

Billard



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Riss International - Rate Applicability - Conflict
on GBLs - Reconsideration

File: B-226006.2

Date: April 27, 1990

DIGEST

Upon reconsideration, our prior decision is affirmed. The evidence presented does not compel a contrary conclusion and no errors of law have been found. Further, claims are not for consideration by GAO where a carrier alleges material facts for the first time in a request for reconsideration concerning 56 of 294 government bills of lading that were the subject of a decision. 31 U.S.C. § 3726 (Supp. V 1987). The bills may be presented to GSA for reaudit if they otherwise satisfy the requirements for the presentation of transportation claims.

DECISION

Upon reconsideration, our decision Riss International, B-226006, Feb. 19, 1988, is affirmed for the following reasons.

BACKGROUND

In Riss International, B-226006, Feb. 19, 1988, we sustained GSA's disallowance of a carrier's supplemental bills for the transportation of 294 shipments of explosives and Freight All Kinds that were based on tariff rates. The decision was based on facts that were undisputed at the time that government shipping officers made two notations on each government bill of lading (GBL)--a notation releasing the property at \$2.50 per pound valuation and a notation referring to Riss tenders which offered the government lower rates pursuant to 49 U.S.C. § 10721 (1982). The lower rates were limited in application to shipments tendered at a valuation not exceeding 10 cents per pound. The decision also recognized that Riss originally billed the government at the lower tender rates.

048475/141335

The record contained administrative reports indicating that the shipping officers placed the \$2.50 notation on the GBLs by mistake, and that Riss did not publish tariff rates applicable specifically to a \$2.50 per pound valuation. We concluded that the parties understood that the lower tender rates were applicable and the two GBL notations gave Riss notice of conflicting shipper intentions which imposed a duty on the carrier, as the party responsible for issuing proper GBLs, to inquire.

In seeking reconsideration, Riss asserts that, in fact, tariffs applicable to valuations of \$2.50^{1/} per pound were in effect when the shipments were transported, and that 56 of the 394 GBLs either contained no tender reference, or referred to a tender not then in effect, or to tenders that were otherwise inapplicable.

OPINION

Conflict on GBLs

GSA and Riss disagree as to whether Riss's higher released rate provisions could have been applicable to these shipments because, according to GSA, they were published in a separate tariff. According to GSA, Interstate Commerce Commission (ICC) regulations require that released rate provisions be published in the same tariff. 49 C.F.R. § 1312.29 (1984). Riss disputes this contention. However, we need not resolve this question. Even if Riss's interpretation of the ICC regulations were correct, there is insufficient evidence to indicate that the shipper intended to use the higher class rate. Notations were made on the GBLs which referred to Riss's tenders and not to Riss's class tariffs which Riss now contends contain the applicable rates. If the shipper had intended that the class rates apply, the GBL would have referred to Riss's class tariff or simply listed the higher valuation. The carrier should have been on notice of a mistake, and where the carrier has notice of such an inconsistency, it has the duty to inquire. B-237773, July 23, 1984. See also Starflight, Inc., 65 Comp. Gen. 84 (1985)^{2/}

^{1/} Riss's Rules Tariff provides for an additional 2 percent charge when the value per pound was in the range of \$1.66 to \$5.

^{2/} This result is derived from the principle that carriers, not shippers, have the duty to issue proper bills of lading free from ambiguity, regardless of whether shippers or carriers actually issue them. See 52 Comp. Gen. 211 (1972).

Presentation of Additional Claims

In its reconsideration request, the carrier alleges for the first time that 56 of the GBLs did not contain proper tender references. Riss has identified only four of the bills and has not presented copies of any of them. Further, Riss apparently has not presented its claims to GSA on this basis. Under these circumstances, we will not consider this new allegation.

Riss may request that GSA reaudit any of the 56 bills that Riss may identify as containing no tender references to tenders not in effect or otherwise applicable, provided Riss otherwise satisfies the requirements for the presentation of transportation claims. See 41 C.F.R. § 101-41.6 (1989).

Upon reconsideration, our prior decision is affirmed.



Acting Comptroller General
of the United States