



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Stevens Transport - Carrier Denies Issuance of
Apparently Valid Rate Tender

File: B-225507

Date: September 23, 1987

DIGEST

A motor carrier contends it was improper for the General Services Administration (GSA) to recover overcharges on the basis of rates published in a tender which the carrier denies that it ever issued. However, the Military Traffic Management Command (MTMC) received the tender and returned it to the carrier for revision, and MTMC received it back again with required revisions. Also, reference to the tender on Government Bills of Lading gave the carrier notice of the government's intentions to apply the tender; however, the carrier failed to inquire about it until after GSA issued the notices of overcharge. Under these circumstances, the carrier's general denial of responsibility for the tender does not meet its burden to prove the legal liability of the United States, and where there is doubt concerning the government's liability, GSA's audit action is sustained.

DECISION

Stevens Transport asks the Comptroller General to review numerous deductions made by the General Services Administration (GSA) from monies otherwise due the carrier to recover overcharges allegedly collected by Stevens. The carrier contends that the rate tender used in GSA's audit was not issued by Stevens; therefore, the deductions were improper. In the absence of proof supporting the carrier's contention, we sustain GSA's actions.^{1/}

BACKGROUND

For the transportation of numerous shipments for the Department of Defense (DOD), Stevens Transport collected

^{1/} Stevens filed several amendments to its initial request for review containing numerous references to additional overcharges. This decision covers all bills involving the same issue.

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freight charges on the basis of rates published either in its tenders No. ICC 1, No. ICC 100, or No. ICC 1000. In an audit of the carrier's bills GSA determined that lower rates published in a Stevens Tender No. ICC 1003 (Tender 1003) were applicable and deducted the difference between the freight charges collected by the carrier and the charges that would have been assessed on the basis of rates in Tender 1003.

There is no dispute that the Military Traffic Management Command (MTMC)--the agency that receives, reviews, and distributes rate quotations from carriers soliciting DOD traffic--received a tender identified as "ICC 1003" which contained the rates used by GSA in its audit of Stevens bills. Copies of the tender prepared from MTMC's official and public files were forwarded here along with a report from Mr. David A. Beckner, Chief of Transport and Tariff Branch, Negotiations Division, Directorate of Inland Traffic, MTMC. The copy is of a "Uniform Tender of Rates and/or Charges For Transportation Services", GSA Optional Form 280, identified as "ICC 1003," that was purportedly issued by Stevens Transport on November 6, 1984, to be effective December 6, 1984, and to expire on December 6, 1986. Both issue and effective dates were altered by handwriting to January 6, 1985, and the circled initials, "MR," were added to both changes. Stevens ostensibly offered the rates therein to the United States Government under "Section 10721 of the Interstate Commerce Act," for the transportation of freight-all-kinds from East Texas to points in the 48 contiguous states. The official copy of the tender contains five MTMC stamps, two of which indicate receipt by MTMC on two different dates, one on November 29, 1984, and the other on January 7, 1985. Two stamps indicate administrative reviews by MTMC on November 29, 1984, and January 9, 1985. Another indicates that the tender was distributed on January 9, 1985. The typed and written name, "Mike Richey," as Vice President of Sales, purports to be the signature and title of the company's authorized officer.

GSA reports that when MTMC first received the tender on November 29, 1984, MTMC reviewed it (as evidenced by the review stamp of the date), and returned it to Stevens to change the issue and effective dates. These changes were made in handwriting by altering the original dates, as previously explained. When the tender was received the second time (on January 9, 1985), MTMC reviewed it again on

