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DECISION



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

FILE: B-199475

DATE: September 29, 1981

MATTER OF: American Farm Lines, Inc.

DIGEST:

GSA's settlement action, disallowing carrier's claim for exclusive use of vehicle charges, is sustained, without resolution of question raised by carrier in request for review where answer is not relevant under the facts.

American Farm Lines, Inc. (AFL), requests review by the Comptroller General of the disallowance by the General Services Administration (GSA) of its claim for additional freight charges for the transportation of a less than truckload (LTL) shipment from Mishawaka, Indiana, to Point Mugu, California, on Government bill of lading (GBL) S-0865563, dated December 11, 1978.

The GBL indicates that the Government tendered one container (4,900 pounds), with radio transmitting and receiving sets, and one box of electrical instruments, NOI (276 pounds). The GBL shows that numbered seals were applied and that the shipment was transported on trailer 7001. The GBL also contains a notation instructing the carrier not to break the seals.

AFL billed and was paid charges, originally, on the basis of LTL rates. The carrier's supplemental bill contained charges for exclusive use of vehicle service, which the carrier alleges was requested and performed. Minimum charges, derived from application of class 100 truckload rates to a minimum weight of 18,000 pounds, are applicable under item 80 of AFL's Tariff 1-E, MF-ICC 10, where the shipper requests and the carrier provides a trailer for the exclusive use of the Government's shipment. GSA disallowed the claim on the basis that the Government did not request the service.

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Item 80 offers a shipper the exclusive use of a carrier's vehicle where a shipment requires segregation from the freight of other shippers. Paragraph 2 requires the shipper to indicate on the bill of lading that the service is requested, and paragraph 3 provides an option to the shipper to apply locks or seals to vehicles suitable for sealing, and to instruct the carrier to deliver the vehicle with the seals intact. In effect, the exclusive use service deprives the carrier of access to its equipment for possible consolidation with other shipments.

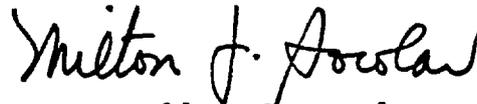
AFL concedes that the shipper did not indicate on the GBL in technical language a request for exclusive use; however, it contends that in light of Government regulations, the application of seals and the annotation not to break them constitutes, in effect, a request for exclusive use of vehicle service. AFL refers to Military Traffic Management Regulation DSAR 4500.3, and Department of the Navy Transportation Safety Handbook for Hazardous Materials, NAVSEA OP 2165, volume 1, which provide that where, for security or other reasons, the Government seals the carrier's equipment, with the intention that the carrier be deprived of access thereto, the shipper should annotate the GBL instructing the carrier not to break seals and annotate the GBL to indicate a request for exclusive use.

We find that the answer to the question--whether, in light of the regulations, sealing of a vehicle with the GBL annotation not to break seals is, in effect, a request for exclusive use service--is not necessary to decide this claim, for reasons discussed below, and not, therefore, for resolution in this case. See 21 Comp. Gen. 83 (1941) and B-165626, January 12, 1970.

The Defense Contract Administration Services Management Area, Chicago, advised this Office that the property shipped on GBL S-0865563 was tendered to AFL in a missile container for loading on a flatbed trailer, and that the seals were applied to the container and not to the carrier's equipment. We were also advised that AFL's Equipment List of January 24, 1978, indicates that trailer 7001 is a 42-foot flatbed trailer; the copy of AFL's Load Order in the record confirms that trailer 7001 was a flatbed, rather than a closed-type trailer.

The regulations relied on by AFL pertain to the sealing of closed-type equipment, and the carrier admits that its exclusive use rule, item 80, applies to situations where seals are applied to its equipment, thereby depriving it access for consolidation. Obviously, the regulations are not pertinent because flatbed trailer 7001 was not a closed-type trailer and item 80 is not applicable because seals were not applied to the carrier's equipment.

In the absence of any evidence that the sealing denied the carrier access to its equipment for consolidation of shipments, GSA's settlement action is sustained.



Acting Comptroller General
of the United States