151483

Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Tri-State Motor Transit Company

File: B-253445, et al

Date: April 20, 1994

DIGEST

General Services Administration properly applied intrastate rates to the services of a motor carrier that moved a Department of Defense shipment within one state following the movement of that shipment into the state by the Department.

DECISION

Tri-State Motor Transit Company, a common carrier, requests review of the General Services Administration's (GSA) application of intrastate charges to Government Bill of Lading (GBL) shipments moved for the Department of Defense (DOD) by Tri-State within California. The moves by Tri-State took place either before or after DOD moved the same shipments on its own conveyances between the United States and another country, or between California and another state. Tri-State argues that higher interstate or import/export charges should apply.

We affirm GSA's settlements.

DOD's regulations[1] do not specify whether or how interstate or intrastate rates and charges would apply to these types of shipments. As a result, the practice is to refer to Interstate Commerce Commission decisions for guidance. The general rule in these decisions is that the essential character of any type of commerce (interstate, foreign, or intrastate) is governed by the fixed and persisting transportation intent of the shipper at the time of shipment, and that such character is retained throughout the movement absent an interruption. See Allen-Investigation of Operations and Practices, 126 M.C.C. 336 (1977). Thus, if at the initiation of a shipment the shipper intends to put an item into interstate commerce, the shipment is considered an interstate one subject to the Commission's jurisdiction

[1]Military Traffic Management Command Freight Traffic Rules Publication No. 1A.

and to interstate charges in tariffs or tenders on file with the Commission.

GSA applied intrastate charges to these shipments, however, based on our decision in Coast Counties Express, Inc., 63 Comp. Gen. 620 (1984), which involved import/export shipments. There, we discussed the Commission's "single state" exception to the general rule cited above for the situation where a for-hire motor carrier moves a shipment within one state either preceding or following movement of that shipment from/into the state by private carriage. In those circumstances, the Commission found that it could not regulate the motor carrier's service, so that intrastate charges applied. See Motor Transportation of Property within Single State, 94 M.C.C. 541 (1964); see also, Central Freight Lines v. ICC, 899 F.2d 413, 425 (5th Cir. 1990), citing Pennsylvania R. Co. v. Public Utilities Com., 298 U.S. 170 (1936); Allen, supra.

We note, however, that the Military Traffic Management Command (MTMC), which sets DOD traffic management policy for motor carrier services, supports Tri-State's position on the basis that recent Commission decisions appear to be moving away from the "single state" exception. GSA concedes that the Commission no longer appears to apply the "single state" doctrine, but the agency still advocates the application of intrastate charges to this case on contract grounds, focused on the view that the contracts of carriage were fully executed with the intent of all parties that intrastate charges would apply to them.

We recognize that in 1992 the Commission stated that the nature of a subsequent motor movement into a state is not affected by whether the initial movement is regulated, private or exempt; rather, when the shipper's fixed and persisting intent is for a continuing movement in interstate commerce, such an intent will control. See Pittsburgh-Johnstown-Altoona Express, Inc. (PJAX II), 8 I.C.C. 2d 815 (1992), which also criticizes Central Freight Lines; see also, Amoco Oil Co., 9 I.C.C. 2d 268 (1992). Whether the Commission thereby has overturned the "single state" doctrine is not entirely clear, however. In any case, the shipments involved here moved in late 1989 and early 1990, prior to the recent Commission decisions that suggest to MTMC and to GSA that the fixed and persistent intent approach, and thus interstate charges, might well apply to these types of transactions.

As stated above, the practice in addressing the application of interstate versus intrastate charges to these types of shipments has been to refer to Commission decisions for guidance. At the time of the parties' agreement for the shipments in issue, through the full execution of the

contracts of carriage, the basis for payment as instructed by Commission "single state" decisions at the time, as well as by our Office's Coast Counties decision and subsequent administrative and judicial rulings, was to be intrastate charges; clearly, the parties contracted and performed with that understanding. Irrespective of MTMC's and GSA's readings of the Commission's recent decisions, we see nothing improper in GSA's application of intrastate charges to the transactions involved here.

We affirm GSA's settlements.

Seymour Efros

for Robert P. Murphy
Acting General Counsel