

DECISION



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

FILE: B-216687

DATE: March 14, 1985

MATTER OF: Towne Services Household Goods
Transportation Company, Inc.

DIGEST: A carrier filed an individual tender with the Military Traffic Management Command containing single-factor rates applicable to the transportation of Government household-goods shipments. The fact that the tender was filed under Military Traffic Management Command's "me-too" rate-making procedure does not bind the Government to its rates when the tender expressly provides that its rates will not apply where they exceed rates in an otherwise applicable tender. General Services Administration's determination of overcharges, based on lower segmented rates in another applicable tender is, therefore, sustained.

Towne Services Household Goods Transportation Company, Inc. requests review of deduction action taken by the General Services Administration to recover overcharges collected by the carrier on 11 interstate shipments of household goods that were transported from the Naval Air Station, Jacksonville, Florida, to various points in the United States during May and June 1982.

We sustain the General Services Administration's action.

Background and Analysis

The carrier presented its bills and was paid before audit (as required by 31 U.S.C. § 3726(a)) on the basis of single-factor rates^{1/} published in Towne's individual rate tender, T-1336. In its audit, the General Services Administration determined that lower segmented

^{1/} Single-factor rates include packing, loading, unloading, line-haul transportation, unpacking services, tolls, and accessorial services.

rates^{2/} were published in Government and Military Rate Tender No. 1-M, ICC No. 41 (MRT-1), and applied those rates in the computation of the overcharges. MRT-1 is published for numerous participating carriers, including Towne, by their agent, the Household Goods Carriers' Bureau.

Towne contends that the Government became obligated to pay the higher single-factor rates when Tender T-1336 was accepted for filing by the Military Traffic Management Command. This is on the premise that they were filed under Military Traffic Management Command's "me-too" procedure. The carrier also contends that the single-factor rates "were never intended to be directly competitive with the segmented rates on file by other carriers during the May-October 1982 cycle."

General Services Administration contends that the form on which Tender T-1336 rates were filed (MT-HQ Form 43) expressly provides for the alternate application of lower rates whenever the charges derived from Tender T-1336 would be higher than rates published in another applicable tender. The General Services Administration also contends that the segmented rates in MRT-1 were applicable, and lower.

Under the so-called "me-too" rate-making procedure, the Government periodically solicits the tender of lower rates than those published in MRT-1. Carriers are allowed to meet the lowest rates tendered prior to a specified date. Then, after the effective date, carriers may file competitive rates only during so-called

^{2/} Segmented rates are rates that are separately stated for the various services, such as transportation and packing.

"me-too" cycles.^{3/} Towne filed Tender T-1336 on an MT-HQ Form 43 which shows that the tender was filed to meet the individual single-factor rates filed by Van Pac Carriers in its Tender 82-21, on Codes 1 and 2 traffic.^{4/}

We find no legal relevance in the fact that the higher single-factor rates in Tender T-1336 were filed under the "me-too" procedure because, as contended by GSA, paragraph 27 (the "Alternations" clause) of Form 43, provides that:

"This tender will not apply where charges accruing herein exceed charges otherwise applicable for the same service."

Towne does not dispute the fact that Tender T-1336 produced charges exceeding those derived from MRT-1 or that both tenders were in effect at the time of the shipments in question. Towne's contention that the single-factor rates in Tender T-1336 were not intended to compete with segmented rates filed by other carriers, ignores the material fact that Towne was a participating carrier in MRT-1; therefore, it offered the rates published therein to the Government.

^{3/} Generally, when the "me-too" tenders are received, they are distributed to the various military installations by means of a printout. In contrast, Military Traffic Management Command receives numerous individual rate tenders from carriers, which are unsolicited and, generally, are simply stamped accepted and filed. Towne also refers to "base-line" rates, but these have no relevance because, as General Services Administration states, the base-line procedure was not adopted by Military Traffic Management Command until May 1, 1984, or long after the shipments moved.

^{4/} Code 1 refers to shipments of household goods moved from door to door by motor van. Code 2 involves movement in container service.

B-216687

Conclusion

In view of these circumstances, our resolution of this case is controlled by the holdings in the similar cases of Towne International Forwarding, Inc., B-216116, February 12, 1985, and Towne Van Lines, Inc., B-216117, February 19, 1985. There, we held that by the terms of the "Alternations" clause (paragraph 27) in the carrier's individual tender the lower segmented rates in MRT-1 apply.

Accordingly, the General Services Administration's audit action on the 11 shipments involved in this case is sustained.

Milton J. Fowler
for Comptroller General
of the United States