



The Comptroller General
of the United States

Washington, D.C. 20548

Jan Billard

Decision

Matter of: ABF Freight System, Inc.

File: B-221705

Date: May 11, 1987

DIGEST

On a shipment destined to Lexington Park, Maryland, the General Services Administration (GSA) collected, as overcharges, the difference between assessed tariff rates and reduced rates published in the carrier's tender. GSA's action was improper since the carrier's tender reflects the intent to restrict the reduced rates to points served direct, as listed in a particular section of a tariff, and Lexington Park was not shown as a direct-service point for the carrier. The carrier's merger with and adoption of operating authority of another carrier, which included direct-service authority to serve Lexington Park, do not establish the carrier's intent to extend application of its tender rates to Lexington Park where its tender continued to expressly refer to the list of points which excluded Lexington Park.

DECISION

ABF Freight System, Inc. (ABF), asks the Comptroller General to review a General Services Administration (GSA) audit determination that affected freight charges on at least 75 government shipments transported by ABF.^{1/} Based on the determination that lower rates offered in ABF's tenders were applicable, rather than its tariff rates, GSA collected the difference as overcharges from monies otherwise due ABF.

^{1/} GSA reports that the issue involves the operations of many carriers. Due to its widespread impact, the industry and GSA are seeking resolution by the Comptroller General before considering further action. In addition to GSA's customary report, we received a brief on behalf of ABF, ANR Freight System, Inc.; Transcon Lines; Yellow Freight System, Inc.; and the National Motor Freight Traffic Association, Inc.

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In this case ABF issued a tender offering the government reduced rates only to points "served direct" by it "as indicated in Section 2" of a specific tariff. Subsequently, ABF merged with another carrier and thereby gained authority to serve additional points. The issue here is whether, through the merger, ABF's tender rates became applicable to additional points even though they are not listed in Section 2 of the tariff, as points "served direct" by ABF. GSA contends that ABF's tender rates became applicable through a note in Section 2 referring to Section 1, where the carrier with which ABF merged is shown as serving the additional points. We conclude that the tender rates were not applicable because, by its specific terms, the tender did not apply to the points involved.

BACKGROUND

The shipment analyzed by GSA as representative of the shipments in question moved on Government Bill of Lading No. FP-094063, dated March 1983. It originated at Tinker Air Force Base, Oklahoma, and was destined to Lexington Park, Maryland. The question raised by GSA's audit action is whether the rates offered in ABF Tender ICC 1188^{2/} are applicable to Lexington Park, as the result of the merger of East Texas Motor Freight (ETMF) into ABF on September 12, 1982.

GSA does not dispute the fact that Tender 1188 expressly restricted application of its rates to destination points "served direct by ABFS as indicated in Section 2" of Rocky Mountain Motor Tariff Bureau Tariff 118 (RMB 118). In Section 2 of RMB 118 ABF is not shown as serving Lexington Park. At the time the tender was issued ABF's operating authority, Certificate No. MC 29910, did not include Lexington Park as an authorized direct-service point.

GSA indicates, however, that ETMF held operating authority to serve Lexington Park, and since the representative shipment was transported after the two carriers merged, Tender 1188 should be construed as offering direct service to Lexington Park at the rates published therein. To support its position GSA indicates that even though Section 2 of RMB 118 does not list ABF as serving Lexington Park, Section 2 contains a parenthetical note stating "see Item 1300 herein." And item 1300, found in Section 1 of the tariff, shows ETMF as having

^{2/} Other ABF tenders involved in the 75 shipments include No. 1156 and 1174.

authority to serve all points in Maryland. Thus, GSA concludes that since, through the merger, ABF gained authority to serve Lexington Park, that point is included in the terms of the tender by reference through the note to item 1300 in Section 1 of RMB 118. We note in this regard that item 1300 also shows ABF as serving points in Maryland, but, by a reference mark, limits those points to points it was authorized to serve under its existing operating authority, which did not include Lexington Park.

OPINION

We affirm our position in ABF Freight System, Inc., B-218694, November 25, 1985, involving a similar situation, that the central issue in these cases is not whether a carrier holds operating authority to serve a particular point, but whether the carrier through its tenders offered the rates from or to the specified points. Rate tenders are continuing unilateral offers to perform transportation services at the terms and conditions named therein. As was the case in the tender at issue in B-218694, supra, the tender in this case expressly conditioned the offer of lower rates to direct service points indicated in Section 2 of RMB 118. Based on the record in this case, we hold that the mere corporate merger^{3/} or the adoption of ETMF's operating authority is not a sufficient basis for concluding that ABF's existing rates were thereby extended to points that were not included under the terms of the tender as issued. As a result, ABF's Tender 1188 was not applicable to the shipment destined to Lexington Park, Maryland, because Lexington Park is not included in Section 2 of RMB 118 as an ABF direct-service point.

The GSA should issue settlement of this and similar claims consistent with this decision.



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^{3/} Compare B-174926, December 4, 1972.