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

FILE: B-202596

DATE: September 7, 1982

MATTER OF: Yellow Freight System, Inc.

DIGEST:

Where formula for determining freight all kinds (FAK) rate offered in carrier's tender provides for taking percentage of applicable class 100 rate from appropriate tariff, there is no intention to further refer to the National Motor Freight Classification to determine each article's individual class rating because formula clearly implies a class 100 basis and to do so would defeat the obvious purpose of the tender to offer Government FAK rates which are in the nature of commodity rates and designed to bypass the classification rating process.

Yellow Freight System, Inc. (Yellow Freight), requests review of settlement action taken by the General Services Administration (GSA) on one less than truckload (LTL) shipment of Government property which was transported from Minneapolis, Minnesota, to San Diego, California, under Government bill of lading (GBL) No. S-0527283. The carrier billed and was paid \$342.05 on presentation. GSA subsequently determined that the applicable charges for the 1,650-pound shipment of pillowcases in question were \$256.16 and issued a Notice of Overcharge for \$76.89. When Yellow Freight declined to pay the overcharge, GSA caused deduction to be made in this amount from monies otherwise due the carrier. The carrier has not convinced us that GSA's action was incorrect.

The applicable rate for the shipment is determined by the formula contained in item 1500 of Rocky Mountain Motor Tariff Bureau, Inc., United States Government Quotation ICC RMB Q33-A (RMB Q33-A). Item 1500 expressly provides LTL rates on freight all kinds (FAK) shipments weighing less than 10,000 pounds. It provides that one must first determine the applicable class 100 rate (and minimum charge), including any applicable increase, from the appropriate Rocky Mountain tariff; then, as shown in the following table, apply a percentage of the applicable class 100 rate depending on the weight of the particular shipment.

When the weight of shipment (in pounds)		the rate will be the percentage shown of the applicable class 100 rate (subject to Note 2)
is	but less than	
0	500	86
500	1,000	77 1/2
1,000	2,000	77 1/2
2,000	5,000	77 1/2
5,000	10,000	72

Both the carrier and GSA agree that since the weight of the shipment was 1,650 pounds, the applicable percentage is 77-1/2.

The parties also agree that the appropriate tariff in which to find the applicable class 100 rate is Rocky Mountain Motor Tariff Bureau, Inc., Tariff ICC RMB 521-B (Tariff 521-B). And they further agree that the applicable class 100 rate, upon which to base the 77-1/2 percent, is in the class 100 column of the class rate table published in section 8 of the tariff. That table, showing, to the extent necessary, the intersecting columns and lines, follows, as it appears on original page 527 of the tariff:

"Classes					
"SCALE	100	* * *	77.5	* * *	50 * * *
LTL	2430		1883		1215
5C					
1M	1965		1523		983
2M					
5A					
10M	1505		1166		753
20M					
TL"					

The parties disagree over which weight scale (line) applies (see Yellow Freight System, Inc., B-199805, December 29, 1980, 60 Comp. Gen. 135, for a related issue.) GSA's action is based on the scale "IM" (1,000 pounds) line on the theory that the weight of the shipment, here 1,650 pounds, controls. The carrier, however, based on instructions in the tender concerning applicability of the various weight scales, argues that the higher class 100 rate corresponding to the scale "LTL" line applies. The referenced instructions, as they appear on original page 517 of Tariff 521-B, follow:

"Application of Scale LTL, 5C, 1M, 2M, 5M, 10M, 20M or TL
Rates Shown in this Section

Scale LTL - Less than truckload, subject to LTL classes; or AQ classes.
 Scale 5C - Minimum weight 500 pounds, subject to LTL classes.
 Scale 1M - Minimum weight 1,000 pounds, subject to LTL classes.
 Scale 2M - Minimum weight 2,000 pounds, subject to LTL classes.
 Scale 5M - Minimum weight 5,000 pounds, subject to LTL classes.
 Scale 10M - Minimum weight 10,000 pounds, subject to LTL classes.
 Scale 20M - Minimum weight 20,000 pounds, subject to LTL classes.
 Scale TL - Rates apply on shipments subject to TL Classes."