Mr. Beckner's report describes the tender-filing procedure at MTMC when the agency received Tender 1003. Carriers were required to submit 15 copies of each tender that they filed, 2 signed and 13 unsigned. After being stamped with a received date, each tender was subjected to technical and administrative reviews. The administrative review included a check of the issuing officer's or agent's signature; however, this was limited to verifying that the two copies of the tender had, in fact, been signed. The review did not include validating the signature itself. Tenders which failed to pass both levels of review were returned to the carrier with a written explanation. Tenders which passed both levels of review were distributed. Three copies of the tender, including one signed copy, were mailed to GSA. The carrier did not receive a copy of the tender, except where less-truckload traffic was involved. Instead, MTMC maintained public tender files at three regional locations. Although pen and ink changes to tenders were the exception rather than the rule, carriers did on occasion make handwritten changes to their tenders. There was no requirement that tenders be typed, and a handwritten change afforded the carrier the opportunity to correct a publication without typing it over. Carriers had the choice of making the handwritten entry on each of 15 copies or of making the entry on one and copying the publication 14 times. In either event, the copy retained by MTMC in its official file was controlling. Mr. Beckner states:

"In summary, MTMC accepted tenders in good faith. Tender review was limited to technical traffic management issues and administrative procedures. No attempt was made to determine whether or not a tender filing was fraudulent. It was incumbent upon the carrier to police its own tenders, either by visiting one of the public files or by monitoring tender information on Government bills of lading tendered to it by DOD shippers."

Concerning monitoring, GSA refers to Government Bill of Lading, No. S-6368954 as representative of the GBL's covering the shipments involved. This GBL was issued to Stevens by the transportation officer at Red River Army Depot, Texarkana, Texas, and it contains a reference to Stevens Tender 1003 in the "Tariff or Special Rate Authorities" block. The shipment was received by Stevens

on May 15, 1986, and according to GSA, the carrier did not object to the notation or inquire about it.

Copies of affidavits executed by five company officials state that they were the only officials authorized to issue tenders on various dates; that none of them issued Tender 1003, and that no employee or agent could have issued it. The affidavit of Mike Richey, the name shown as the authorized issuing officer on Tender 1003, states, among other things:

"* * * I can swear and state that none of these tenders, i.e. 1003 or alterations of 1003 were prepared by me in any capacity at Stevens Transport, a Division of Stevens Foods, Inc. I can further state that these tenders were not issued by Stevens Transport as I am privy or was privy during my employment at Stevens Transport to the costs of transportation of freight. The price set out in tender 1003, at the time of the dates in question, was well below the actual cost of the company in moving freight. I further know and have personal knowledge that no employee nor agent other than Mr. Aaron, Mr. Coffey, Mr. Fulwood or Mr. Braden would have had access to the forms or could have completed tender 1003.* * *"

The carrier makes several arguments in support of its case. Among them is the argument that the tender is "questionable" because a GSA official acknowledged that the altered effective date would apply. From this acknowledgment, Stevens believes a GSA auditor altered the dates.

The carrier further questions the tender's authenticity by finding differences among three copies of the tender. The differences are not articulated; the only obvious difference is the number of MTMC stamps appearing on each. The copy allegedly furnished to Stevens by GSA does not contain the two administrative review stamps that are on the copy made by the MTMC official from the agency's official files, and a copy allegedly made by Stevens' agent from MTMC's files contains only the distribution stamp.

Stevens' brief of November 21, 1986, asserts that a key MTMC official, presumably Mr. Beckner, would no longer confirm that the government accepted Tender 1003 as coming from Stevens. Finally, the carrier presents cost data indicating

that the revenue generated from application of Tender 1003 rates would not have covered the carrier's costs, and for that reason, the argument concludes, Stevens would not have issued the tender.

DISCUSSION

This case raises a question of material fact: whether Stevens offered to transport freight-all-kinds shipments for DOD at the rates published in Tender 1003. It is well settled that the carrier has the burden of proving its case. Starflight, Inc., B-211473, B-212279, B-212408, August 15, 1983. Where there are disputes of fact, we rely on the facts as presented by the administrative officers of the government, in the absence of compelling contrary evidence in the record. See Dan Barclay, Inc., 64 Comp. Gen. 612 (1985); 45 Comp. Gen. 99 (1965).

