

118056

21448

Golden

DECISION



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

FILE: B-203929.2

DATE: April 9, 1982

MATTER OF: American Farm Lines, Inc.

DIGEST:

Where item in motor carrier's tender expressly states that transportation rates offered therein will not apply if shipper fails to load, count, unload freight, and apply numbered seals to carrier's equipment, option offered to shipper in same tender's exclusive-use rule "to apply locks or seals to the vehicle or vehicles with instructions" to preserve seal integrity is not exception to general tender requirement that shipment be sealed. The exclusive-use service provision merely offers the shipper additional rights when requesting exclusive use, the option to seal the vehicle with specific instructions concerning preservation of the integrity of the seal.

American Farm Lines, Inc. (AFL), requests review of deduction action taken by the General Services Administration (GSA) for an alleged overcharge in connection with a shipment moving under Government Bill of Lading (GBL) No. S-0,551,728. Exclusive use of vehicle service was requested by the Government and furnished by the carrier.

AFL originally billed and was paid transportation charges on the basis of tariff rates. GSA's audit action was based on lower rates in AFL Tender 266. It is AFL's position that Tender 266 is not applicable because it required the shipper to seal the vehicle as a condition of applicability, and the shipper undisputedly did not perform this function. However, GSA contends that under Tender 266, the application of seals to the carrier's vehicle by the shipper was optional, not mandatory, and, therefore, the lower Tender 266 rates were applicable to this shipment.

We reverse GSA's audit action.

Item 179 of the tender states in pertinent part that:

"except as otherwise specifically provided, the shipper must (a) load and count the freight and (b) apply numbered seals when closed van type equipment is used, and the consignee must unload the freight, subject to the following conditions:

* * * * *

"(4) When * * * the shipper * * * does not comply with the conditions of this item, the rates * * * in this tender * * * will not apply." (Underscoring supplied.)

GSA refers to the language, "except as otherwise specifically provided," of item 179 and cites item 130 of the tender. Paragraph (3) of this item contains the following proviso for shipments moving under the exclusive use of vehicle provisions:

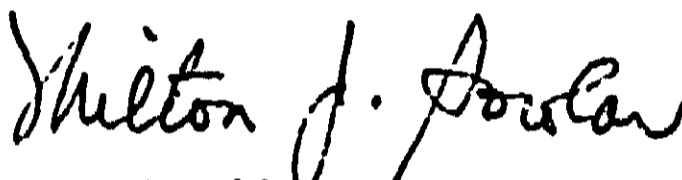
"When the vehicle or vehicles used are suitable for the application of locks or seals, the shipper may, at his option, apply locks or seals to the vehicle or vehicles with instructions that the vehicle or vehicles remain locked or sealed and be so delivered at destination."

In our view, item 179 is intended to apply where the shipper, the Government, seals the vehicle, performs the load and count (and unloading) of the freight and applies the numbered seal. Thus, in exchange for reduced tender rates, the carrier is relieved of loading and unloading the shipment, of the duty to count the freight and of the need to inspect the shipment as a means of protecting itself from potential loss and damage liability. With respect to establishing the carrier's liability for loss and damage, shipper load and count place the burden of proof on the shipper regarding the number and good condition of the shipment when accepted by the carrier. See BlueBird Food Products Co. v. Baltimore & Ohio Railroad Company, 492 F.2d 1329 (3rd Cir. 1974); United States v. Louisville and Nashville Railroad Company, 389 F. Supp. 250 (D. Ct. Ala. 1975).

On the other hand, item 130 offers the shipper additional rights, when requesting exclusive use, that is, the option to seal the vehicle with specific instructions consistent with maintaining the integrity of the seal to ensure the performance of the exclusive-use service.

In view of the language and purpose of item 179, we cannot accept GSA's theory that the exclusive-use provision, item 130, which is usually requested as an additional security measure, is intended as an exception to the general tender requirement for seals which also concerns security and protection of the shipment.

Accordingly, we reverse GSA's audit action.

for 
Comptroller General
of the United States