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DECISION



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

26347

FILE: B-210740

DATE: September 27, 1983

MATTER OF: Starflight, Inc.

DIGEST:

1. Not only do claimants generally bear the burden of proving their claims and establishing the liability of the United States, but where the claimant is a carrier making a claim based upon a tender or tariff, then ambiguities in the terms of the tender or tariff are to be resolved against the claimant.
2. An agency is entitled to the shipper's applicable tender which affords the Government the most favorable rate.

Starflight, Inc. requests our review of a General Services Administration notice of overcharge concerning the transportation of machine guns under Government Bill of Lading Nos. S-0,953,548 (GBL-548) and S-0,953,580 (GBL-580) issued by the Anniston Army Depot, Anniston, Alabama. Starflight admits to an overcharge but contends that it owes a lesser amount than that claimed by GSA. We disagree with Starflight's contentions concerning the amount of the overcharge and sustain GSA's findings.

GBL-548 was issued for the shipment by air of machine guns from Alabama to Delaware. The GBL cited Starflight's Tender No. 3 as the applicable rate for the shipment. GBL-580 was issued for the shipment by air of machine guns from Alabama to California. The GBL cited Starflight's Tender No. 1 as the applicable rate.

Both Starflight and GSA agree that the tenders cited in the GBLs were not applicable. Tender No. 3 cited in GBL-548 was restricted to shipments of weapons weighing 300 pounds or less while the shipment under this GBL weighed 330 pounds. Tender No. 1 cited in GBL-580 was not applicable to the shipment of weapons. In addition, Starflight concedes that, as contended by GSA, the 5 percent airport charge for which Starflight billed the Government was inapplicable to these shipments.

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Starflight and GSA disagree, however, on the proper tender to apply. Starflight billed the Government \$1,725.86 for the shipment under GBL-548 and \$2,311 for the shipment under GBL-580 based upon the rates in Starflight's Tender No. 2. GSA, on the other hand, applied Starflight's Tender No. 4 and determined the proper charges to have been \$732.65 for the shipment under GBL-548 and \$1,170.05 for the shipment under GBL-580. GSA accordingly issued notices of overcharge in the amounts of \$993.21 and \$1,140.95 for the respective shipments. If, as Starflight argues, Tender No. 2 does apply to the shipment under GBL-548, then Starflight also contends that the dimensions of the shipment of guns in pallets were such that a cargo door was required, thus making applicable the higher schedules in Tender No. 2 specified for use when cargo doors must be used.

Both Tender Nos. 2 and 4 are applicable to machine guns with the weights and dimensions of those shipped under the subject GBLs. Tender No. 2 has no restrictions as to type of cargo, and no express restrictions as to weight or dimension. Tender No. 4 provides that it does not apply to shipments over 600 pounds, over 82 inches long, over 50 cubic feet in volume, or to shipments requiring an armed guard or the exclusive use of an aircraft. The GBL-548 shipment weighed 330 pounds, and measured 63" x 36" x 16" for a total of 23 cubic feet. The GBL-580 shipment weighed 408 pounds and consisted of four cartons, each measuring 59" x 18" x 12" for a total of 7 cubic feet each. These four cartons could be consolidated into a single package with a volume of 28 cubic feet. There is no allegation or indication that armed guards or the exclusive use of an aircraft were required for either shipment.

Starflight, however, contends that Tender No. 2 was the applicable rate for the shipment under GBL-548 because that GBL erroneously indicated that Tender No. 3 was applicable and Tender No. 3 provided that:

"Note 7. This tender does not apply to:

1. Shipments over 300 pounds

* * * * *

6. If (1) - (5) cannot be complied with, use Starflight Tender No. 2."

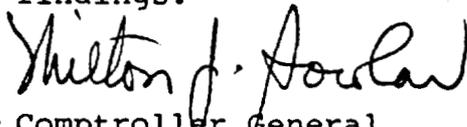
Starflight also contends that Tender No. 4 is not the applicable rate for the shipment under GBL-580, and that therefore Tender No. 2 is applicable, because the Army failed to indicate "Weapons Service Requested" on the GBL.

Claimants bear the burden of proving their claims and establishing the liability of the United States. Ultra Special Express, 55 Comp. Gen. 301 (1975). Further, where the claimant is a carrier making a claim based upon tariffs or tenders, ambiguities or uncertainties in the terms of the tariff or tender are to be resolved against the carrier, as the author of the document, and in favor of the shipper. Eastern Airlines, Inc., 55 Comp. Gen. 958 (1976); Ultra Special Express, supra.

Starflight has failed to establish that the Government is liable under Tender No. 2, rather than under Tender No. 4, for the shipment under GBL-548. We see no reason to apply the provisions of Tender No. 3 to a shipment to which Tender No. 3 is by its terms expressly made inapplicable. A provision in a tender establishing the rates for shipments to which that tender and its provisions are expressly declared inapplicable is a contradiction which at most raises an ambiguity or uncertainty which must be interpreted against the carrier. Since, therefore, either Tender No. 2 or No. 4 could apply, the Army was entitled to the benefit of the rates under Tender No. 4, the tender affording the most favorable rate for the Government. See Trans Country Van Lines, Inc., 52 Comp. Gen. 927 (1973).

Starflight has likewise failed to establish that the Government is liable for the rate under Tender No. 2, rather than under Tender No. 4, for the shipment under GBL-580. Although Tender No. 4 is designated a "Weapons Tender," we see nothing in the Tender that required the Army to indicate on the GBL "Weapons Service Requested" before that tender would be applicable to a shipment. Therefore, the Army was entitled to the benefit of the rates under Tender No. 4, the tender affording the most favorable rate for the Government.

We sustain GSA's overcharge findings.

for 
Comptroller General
of the United States