The carrier points out that the "LTL" weight scale states that it is subject to "A: [any quantity] classes," and that section 8 of Tariff 521-B provides that the classes (100, 77.5, 50, etc.) in the rate table (for application to specific commodities shipped) are determined by reference to the governing National Motor Freight Classification (NMFC). Since the parties agree that the class 100 any quantity rating (that is, class 100, regardless of the weight of a particular shipment) in item 49390 of NMFC 100-E applies to pillowcases, Yellow Freight concludes that the 77-1/2 percent provided in item 1500 of RMB-Q33-A should be applied to the class 100 columnar rate that corresponds to the "LTL" weight scale in the rate table because that scale, as pointed out, is subject to any quantity classes.

The false premise in the carrier's reasoning is that while the tariff requires that class ratings on individual articles for application to the tariff's rate tables are determined by reference to the NMFC, class ratings for FAK articles shipped under the tender must also be obtained from the Classification. We recognize the practice of incorporating by reference provisions of a published tariff into a Government rate tender. See 54 Comp. Gen. 610 (1975). However, Yellow Freight's Interpretation of item 1500 extends the scope of the incorporation far beyond the tender's intent.

A tender should be given meaning in the light of the principal apparent purpose it was intended to serve. 37 Comp. Gen. 753, 755 (1958).

The language in item 1500 emphasized by the carrier does not accomplish what the carrier says it does. To determine the "applicable class 100 rate" from the appropriate tariff does not express an intention to incorporate the entire tariff and provisions requiring reference to the NMFC for individual commodity ratings. The tender clearly gives the class--class 100--so there is no need to refer to the Classification. With the known weight of a FAK shipment under 10,000 pounds, item 1500 requires referral to the tariff solely for the purpose of obtaining the class 100 rate (rather than rating), and the product of multiplying the rate by 77-1/2 percent is a FAK, or commodity, rate, not a class rate. The distinction is crucial.

Where class rates apply, reference is made to the Classification, which assigns each article a class rating according to its transportation characteristics, while commodity rates are not subject to classification ratings; they are applicable to commodities from one point to another without reference to the Classification. See All States Freight v. N.Y., N.H. & H.R. Co., 379 U.S. 343, 345 (1964), and 49 U.S.C. § 10704 (Supp. III, 1979).

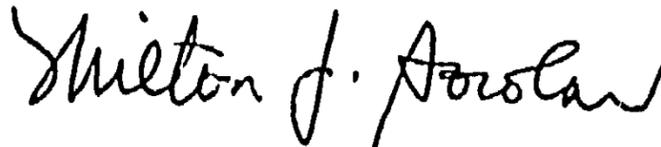
The tables in Tariff 521-B contain class rates; therefore, their application is based on individual commodity ratings in the Classification. In item 1500 of Tender RMB Q33-A, the carrier offers FAK rates

which are in the nature of commodity rates; it provides a single rate on a mixture of diverse articles. By covering hundreds of different articles, the FAK rate relieves shipping officers from the burden of classifying thousands of different articles and from segregating them according to classification ratings. See California Commission v. United States, 355 U.S. 534, 544 (1958). FAK rates offer the advantage of bypassing the classification rating process. 49 Comp. Gen. 6 (1969).

The purpose of a tender or quotation is to offer reduced rates to the Government. See Great Northern Railway Co. v. United States, 312 F.2d 901, 903 (Ct. Cl. 1962). And the obvious purpose of item 1500 of tender RMB-Q33-A was to offer a single rate on numerous diverse articles (FAK), even though only one article, pillowcases, was shipped here. If the Government had shipped a mixture of diverse articles under item 1500, it would be incongruous to assert the carrier's interpretation because reference to the Classification for the purpose of obtaining the class rating on each article would completely defeat the intent of offering a FAK rate.

We conclude that since the tender clearly provides the class (class 100) to be used in selecting the appropriate column in the tariff's rate table, there was no intention or necessity to refer to the NMFC; therefore, as contended by GSA, the any quantity class 100 rating provided for pillowcases in item 49390 of the Classification is irrelevant in determining the FAK rate under item 1500 of the tender.

GSA's audit action is sustained.



Acting Comptroller General
of the United States