Stevens has no explanation for MTMC's receipt of Tender 1003. Company officials simply deny that it was issued by the carrier. For example, in his affidavit, Michael Richey, whose name appears on the tender as the authorized issuing officer, and whose initials, "MR," appear with the handwritten alterations, denies that he prepared the tender or made the alterations. Mr. Beckner admits that MTMC's procedures did not include verifying the genuineness of the issuing officers' signatures. While the scant record on this point leads us to accept the validity of Mr. Richey's statement, the DOD and GSA reports dispute another statement that no company employee or agent would have prepared the tender or made the alterations. Further, none of the affidavits rule out the record's clear implication that some unidentified company employee or agent had knowledge of the tender and that DOD was offering traffic to the carrier in reliance on the tender's applicability.

Although Stevens states that MTMC did not receive Tender 1003 from the carrier, agency reports show that the tender was "returned" to Stevens for changes in relevant dates, which was consistent with MTMC procedure at the time. The fact of return of the tender to Stevens reasonably raises the presumption that some company employee or agent received it, made the alterations and returned it to MTMC, which accepted it for DOD and GSA use on January 9, 1985. These facts clearly imply that Stevens had knowledge of the tender and its legal consequences.

Also, we have held that where a GBL's tender reference conflicts with the carrier's understanding of higher applicable rates, the carrier has a duty to inquire of the shipper to seek clarification. See Starflight, Inc., B-218844, November 26, 1985. Here, by the reference to the tender on the GBLs the carrier had notice of the government's understanding that the rates in Tender 1003 were applicable, and if Stevens disputed their applicability, it had a duty to inquire. But the carrier failed, according to the administrative reports, to protest or inquire until it received the notices of overcharge from GSA, which was long after the carrier enjoyed DOD's traffic.

From the fact that GSA acknowledged that the altered tender dates were effective, Stevens speculates that a GSA auditor altered the dates. We cannot accept speculation as evidence of facts. We note that MTMC's procedures allowed for handwritten alterations, and when MTMC accepted the tender and distributed copies to GSA and DOD installations, it already contained the alterations.

Stevens' contention that a MTMC official no longer confirms that the government accepted Tender 1003 is rebutted by the fact that MTMC's official responsible for the tender files, Mr. Beckner, reported on March 11, 1987, that MTMC accepted the tender in good faith.

The carrier further questions the tender's authenticity by finding differences among three copies of the tender. The copy allegedly furnished to Stevens by GSA does not contain the two administrative review stamps that are on the copy made by the MTMC official from the agency's official files, and a copy allegedly made by Stevens' agent from MTMC's files contains only the distribution stamp. It has not been shown how these differences among the copies are inconsistent with the tender-filing procedures described by Mr. Beckner. Those procedures provided simply that a signed copy be mailed to GSA. The only copy that could reasonably be expected to contain all five stamps would be the one maintained as the official tender in MTMC's official file, while the copy from the public file that we received from MTMC contained only the distribution stamp. We assume that Stevens obtained its copy from MTMC's public file.

As to the argument that Stevens would not have issued Tender 1003 because, according to Stevens, the rates would not have covered the carrier's costs, the rates therein were offered

to the government under "Section 10721 of the Interstate Commerce Act" (49 U.S.C. § 10721), and under that section carriers are authorized to provide transportation service to the government free or at reduced rates. Therefore, the offer of lower rates or rates that may be lower than unspecified costs would not have been inconsistent with law, or with the practicality of sharing in government traffic.

CONCLUSION

At best, the record raises substantial legal doubt as to the validity of Stevens' claim, and our jurisdiction to authorize payment is based upon the legal liability of the United States. See 50 Comp. Gen. 434, 441 (1970) and court cases cited therein. Since there is substantial legal doubt concerning the liability of the United States to Stevens, we sustain GSA's audit action.

for *Harry R. Van Cleave*
Comptroller General
of the United States