DECISION

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

FILE: B-215301 DATE: January 22, 1985

MATTER OF: Starflight, Inc.

DIGEST:

1. Under carrier tender rule which provides for payment of transportation charges where aircraft is provided but not used for actual airway miles flown "to position and reposition aircraft," carrier may be paid additional time and mileage reflecting flight detour to location at which aircraft was requested, but not used.

2. Carrier is not entitled to payment for aircraft provided, but not used by government, where carrier cannot establish that government ordered plane to pick up shipment.

Starflight, Inc. (Starflight), requests review of settlement action by the General Services Administration (GSA) concerning transportation charges for furnishing airplanes for two shipments which subsequently were not delivered to Starflight for transportation. In both cases, Starflight billed on the basis of its tender rule which provides that:

> "When an aircraft is provided but not used, charges will be based on . . . [Starflight] Tender No. 16, Note 3, for actual statute airway miles flown to position and reposition the aircraft.
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> "Note 3. Ferry miles will be charged at $1.90 per Statute Airway miles flown for positioning, repositioning when required and returning aircraft to home base."

Under Starflight claim No. 1703, the facts essentially are not in dispute. The record shows that Tooele Army Depot (Salt Lake City Airport), Utah (Tooele), requested and Starflight furnished plane number N2NG for pickup and

delivery of two shipments to Fort Leonard Wood, Missouri. These shipments were scheduled to be ready January 5, 1983, at 9 a.m. The record further shows that Starflight had another pickup that same day at Sierra Army Depot, Amedee, California, and could not delay beyond 11 or 11:30 a.m., for the January 5 pickup at Tooele. The Tooele Depot acknowledged that it was aware of the requirement that the shipment be ready at 9 a.m. because of Starflight's schedule. Tooele did not deliver the cargo to the airport timely and ultimately shipped the cargo by other means when notified at approximately 10 a.m. by Starflight that it could not wait beyond 11 or 11:30 a.m.

Starflight filed a supplemental bill for $4,353.09. These charges are for a roundtrip between the plane's home base at Smyrna, Tennessee, and Tooele Army Depot, Salt Lake City, Utah. GSA's final settlement action on this claim is based on Starflight's records concerning the routing of the N2NG aircraft on the agreed-to pickup date of January 5, 1982. GSA has agreed to pay $133 for 70 additional airway miles and to pay $80 for 2 hours' waiting time.

Referring to the fact that the uncompleted Tooele pickup was only one stop in a series of connected pickups and deliveries, which did not involve return to the home base until after completion of these deliveries, GSA determined that Starflight's entitlement is limited to the additional mileage to and from the Tooele pickup point to the other stops flown to, before and after that stop. GSA points out that Starflight's tender does not define the terms "position," "reposition" or "repositioning" as they relate to specific factual point-to-point application. GSA further notes that the tender does not explain the term "when required" or what flight conditions would entitle the carrier to payment for "returning aircraft to home base."

We recognize that the tender rule is intended to compensate for the cost of dispatching aircraft to a pickup point and return of the aircraft to the home base when a scheduled shipment is not offered to the carrier which results in a loss of revenue. However, we think GSA's settlement action was reasonable as it is based on a reading of the tender provision which fulfills the purpose of the tender rule. Starflight's records show that the plane was "positioned" at Clovis, New Mexico, for the trip to Tooele Army Depot at Salt Lake City. Furthermore, from Salt Lake

City, the aircraft continued its scheduled flight to California and made stops on its way back to its home base in Tennessee. Thus, we agree with GSA that the only aircraft "positioning" or "repositioning," as we understand the term, involved the detour to Salt Lake City. Under these circumstances, we conclude that GSA's settlement action which compensates Starflight for the additional waiting time and mileage incurred as a result of the detour to Salt Lake City is correct.

Under Starflight claim No. 1782, Starflight asserts charges for the failure of the Defense Contract Administration Service Management Area (DCASMA), Orlando, Florida, to give Starflight a shipment. Starflight alleges it received instructions from the Military Traffic Management Command (MTMC) to dispatch a plane to Orlando and submits a bill for a roundtrip between Smyrna, Tennessee, and Orlando, Florida.

Starflight refers to a conversation with an MTMC Eastern Area rate technician, Mr. VanDerveer, and states that he verified that Starflight "[was] the low bidder and to go pick it up." Starflight also relies on two MTMC documents, obtained from MTMC, under a Freedom of Information request, a "Domestic Freight Routing Request and Order," and "Standard Route Order Worksheet," which allegedly show Starflight as the low cost carrier.

Mr. VanDerveer's statement shows that he provided the DCASMA transportation officer with Starflight's telephone number and the comparative rates (Express Airways and Phoenix Air) showing Starflight was the low carrier. Mr. VanDerveer telephoned Starflight and advised the carrier it was the low cost carrier and "they should be governed accordingly." According to VanDerveer's statement, at 9 a.m. July 19, 1983, Starflight advised Mr. VanDerveer that it had a plane at Orlando to transport the shipment. Mr. VanDerveer telephoned the DCASMA transportation officer, who advised him that the shipment had been sent by Express Airways (Express) as the "first available carrier."

The record establishes that this was an emergency shipment. Due to testing requirements, the shipment had to move by "1700 on 18 July 1983," and that MTMC was advised by DCASMA that Express had provided DCASMA with an estimated shipping cost of $6,545. The record further shows that Starflight was not acceptable because it could not meet

DCASMA's time schedule and, in any event, Starflight's estimated shipping cost was higher. As a result of the urgency of the shipment and Express' lower price quote, DCASMA gave the shipment to Express on July 18. A complete copy of MTMC's Domestic Freight Routing and Order for this shipment (Starflight's copy only consists of the top half of the document) shows that Express was the authorized shipper, and that the cargo was sent as an emergency shipment. This document and the worksheet which shows MTMC's internal rate calculations do not indicate that MTMC authorized Starflight to perform the transportation. Thus, neither document referred to by Starflight shows that MTMC authorized Starflight to send a plane for this shipment.

In this connection, while GSA concedes that "Area Commanders," such as MTMC Eastern Area, generally are authorized to select the mode of transportation and route for the type of explosive shipment involved here, see Army Regulation 55-355, paragraph 202012 (February 1, 1982), there is an exception for a local emergency. The government bill of lading (GBL) was annotated under the route order section in accordance with MTMC regulations showing the shipment was sent under the emergency routing procedures by the authority of the transportation officer. See Army Regulation 55-355, paragraph 214020c(1).

Here, the GBL and routing orders support GSA's view that the government did not request that Starflight provide an airplane. Furthermore, it is not clear that the MTMC rate technician ordered the airplane or, in any event, had the authority to make such a request. In this connection, we think Starflight had an obligation to confirm the alleged request with the local transportation official who ultimately is responsible for preparing the shipment, giving it to the carrier, and preparing and issuing the GBL. A claimant bears the burden of furnishing evidence clearly and satisfactorily establishing its claim. 31 Comp. Gen. 340 (1952). The claimant has not sustained this burden of proof.

We sustain GSA's settlement action on both claims.

Milton J. Socolar

For The Comptroller General
of the United States