

Mr. Billard
14806

DECISION



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

FILE: B-197913

DATE: September 2, 1980

MATTER OF: American Farm Lines

DIGEST:

1. Where tender describes narrow circumstances under which lower rates apply to transportation of empty containers, it is implied that such rates are not applicable to containers tendered under other than described circumstances.
2. Where tender offers lower rates on empty containers having prior movement in full condition by same carrier, and containers tendered by Government had no such prior movement, tender rates are not applicable on theory they were commodities requiring specialized handling because of size or weight, despite large size and heavy weight of containers.

By letter of February 21, 1980, American Farm Lines (AFL) [requested [review of the audit action] taken by the General Services Administration (GSA) in connection with two Government bills of lading] (GBL).

GSA's report of June 17, 1980, states that in April 1980, amounts of \$219.92 and \$210 [were deducted from monies otherwise due AFL to recover overcharges collected by the carrier] for the transportation of two truckloads of containers [from Red River Army Depot, Defense, Texas, to Tooele Army Depot, Tooele, Utah, on GBLs K-3194221 (November 7, 1978) and K-3194422 (November 15, 1978), respectively.

The GBLs covered shipments of 16 steel containers, 16 gauge or thicker, empty, "NOI," and identify them to item 41060 of the National Motor Freight Classification (NMFC). GBL K-3194221 shows displacement of the containers of 1438.4 cubic feet, dimensions of

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60x43x56 inches, and weight of 24,160 pounds, while GBL K-3194422 shows displacement of 1120 cubic feet, dimensions of 61x47x56 inches and weight of 21,520 pounds.

[GSA states that the charges collected by AFL were derived from the class 50 truckload rating and minimum weight of 24,000 pounds] named in item 41060 of NMFC 100-E, NMF 100-E, and the class 50 rate published in AFL's Tariff 1-E, MF-ICC-1E. [GSA issued notices of overcharge based on the applicability of lower commodity rates published in item 7010 of AFL's Tender ICC 345.]

The rates in item 7010 are subject to item 7005 which refers to item 690 for a list of commodities covered. [The general question raised by AFL and GSA is whether the containers shipped are included in item 690's commodity list. AFL contends that they are not included; GSA urges that they are.]

Among the various commodities described in item 690, [such as ambulances, buses, cranes and electric generator sets,] are the following articles:

"COMMODITIES requiring specialized handling because of size or weight, and PARTS thereof, NOI."

* * * * *

"CONTAINERS (except containers or shipping devices for aircraft engines), returned empty from destination to the origin of filled container when used in outbound transportation of commodities authorized and moving in service of carrier."

[The parties agree that the containers transported are not covered by the container description above because they were not transported previously in a filled condition from Tooele. Based on the displacement and weight of the containers, GSA contends that two decisions of the Interstate Commerce Commission (ICC), Telischak Trucking, Inc. v. White Brothers Trucking Co., 77 MCC 672 (1958), and L & B Express, Inc. - Extension-Owensboro, Ky., 99 MCC 410, 413 (1965) support its view that

the containers are commodities requiring specialized handling because of size or weight, having displacement of 70 and 88 cubic feet and weight of 1,380 and 1,510 pounds.] It is noted that [these ICC decisions were rendered in operating rights proceedings to determine the extent which the involved commodities could be transported by opposing general-commodity carriers and heavy haulers and in nowise involved rates or ratings on commodities requiring specialized handling.]

The GBLs each bear the notation--"SHIPPER TO LOAD AND CONSIGNEE TO UNLOAD." However, [there is no evidence in the record either from the administrative office or otherwise that would show that any of the 32 containers shipped required specialized handling because of size or weight.] And item 280 of [AFL's Tender ICC 345 provides that the shipper and/or consignee must assume the responsibility and expense where special equipment is required to facilitate the loading or unloading of heavy or bulky articles. Thus other than speculation that the articles shipped required specialized handling and reliance upon inapposite ICC rulings involving operating rights cases, there is no explicit evidence that the containers conformed to the commodity description in item 690.]

[AFL's rejection of GSA's contention stands on the meaning of "NOI," which is included in the commodity description relied on by the agency. In other words, containers that had a prior movement by AFL from destination to the origin of the shipment in a filled condition is a specific description; therefore, "COMMODITIES . . . NOI" would not cover containers because they are commodities that are more specifically described under the container description.]

For other reasons we cannot sustain the deduction action taken here.

[Tenders like Tender ICC 345 are offers to perform transportation services at named ratings or rates subject to the terms and conditions named therein, and the principles followed in their interpretation are no different from any other contract.] 51 Comp. Gen. 724 (1972). Generally, rules governing the construction of statutes

are applicable to the construction of contracts and tariffs. Pillsbury Flour Mills Co. v. Great Northern Ry., 25 F.2d 66 (8th Cir. 1928). A recognized rule of statutory construction is *espressio unius est exclusio alterius*, which means that the enumeration of certain things implies exclusion of all others. See 55 Comp. Gen. 1077, 1078 (1976) and 29 Comp. Gen. 496 (1950).

[As contended by AFL, the description of containers contained several conditions for application of the rates: (1) not for aircraft engines, (2) empty, (3) previous movement, (4) previous movement in filled condition, (5) previous movement from destination and to origin of subject shipment, (6) authorized for AFL, and (7) transported by AFL.]

Since the draftsman articulately described the circumstances under which it would transport empty containers under the tender's rates, it is clearly implied that item 690 excludes from application of item 790's rates all those containers that are shipped under other circumstances. [We agree with AFL that if item 690 were interpreted as urged by GSA, which would place these containers within the grasp of commodities requiring specialized handling, the tender's obvious design would be frustrated, a result which ignores the rule that a tender should be viewed in the light of the principal apparent purpose that it was intended to serve.] See 37 Comp. Gen. 753 (1958). [It is apparent here that AFL had no intention to offer lower rates for transportation of empty containers, except under the narrow circumstances specifically described.]

We note that application of the ratings in item 41060 of the Classification is not dependent upon any requirement for the use of specialized handling.

[In view of the obvious intention to offer lower rates only for containers tendered under limited circumstances and the fact that the containers were not so shipped, the legal question raised by GSA of whether these containers, because of their size and weight, would be included within the scope of commodities requiring specialized handling, as interpreted by the ICC, is irrelevant.]

We conclude that [the containers shipped are not included within the general term, commodities, NOI, as described in item 690; therefore, Tender ICC 345 rates are not applicable to the shipments.] [Accordingly, GSA's settlement action was incorrect and refund of the amounts deducted should be made to AFL.]

Harry R. Van Cleave

For The Comptroller General
of the United States