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DECISION

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

FILE: B-217640 **DATE:** December 9, 1985

MATTER OF: Jim Harrison Hauling

DIGEST:

A motor carrier was notified in advance that a naval shipyard would be closed from 3:30 p.m., December 23, to 8 a.m., January 4. The carrier's driver arrived at the shipyard with a loaded trailer in the afternoon of December 23. The carrier states that its driver was told that the unloading facility was occupied and he would not be able to unload. The agency states, however, that the driver was told that he could be unloaded that afternoon if he waited until the vehicle then occupying the facility was unloaded, but the driver chose not to do so and, instead, left the loaded trailer, which consequently was not unloaded until January 4. In these circumstances the facts stated by the agency are accepted, the delay in unloading is attributed to the carrier, not the agency, and the carrier is not entitled to vehicle detention charges for the period of December 23 to January 4.

Jim Harrison Hauling, an intrastate motor carrier of freight, has asked the Comptroller General to review under 31 U.S.C. § 3726(d)(1) the General Services Administration's transportation audit action of disallowing detention charges the carrier claimed on a shipment of freight it transported for the Navy from the Naval Supply Center, Norfolk, Virginia, to the Norfolk Naval Shipyard, Portsmouth, Virginia, in December 1981. In the circumstances of this shipment we sustain the General Services Administration's action of disallowing the carrier's detention charges of $5,625, which resulted in the collection of that amount initially overpaid the carrier.

Background

The carrier picked up the shipment, a load of steel, on the morning of December 23, 1981, at the Naval Supply Center, delivered it to the Naval Shipyard at Portsmouth

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at 2:48 in the afternoon, and spotted the trailer[1] containing the shipment at the shipyard at 2:55 p.m. the same day. The carrier had been advised in advance by written notice sent by the shipyard that the shipyard was to be closed for the holiday season from 3:30 p.m. on December 23, 1981, until 8 a.m. on January 4, 1982, for receiving and unloading normal shipments of freight. One of the conditions of the carrier's contract of carriage as shown on the Bill of Lading was that the shipyard would unload the shipment, and since the shipyard was closed until January 4, 1982, the shipment was not unloaded from the carrier's trailer until January 4, even though it was delivered on December 23, 1981.

When the carrier's driver arrived at the shipyard's main freight receiving area, he had a conversation with the shipyard's unloading supervisor, Mr. Goodman, regarding the unloading of the shipment. The Navy and the carrier sharply disagree about what was said. On behalf of the carrier, Mr. Jim Harrison in a letter of October 8, 1984, stated that the driver, Mr. White, was told that the unloading facility for the freight shipment was occupied and that "* * * he would not be able to unload. Mr. Goodman told him where to drop the load, stamped and signed the GBL and the driver departed." Mr. Harrison also stated, "I not only asked that the load be off loaded upon delivery but during the holiday I sent several trucks to the shipyard to try to have the steel removed from the trailer." He also pointed out that it would have been "too stupid to contemplate" for the carrier to place a leased trailer at the shipyard for that length of time for nothing. It was the Navy's position, however, that the carrier's driver made the decision to leave the trailer rather than wait to have it unloaded, knowing that unloading then would not take place until January 4. The Navy also advises that Mr. Goodman was a knowledgeable employee with over 30 years experience who knew that "there was no way" detention charges would be authorized in this situation.

1/ That is, the carrier's driver left the loaded trailer at the shipyard and departed with the tractor.

In addition to its $183.60 charge for transportation of the shipment, the carrier billed the Navy $5,625 for the detention of its vehicle from December 23, 1981, to January 4, 1982, based on a provision in its tender providing hourly detention charges after the first 3 hours of "free time" for unloading. Tender No. 6, effective December 21, 1981, Appendix B, Note 8. The General Services Administration disallowed the detention charge on the basis of statements from Navy officials indicating that the vehicle was left at the shipyard for the carrier's convenience.

After the carrier made his request for our review of the General Services Administration's audit action, the Navy further investigated the conversation between the carrier's driver and the shipyard's unloading supervisor, Mr. Goodman. In a written statement dated March 29, 1985, furnished by the Navy, Mr. Goodman states:

> "On 23 December 1981, Mr. Jim Harrison's driver came into the Norfolk Naval Shipyard with a load of steel plates to be offloaded at the Gantry facility. As we had one truck presently being offloaded at the Gantry site, I informed the driver that we could not offload his trailer until the offloading of the truck at the Gantry [the shipyard's unloading site] was completed. The driver then asked if he could drop the trailer. I said yes, but it would be at your convenience, not the Shipyard's. However, if you wait awhile longer, the crew at the Gantry would be able to offload your trailer. I further advised that if he left his trailer, that it could not be offloaded until the first workday of January '82."

Analysis and Conclusion

Claims presented to our Office are settled on the basis of the written record without resort to formal hearings. Thus, in cases involving these kinds of factual disputes, unless a claimant is able to demonstrate clearly, with his submitted evidence, that his

factual version of the events causing the dispute is the correct version, rather than the factual version provided by the governmental agency involved, we accept the version of the governmental agency. John B. Tucker, B-215346, March 29, 1985. In this case the carrier has not submitted evidence clearly demonstrating that its version is correct. In fact, the weight of evidence before us supports the Navy's position. Therefore, we accept the factual version of events that the carrier's driver chose not to wait for the unloading facilities to become available to unload his trailer on the afternoon of December 23. Instead, he chose to spot the trailer at the shipyard for his convenience, realizing that it would not be unloaded until January 1982.[2]

Detention charges are assessed on those receiving freight (the consignee) when the carrier's equipment is detained, other than through the fault of the carrier, beyond the free time allotted for the shipment's unloading after its delivery. Such charges do not accrue to the consignee when the detention is not attributable to the consignee. See B-126581, September 9, 1957, and authorities cited therein.

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[2] Although the record contained some initial confusion about whether the carrier delivered the shipment during Portsmouth Naval Shipyard's normal operating hours on the afternoon of December 23, additional information developed by the Navy during its investigation of Mr. Goodman's conversation with the driver indicates that the shipment was delivered during normal operating hours. That additional information also dispelled some initial confusion over that driver's identity. The carrier was correct about the driver's identity; but the confusion apparently developed because another of the carrier's drivers delivering a different shipment earlier in the day at the shipyard signed the detention claim form that applies to this shipment.

As is noted previously, in this case the shipyard had advised the carrier in advance by written notice that its freight-receiving terminal would be closed for normal business between 3:30 p.m., December 23, and 8 a.m., January 4. In addition the carrier's driver was specifically advised by the unloading supervisor on the afternoon of December 23 of the terminal's closing and the fact that if he did not wait for the trailer to be unloaded that afternoon, it would not be unloaded until January 1982. While Jim Harrison, himself, may well have preferred that the driver wait to be unloaded that afternoon rather than leave the trailer to be unloaded on January 4, the driver (Jim Harrison's agent) elected not to wait. Thus, we must conclude that the delay in unloading the vehicle was due to the carrier's action, not the shipyard's, and detention charges are not applicable for the 12-day period.

Accordingly, the General Services Administration's action of collecting the detention charges is affirmed.

Milton J. Socolar

Acting Comptroller General
of the United States