading (GBLs) make specific reference to Tender I.C.C. 1752 in the "Tariff or Special Rate Authorities" space. The GBLs on the three shipments from Emeryville to Forest Park refer to I.C.C. 1586, apparently in error.

Yellow collected freight charges on the 13 shipments based on the class 45 rating in item 20800 of National Motor Freight Classification NMF 100-C, for bills dated prior to September 27, 1976, and item 4400 of Rocky Mountain Motor Tariff Bureau U.S. Government Quotation RMB Q15-C for shipments after September 27, 1976. GSA, in its audit, determined that the lower freight charges of Tender I.C.C. 1752 applied. This determination by GSA resulted in overcharges of \$5,721.66 which in the absence of refund were collected by deduction.

Yellow contends that Tender I.C.C. 1752 was not applicable to the shipments in question because the tender specified that the rates apply from Los Angeles, California and/or Emeryville, California, to Chicago, Illinois; Dayton, Ohio; Kansas City and St. Louis,

Missouri; and Kohomo and Warsaw, Indiana, whereas the bills of lading referred to Bell, California, and Forest Park, Illinois, which points although within the commercial zones of the locations specified in the tender are not listed specifically.

Quotation of freight rates, such as Tender I.C.C. 1752, are made to the United States pursuant to Section 22 of the Interstate Commerce Act, 49 U.S.C. 22, made applicable to motor carriers by Section 217(b) of that Act, 49 U.S.C. 317(b) (1976). They are considered to be continuing offers to perform transportation services at the quoted rates subject to the terms and conditions contained in the offers. C & H Transportation Co. v. United States, 436 F.2d 480 (Ct. Cl. 1971). They are the same as any other offer made by a party seeking to form a contract and their interpretation is subject to traditional rules of contract law. Union Pacific R.R. v. United States, 434 F.2d 1341, 1345 (Ct. Cl. 1970).

Traditional rules of contract law specify that "absent highly unusual circumstances [emphasis supplied], the parties to a contract should be able to rely on their contract's express language." Artisan Electronics Corporation v. United States, 499 F.2d 606, 611 (Ct. Cl. 1974). Such special circumstances may arise when the underlying purpose of the contract may only be determined by going beyond the plain meaning of words and terms used in the contract. See Brubrad Company v. United States Postal Service, 404 F. Supp. 691, 694 (E.D.N.Y. 1975). For example, a shipping contract calling for a railroad to transport certain freight to the "Grand Coulee dam" required resort to extrinsic evidence to determine the meaning of the term "Grand Coulee dam." United States v. Northern Pacific Ry., 188 F.2d 277 (8th Cir. 1951).

In the instant case, the question of whether the MBD locations of Los Angeles, California, and/or Emeryville, California, and Chicago, Illinois, include Bell and Forest Park is such a special case as to require extrinsic evidence to so determine. See Red Ball Motor Freight, Inc. v. United States, Nos. 253-73 and 419-73 (Ct. Cl. May 28, 1976) and 51 Comp. Gen. 724 (1972), in which both the Court of Claims and our

Office dealt with the issue of whether a Section 22 Quotation, specifying New Brighton, Minnesota, as the pickup point for freight, included a United States Army ammunition plant 2-1/2 miles away outside the municipal limits of New Brighton; though the pickup point of New Brighton seemed unambiguous, the circumstances dictated that extrinsic evidence be considered to determine if New Brighton included the United States Army ammunition plant. Thus, as in the Red Ball Motor Freight case, the present case presents similar circumstances which indicate an ambiguity in the terms "LOS ANGELES, CALIFORNIA AND/OR EMERYVILLE, CALIFORNIA" and "CHICAGO, ILLINOIS."

In interpreting a contract and its provisions, the controlling factor to be considered is the intent of the parties. Union Pacific R.R. v. United States, supra. In ascertaining the intention of the parties, the areas to be considered consist of the circumstances surrounding the making of the agreement, including the object nature and subject matter of the writing, as well as the situation of the parties at the time of contracting. See American Commercial Lines, Inc. v. Valley Line Co., 529 F.2d 921, 925 (8th Cir. 1976). Inherent in this analysis of the intent of the parties is the principle that a reasonable interpretation is preferred which effectuates the general purpose of the contract in a valid and reasonable manner, as it cannot be presumed that the parties intended to enter into a meaningless or void contract. Cordovan Associates, Inc. v. Dayton Rubber Co., 290 F.2d 858, 861 (6th Cir. 1961).

