

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

FILE: B-206942

DATE: October 29, 1982

MATTER OF: Milne Truck Lines, Inc.

DIGEST:

1. 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 the 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.
2. Generally, for the same commodity, a carrier may not charge a shipper a greater amount to transport a lesser weight.

Milne Truck Lines, Inc. (Milne), requests our review of a General Services Administration (GSA) audit action concerning the carrier's bill No. 60-046896 for the transportation of a shipment of dry goods under Government Bill of Lading (GBL) No. K,7,376,583. GSA determined that Milne had overcharged the Government. Milne contends that it owes a lesser amount. We disagree with Milne.

GSA reports that Milne transferred the shipment to another carrier for delivery which produced higher transportation charges than if Milne had handled it as a single-line shipment. Milne does not dispute GSA's position that the carrier had the necessary operating authority to transport the shipment through to destination and, further, that reduced rates offered in a freight all kinds (FAK) tender, Rocky Mountain Motor Tariff Bureau, Inc., United States Government Quotation ICC RMB Q33-A (RMB Q33-A), are applicable to the shipment resulting in lower charges to the Government, although the delivering carrier did not participate in the tender. Apparently, Milne agrees that the shipment was misrouted, and that a partial refund of charges is due the Government.

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However, the carrier contends that the overcharges allegedly owed the Government are incorrect because of GSA's erroneous interpretation of the applicable tender.

GSA and Milne agree on the applicable tender provision for determining the rates. The applicable rate for this shipment is determined by the formula contained in item 1500 of RMB Q33-A. Item 1500 expressly provides rates on 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. The appropriate Rocky Mountain tariff, Tariff ICC RMB 332-B, contains various class rate tables, which include class 100 rates that, generally, decrease as the weight of shipments increases. The weight scale corresponding to the highest rate is 0 - less than (LT) 500 pounds, then the weights increase, as follows: 500 - LT 1,000; 1,000 - LT 5,000; 5,000 - LT 10,000 pounds, and so forth. Then, as shown in the following table, the FAK rate is based on a percentage of the applicable class 100 rate depending on the weight of the particular shipment. Note that the percentage here, also, generally, decreases as the weight increases. One of the issues here is which weight scale applies.

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

Although the weight of the shipment was 4,405 pounds, GSA, in calculating the overcharge, based transportation charges on 72 percent of the applicable class 100 rate for the weight group of 5,000, but less than 10,000 pounds under item 1500 of RMB Q33-A. From the tariff, GSA used the class 100 rate that applied to the 5,000 pounds weight

scale of \$12.41 per 100 pounds, which has been increased 3 percent by a blanket increase supplement to \$12.78 per 100 pounds. Taking 72 percent of the \$12.78 class 100 rate basis results in a rate of \$9.20 per 100 pounds and total charges of \$460 when the \$9.20 per 100 pounds is multiplied by the constructive weight of 5,000 pounds. A \$10.58 fuel surcharge was added to the \$460; the total charges were \$470.58, which was then subtracted from charges of \$880.99 previously paid by the Government, resulting in the overcharge claim of \$410.41.

Milne raises two objections to this procedure. Milne contends that GSA is required by the tender to use the National Motor Freight Classification (NMFC) to determine the shipped articles individual class rating which when applied to this shipment results in higher charges than the charges based on GSA's interpretation of the tender. We explicitly rejected this contention, upholding GSA's interpretation of this identical tender provision, item 1500, in Yellow Freight System, Inc., B-202596, September 7, 1982. We stated that since the formula for determining the FAK rate offered in RMB Q33-A provided for taking a percentage of the applicable class 100 rate from an appropriate tariff, there was no intention to further refer to the NMFC to determine each article's individual class rating. We stated that the formula clearly implies a class 100 basis and that use of the NMFC ratings was unnecessary and 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.

Thus, in our view, GSA has properly applied the tariff class 100 rate in this case.

Since the shipment's actual weight is 4,405 pounds, Milne has also questioned GSA's use of 5,000 pounds as the weight used for the class 100 rate and for the determination of the percentage of that rate which produced a \$9.20 per 100 pounds rate used by GSA in calculating the charges.

Milne's tender provides that it is governed, except as otherwise provided, by the NMFC. In prior cases, in

the absence of a tender provision barring their application, (and no such provision apparently is involved here), for example, as in Yellow Freight Systems, Inc., supra, where incorporation would have defeated the purpose of the tender, we have incorporated by reference NMFC rules, specifically NMFC Rule 595. See American Farm Lines, B-199927, May 12, 1981; American Farm Lines, B-198433, July 28, 1980.

Section 1 of NMFC Rule 595 states that:

"* * * In no case shall the charge for any shipment from and to the same points, via the same route of movement, be greater than the charge for a greater quantity of the same commodity in the same shipping form and subject to the same packing provisions at the rate and weight applicable to such greater quantity of freight."

Simply stated, this rule provides that, generally, for the same commodity, a carrier may not charge a shipper a greater amount to transport a lesser weight. See Regent Van and Storage, Inc., 51 Comp. Gen. 676 (1972); cf. maximum charge rule discussed in American Farm Lines, B-199927, May 12, 1981. For example, if under a given tariff the charge for a shipment of 3,000 pounds of a commodity would be \$1,000, any shipment under 3,000 pounds must be transported for a charge no greater than \$1,000.

Here, the use of the 5,000-pound constructive weight results in lower charges (\$460) than charges applicable at the lesser actual weight (approximately \$475) and, therefore, under the NMFC rule, GSA properly could base its calculations on the 5,000-pound weight.

We sustain GSA's audit action.



Acting Comptroller General
of the United States