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**DECISION**



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

FILE: B-193964

DATE: June 27, 1980

MATTER OF: Mercury Van Lines, Inc. --Reconsideration

REQUEST FOR ]

**DIGEST:**

1. Rate tenders issued pursuant to Section 22 of Interstate Commerce Act, 49 U.S.C. 22, 317(b) (1976), are continuing offers to Government to perform transportation services for stated prices. These continuing offers are revocable at carrier's discretion and when proper notice of termination of tender offer is given, Government's power to make any further contract by later acceptance of offer is terminated.
2. Where carrier-offeror files simultaneously with Government-offeree cancellation supplement to rate tender and replacement rate tender, supplement which comports with understanding between parties and complies with applicable filing instructions cannot be rejected by Government-offeree on ground that replacement rate tender is defective.

Mercury Van Lines, Inc. (Mercury) requests reconsideration of our decision in the matter of Mercury Van Lines, Inc., B-193964, October 5, 1979, in which we sustained GSA's audit action on seven notices of overcharges.

The notices of overcharge resulted from GSA's determination that freight charges lower than those collected by Mercury were in effect and applicable to seven shipments of household goods transported by Mercury between June 9 and 17, 1977, in interstate commerce on Government bills of lading. The lower freight charges were derived from Mercury's rate Tender's ICC #63 and ICC #64 (Tender 63 and Tender 64).

We held that Mercury's cancellation of Tender 63 and Tender 64 did not become effective until June 22, 1977, when Mercury's cancellation supplements were accepted by the Military Traffic Management Command (MTMC), which was after the seven shipments were tendered to Mercury for transportation.

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In its initial request for review, Mercury contended that when it filed cancellation supplements to Tender 63 and Tender 64 on May 2, 1977, those supplements became effective 30 days later, or on June 2, 1977, before it received the seven shipments for transportation. It also contended that an error in a replacement tender should not have any effect on the cancellation of any other tender.

On the other hand, GSA contended that since Mercury made its tender cancellations dependent or conditioned on the "MTMC Acceptance Date," which GSA said was June 22, 1977, Tender 63 and Tender 64 were in effect during the period in June when the shipments were given to Mercury for transportation.

In our decision, we found nothing in the applicable tender filing instructions to support Mercury's view that cancellation supplements became effective automatically 30 days after receipt by MTMC; the instructions provided only that cancellation supplements would not become effective prior to 30 days from receipt by MTMC. It was our position that Mercury controlled the effective date of the cancellation supplements by inserting in item 7, "EFFECTIVE DATE," of the tender format the phrase "MTMC Acceptance Date" thereby indicating its intent that the cancellation supplements would become effective when accepted by MTMC.

We also stated that Mercury could have inserted in item 7 a 30-day time limit, a phrase reading "30 days after receipt by MTMC" or a specific date, such as June 2, 1977, but it did not. Because Mercury made its cancellation supplements dependent or conditioned on the "MTMC Acceptance Date," which was June 22, 1977, we agreed with GSA that Tender 63 and Tender 64 were still in effect when Mercury received the seven shipments for transportation. We also noted our intent to ask MTMC to review and examine its practice of rejecting new tenders and cancellation supplements for tenders being replaced when they are simultaneously submitted and the new tenders are found defective.

In its request for reconsideration Mercury asserts that its tenders represented continuing offers which were revocable at Mercury's discretion and that notice of revocation in the form of the cancellation supplement received by MTMC terminated the offeree's power to make any further contract by later

acceptance. Thus, it believes the cancellation supplements for Tender 63 and Tender 64 which MTMC admits comply with the cancellation procedures in MTMC's Tender Filing Instructions were effectively revoked on June 2, 1977, and that the seven shipments could not be authorized for performance of transportation services under the cancelled tenders.

At our request and for purposes of the reconsideration, MTMC also submitted comments regarding our decision. Notwithstanding its prior report, MTMC has now provided information concerning its filing practices which indicate our conclusions based on its conduct should be reconsidered. We find the combination of Mercury and MTMC's contentions persuasive and therefore overrule our earlier decision.

After reviewing its own actions in this case, MTMC believes there exists strong evidence that MTMC was bound to accept the cancellation supplements as Mercury has alleged. In this connection, MTMC states that Mercury controls the effective date of the cancellation supplement only to the extent it determines when it will file a cancellation supplement and, in accordance with MTMC's tender filing procedures, assuming the cancellation supplement is not defective which was the case here, revocation will become effective 30 days after MTMC receives the cancellation supplement. Furthermore, MTMC also states that Mercury could not have inserted in item 7 its own effective date for the cancellation supplement. To do so would have violated MTMC's interpretation of its instructions and its customary practice which require that the MTMC acceptance date be inserted in item 7 and failure to comply would have automatically resulted in the supplement's rejection.

Under these circumstances, MTMC concludes that by its own procedures it was bound to accept the cancellation supplements in the manner Mercury has alleged. We agree.

It now seems clear that Mercury followed the 30-day written notice cancellation requirement in Tender 63 and 64 and all the requirements of the Tender Filing Instructions and the understanding of the parties that item 7, "EFFECTIVE DATE," of the tender format read "MTMC Acceptance Date."

By inserting "MTMC Acceptance Date," Mercury did not intend to make the effective date of the cancellation supplements dependent or conditioned upon MTMC's ultimate

acceptance of them or to deviate from the MTMC procedures. Instead, Mercury sought to comply with MTMC filing practices so that the supplements would become effective 30 days after receipt by MTMC. Since the cancellation supplements otherwise complied with the procedures in the tender filing requirements for filing those supplements, we believe, as MTMC apparently now concedes that MTMC's practice of rejecting a cancellation supplement and replacement tender simultaneously submitted when the replacement tender is defective was not a valid reason to reject these cancellation supplements and they become effective 30 days after receipt by MTMC, or on June 2, 1977.

In this connection, we note that the cancellation supplement contained in item 11 the phrase, "For future rates refer to M&WAA GRT#1-Y" indicating that the cancellation supplement was not dependent on acceptance of the replacement tender and lends support to the carrier's contention.

Our decision on reconsideration is also consonant with basic contract principles which state that the power to terminate an offer rests with the offeror, not the offeree, and where the offeror exercises this power to revoke, by an effective revocation, in the manner agreed to by the parties, the offeree's power of acceptance is terminated. See United States v. Lipman, 122 F. Supp. 284 (D.C. Pa. 1954); Corbin on Contracts, section 38, 39 (1950). Here Mercury complied with MTMC's procedures for revocation effective on June 2, 1977, and the Government could no longer accept that offer when the shipments were transported by Mercury.

Mercury states, without contradiction by MTMC, that upon receipt of the returned cancellation supplements it telephoned MTMC's Rate Analysis Division, protesting the return of the cancellation supplements and stating that Tenders 63 and 64 were cancelled. Mercury also stated its reasons for cancellation, its inability to cover costs with the existing rates. Thus, MTMC had actual notice, written and oral, of the cancellation, yet took no steps to correct the situation and consider the tenders cancelled.

Based on the foregoing, our decision of October 5, 1979, is reversed and GSA should take appropriate action on the notices of overcharges sent to Mercury. Furthermore, we note

from MTMC's letter of March 3, 1980, that, on its own initiative, MTMC is presently in the process of amending its instructions to clarify its policy concerning the filing of tenders and cancellation supplements.

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

Acting Comptroller General  
of the United States