

DECISION



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

FILE: B-217354

DATE: June 11, 1985

MATTER OF: Dan Barclay, Inc.

DIGEST: The Navy contracted with a specialized motor carrier to transport a ship's propeller from Virginia to California from where it was to be transported by the Air Force to the Philippines. Upon arrival in California, rather than unload the propeller from the tractor-trailer, the Navy borrowed the carrier's tractor and trailer, equipped with a fixture specially designed for ships' propellers, and one driver for 20 days, all of which were then flown by Air Force cargo plane from California to the Philippines, and returned to California transporting a damaged propeller for repair. The carrier is entitled to payment on a quantum meruit basis, in the absence of an agreement as to the charges for the services performed between California and the Philippines. Where the carrier fails to show that the Government ordered or received certain services, received a benefit for certain services allegedly provided, or where charges for certain services are duplicative of other charges paid, the General Services Administration's disallowance of the carrier's claim for charges for such services is sustained.

Dan Barclay, Inc., asks the Comptroller General to review settlement action taken by the General Services Administration (GSA) on its claim for services performed in relation to the transportation of ships' propellers for the Department of the Navy between Virginia and the Philippines during the period from September 23 to October 24, 1983. Of the \$236,872.83 billed by the carrier, GSA allowed \$35,130.76. Based on the record before us, we sustain GSA's action on the holding that Barclay has not shown that it is entitled to the additional \$201,742.07.

Facts

On September 23, 1983, a team of two drivers employed by Dan Barclay, Inc., a specialized motor carrier with

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headquarters in New Jersey, arrived at the Naval Supply Center, Williamsburg, Virginia, in a tractor pulling a semi-trailer equipped with a fixture specially designed to accommodate ships' propellers. Propellers, apparently because of their irregular dimensions and shape, must be transported at an unusual angle, a situation that complicates transportation. The fixture includes a "jig" to hold the propeller with hydraulic valves and cylinders (powered by an engine-driven pump), which is capable of lifting, raising and lowering propellers to a secure position.

Under a Government Bill of Lading, No. S-5540187, the carrier agreed to provide transportation and all necessary accessorial services, such as obtaining necessary over-dimensional highway permits, for movement of a four-bladed ship's propeller from Williamsburg, Virginia, to Travis Air Force Base, California. The propeller, which was marked for the Naval Ship Repair Facility, Subic Bay, Philippines, weighed 39,000 pounds; was 15 feet high; 12 feet, 8 inches wide; and occupied roughly 1,000 cubic feet of space.

The carrier tendered delivery at Travis on September 27, 1983, thus completing performance under the contract, for which payment has been made. The rates and charges for the services performed under the contract for the transportation from Williamsburg to Travis are not the subject of review here. Review relates to services performed outside the contract from September 27 to October 18 between Travis and the Philippines under circumstances that were highly unusual for a motor carrier. No written contract between the carrier and the Government provided charges for these services, nor did the carrier have tariffs or rate tenders specifically applicable to such a shipment outside the United States.

When the carrier's vehicle arrived at Travis, the Military Sealift Command decided that, instead of unloading the propeller from the carrier's equipment and providing independent means of moving and bracing it on an Air Force C5A aircraft to be flown to the Philippines, it would be preferable to leave the propeller intact on the carrier's equipment and use the entire unit as a convenient and safe means of handling incident to the air transportation. Barclay agreed with the proposal and assigned the second driver of the team to accompany the unit.

The carrier's tractor and trailer with the propeller were then loaded on the Air Force aircraft which departed Travis on September 30, 1983, and after stops in Hawaii and Guam, it arrived in the Philippines on October 2. When the propeller was unloaded from the carrier's equipment 2 days later, the Navy instructed the driver to load a damaged propeller for return to Travis, and after several cancellations the plane, carrying the equipment, driver, and damaged propeller, departed the Philippines on October 14. After the usual stops en route, the plane landed at Travis on October 16. Two days later, the driver departed Travis and delivered the propeller to the Naval Supply Center, Oakland, California. On the following day he departed with the unladen vehicle, for New Jersey.

The transportation of the damaged propeller from Travis to Oakland was performed under Government Bill of Lading No. S-3737261. The charges for that portion of the shipment have been paid and are not in question here.

The charges under review here are those for services rendered after the initial arrival of the shipment from Williamsburg at Travis, through the return from the Philippines to Travis. Because of the time constraints involved, formal contracting procedures were not followed for this portion of the shipment. The carrier's bills for its services during this period were broken down into separate charges, including:

1. Jig (fixture) detention
2. Vehicle detention
3. Special services support staff
4. Driver services
5. Storage
6. Other, including engineering services, telegram, telephone, office assistance, etc.

The GSA disallowed all or a major part of the charges.

Carrier's Contentions

Barclay contends that if it is not due the full amount billed, \$236,872.83, it is entitled to \$171,993, the amount the Navy allegedly paid for services provided by the Air Force; or as a minimum, \$94,253.11, which is the total for 19 days at a daily rate (\$4,960.69) derived from dividing the carrier's charges billed for the services performed from Virginia to California under the Government Bill of Lading contract by the number of days that portion of the shipment took. The thrust of the carrier's claim is the premise that the services were requested to meet an "emergency" since the Navy considered it "critical" that the new propeller be transported as quickly as possible to replace a damaged propeller on a ship of the Seventh Fleet.

General Principles of Law

Where there is no specific agreement between the parties as to rates, payment is made for services actually requested and performed on a quantum meruit basis. 36 Comp. Gen. 529, 531 (1957). On that basis, the claimant is entitled to payment for the reasonable value of the work or labor. To recover, the claimant must show that the Government received a benefit. B-173765, November 18, 1971. Where benefit is shown, payment may be based on the lowest rates available to the Government for the same or similar services. Starflight, Inc., B-212279, November 13, 1984. The burden of proof is on the claimant. 52 Comp. Gen. 945, 948 (1973); 41 C.F.R. § 101-41.603-3 (1984). Where there are disputed questions of fact, we rely on the statements furnished by the administrative officers of the Government. 45 Comp. Gen. 99 (1965).