An analysis of the factual background of this case in terms of the legal principles involved in construing contracts makes it manifest that Tender I.C.C. 1752 applies to the shipments in dispute.

The record indicates that Yellow issued Tender I.C.C. 1752 for the purpose of obtaining a portion of the empty mailbag movement from Bell, California, to Forest Park, Illinois. The shipments were tendered by the USPS and accepted by Yellow with the understanding that Yellow's Tender I.C.C. 1752 would apply. Reference is made to the USPS 1979 National ZIP Code & Post Office Directory, Publication 65A, page XXXV, which published a list of MBDs. The listing shows that

the Bell facility is the only MBD in the Los Angeles area, and that the Forest Park facility is the only MBD in the Chicago area. Publication 65A also shows locations of Bulk Mailing Centers (BMCs). At page XXXIII the location of "BMC Chicago IL" is shown as 7500 W. Roosevelt Road, Forest Park, IL 60130, the same address as the MBD, indicating that the Forest Park MBD was, and is, the Chicago MBD. Clearly, then, if Yellow is correct, Tender I.C.C. 1752 would have no application at all from the Los Angeles area or to the Chicago area because there were no known shipments made or intended to be made from any point in the city of Los Angeles, and none to any point in the city of Chicago.

Of additional importance is a consideration of the changes made by the supplements to Tender I.C.C. 1752. At its effective date, June 16, 1976, the tender was amended by supplement 1 to show only Los Angeles and Emeryville, California, as origins. Supplement 5, apparently issued some time in 1978 but retroactive to October 16, 1976, amended the origins to read "LOS ANGELES, CALIFORNIA AND COMMERCIAL ZONE AND/OR EMERYVILLE, CALIFORNIA." Supplement 6, effective July 1, 1978, amended the destination shown originally as "Chicago, Illinois" to read "CHICAGO, ILLINOIS AND COMMERCIAL ZONE OR FOREST PARK, ILLINOIS." In a letter dated July 23, 1979, written to James D. Hestand of Yellow Freight System, Inc., James E. Orlando, Director, Office of Transportation Services, Mail Processing Department, USPS, points out the clear indication of the intent of the original tender (that since Los Angeles was named as the origin point that Bell, California, was included, since it is within the Los Angeles area) in that supplement No. 5 was issued naming the Los Angeles Commercial zone without a change in the rates.

Even more probative of the intent of the parties are the facts supplied by the record relevant to what transpired when the items were shipped and delivered. The GBLs all cited either Tender I.C.C. 1752 or 1586 (which appears to be an error since Yellow's Tender I.C.C. 1586 covers shipments of blueprint paper) as applying to the shipments. Not only did the Government agent responsible for the shipment believe that the rates offered in Tender I.C.C. 1752 applied but

so apparently did Yellow's agent, as no protest was ever made to the reference in the bills of lading to the Tender. If the respective agents of the parties had not considered Tender I.C.C. 1752 to be in effect, some evidence of this would be in the record. Indeed, if Yellow had protested, it is most probable that the Government agent would have secured other carriers ready, willing and able to deliver the goods at the rate in Tender I.C.C. 1752. This was confirmed by correspondence from USPS indicating that the original negotiations of Tender I.C.C. 1752 included the commercial zone of both Los Angeles and Chicago. The belief of USPS was that Yellow's special tender rate applied to the involved traffic or other carriers would have been tendered the shipments. In ascertaining the intent of the parties at the time of negotiation, it is relevant to consider both the correspondence and the supplements to the Tender. See Trans Ocean Van Service v. United States, 426 F.2d 329, 336 (Ct. Cl. 1970), and citations thereto; Pennsylvania R.R. v. United States, 165 Ct. Cl. 1, 10 (1964); Union Pacific R.R. v. United States, 287 F.2d 593 (Ct. Cl. 1961).

Finally, if there be any doubt as to the intention of the parties, it must be resolved against Yellow, the carrier, as its rate tender created the ambiguity, indicated by the need for clarifying supplements. Hughes Transportation Co. v. United States, 169 Ct. Cl. 63, 68 (1965).

Thus, based on the locations of the MBDS as indicated in the USPS listings, the GBLs, the supplements, subsequent documents and correspondence relating to the contract, it seems clear that Yellow's intent was to execute a valid contract with the Government for the shipment of empty mailbags from the commercial zone of Los Angeles to the commercial zone of Chicago.

Based on the present record, GSA's settlement actions on the 13 shipments are correct and are sustained.

For the


Comptroller General
of the United States