Discussion

We do not consider the amount paid by the Navy to the Air Force, \$171,993, to be a reasonable basis for payment to Barclay because the services performed by each were substantially different. The Air Force provided crews, ground support and multi-million dollar cargo aircraft for the round-trip transportation between California and the Philippines. Barclay provided the use of a tractor and trailer with fixture and one driver, for incidental ground use.

Also, we fail to see how the average daily charges for the carrier's transportation services performed under the Government Bill of Lading contract can be a reasonable standard either. Under that contract, Barclay performed full carrier services, including all the transportation, and assumed common carrier liability for the cargo, plus the care for its own equipment, whereas between Travis and Subic Bay, Barclay simply provided its equipment for the use of the Government; the Government provided the transportation services, assumed responsibility for the cargo, and as bailee, the responsibility for the care of Barclay's equipment while in transit.

Barclay's Tender No. 23, as amended, and the Heavy and Specialized Tariff Bureau Tariff 401-A publish line-haul rates and charges for accessorial services performed within the continental United States. Although the line-haul rates have no use as a standard of reasonableness since the Air Force, rather than Barclay, performed the transportation services, we see no reason why the accessorial charges cannot be used as a basis of reasonableness to the extent the services performed by Barclay overseas were the same or similar. Therefore, as explained below, we find GSA's settlement on this basis appropriate.

Detention

Barclay contends that the jig is an expensive piece of equipment for which it is entitled to detention charges in addition to detention charges for the vehicle. Barclay states that it is currently making two jigs for the Navy at a cost of over \$74,000 each, and that in previous contracts shippers paid over \$100 per hour for jig detention. Thus, it claims that \$100 per hour should be used as a reasonable standard for payment here. On that basis Barclay claims \$48,000 for 20 days' jig detention.

As GSA previously advised Barclay, the evidence of record does not support the contention that separate jig detention is due. We note that neither tariff 401-A nor tender 23 provides a separate charge for jig detention. The GSA allowed the carrier over \$24,000 for vehicle detention based on rates in the carrier's tariff which apply to the detention of the carrier's vehicle when transporting heavy and specialized commodities or articles

requiring special equipment or handling. Tariff 401-A, item 1507. However, GSA disallowed additional jig detention charges on the theory that the vehicle detention provisions covered all equipment, including any trailer fixtures, in the absence of a specific provision for the fixture. We agree with this determination.

Special Services Support Staff

The carrier billed \$134,775 for special services support staff. This was based on \$450 per hour, 24 hours per day, 7 days a week, for standby of three company executives who made themselves available for contact by telephone at company headquarters in New Jersey or at home. Barclay contends that these services were required because Government agents requested expeditious service for a critical transportation movement. The Military Sealift Command states that no such request for standby of company executives was made and that no such standby was necessary. The Sealift Command has stated that, with the exception of a few telephone calls on one weekend totaling about 1 hour, all contacts with Barclay were made during normal working hours. The GSA was correct in accepting the statements of the Military Sealift Command personnel in this regard. There is no evidence that the Government received any benefit from such special service the carrier claims to have provided and there is no evidence that the Government requested such service. Thus, we agree with the disallowance of this item.

Storage

The carrier contends that in addition to detention charges it is entitled to storage charges at a rate of \$77.50 per day, as published in item 1751 of tariff 401-A, for the same period of time on the theory that detention and storage charges are separate.

Although the tariff contains separate provisions for detention and storage, it does not follow that they apply simultaneously. Item 1751 provides that "carrier's trailers" may be used for storage upon request, while item 1507 provides an hourly rate for the detention of a "tractor-trailer combination" and does not apply to "trailers without motive power." Thus, it appears that

these are mutually exclusive charges. In addition, there is no evidence that the trailer here was requested for storage purposes. Instead, the tractor-trailer combination was detained for the use of the Government, and the charge for the use of the trailer was included in the detention charge. Thus, we agree with GSA that storage charges in addition to payment of vehicle detention charges of \$24,000 for use of the carrier's equipment is not appropriate.

Driver

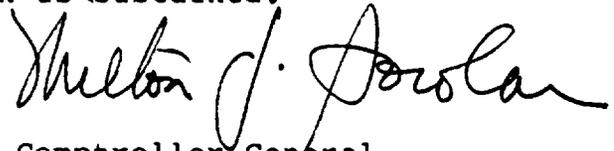
While noting that under item 1535 of tariff 401-A there is no extra charge for a driver between the hours of 7 a.m. and 5 p.m., GSA allowed hourly charges for the driver 24 hours per day since the driver was outside the United States for most of the period. Barclay, however, contends that the rates applied by GSA from item 1535 of the tariff were erroneous. Under item 1535 the rates are higher for a second driver than for the first driver. Barclay states that of the two-man team that operated the vehicle to California, the second driver accompanied the propeller to the Philippines. This fact is irrelevant because the item applies only where a request is made for more than one driver. For the transportation from Travis to the Philippines and return only one driver was requested and only one was dispatched.

Other Charges

We have reviewed the other charges and find that the carrier failed to show that the Government received any benefit from the services that allegedly were performed, that such services were requested by the Government, or that they were actually provided.

We conclude that, based on the facts as stated by the Government, and in the absence of proof that the carrier is entitled to more than the amount allowed by GSA, we cannot authorize payment of any additional amount.

Accordingly, GSA's action is sustained.

for 
Comptroller General
of the United States