



Comptroller General
of the United States
Washington, D.C. 20548

552146

Decision

Matter of: Tri-State Motor Transit Company
File: B-256083
Date: June 10, 1994

DIGEST

Government bill of lading notation that the carrier must receive prior consent to remove a shipper's seal and replace it with an equivalent seal, and that application of the seal is not a request for exclusive use, does not in itself constitute a request for exclusive use.

DECISION

Tri-State Motor Transit Company requests review of the General Services Administration's (GSA) settlement disallowing its claim for exclusive use charges on dromedary service it provided in August 1988 to the Department of Defense (DOD) in government bill of lading transaction (GBL) C-6,547,466. While this matter was pending at this Office, GSA issued a Certificate of Settlement allowing exclusive use charges in this transaction, but DOD opposes the allowance. GSA's initial disallowance of exclusive use charges was correct; we reverse its latest settlement.

Tri-State bases its claim that DOD requested exclusive use of the dromedary unit involved upon the restrictive nature of the GBL notation used by DOD for sealing the dromedary:

"SHIPPER SEALS(S) APPLIED. CARRIER MAY REMOVE SEAL(S) AND REPLACE WITH EQUIVALENT SEAL(S) ON PRIOR CONSENT OF CONSIGNOR. IF SEALS ARE BROKEN IN EMERGENCIES, NOTIFY CONSIGNOR AS SOON AS POSSIBLE. CARRIER MUST ANNOTATE SEAL CHANGES ON GBL. APPLICATION OF SHIPPER SEALS(S) DO NOT

¹Exclusive use service means that a vehicle or dromedary furnished will be devoted exclusively to the transportation of the shipment, without the breaking of seals or locks and without the transfer of the lading for the carrier's convenience. A dromedary is a freight box carried on and securely fastened to the chassis of a truck tractor or flatbed trailer which, among other things, is equipped with doors that can be locked and sealed.

CONSTITUTE A REQUEST FOR EXCLUSIVE USE OF
VEHICLE."

To support its claim for exclusive use, Tri-State cites the United States Claims Court's decision in Baggett Transp. Co. v. United States, 23 Cl. Ct. 263 (1991), aff'd 969 F.2d 1028 (Fed. Cir. 1992), in which Tri-State and three other carriers were parties. One of the matters addressed by the court in this decision was whether certain notations placed on GBLs by the government related to the sealing of vehicles or dromedary units also constituted requests for exclusive use. When exclusive use of a vehicle or dromedary unit is requested and provided, additional charges accrue to the carrier.

In Baggett the court found that, with respect to Tri-State, when the government placed a notation on a GBL substantially similar to the one quoted above, it also constituted a request to the carrier to provide exclusive use. However, the court's decision in this regard specifically depended upon the application of a provision in Tri-State's Tariff 4000-B, which had been incorporated into the carrier's tender, stating that exclusive use charges applied whenever a GBL notation in "any way limits or denies" carrier access to the dromedary. The court found that the same GBL notation would not constitute a request for exclusive use in the absence of the applicability of language similar to that in Tariff 4000-B, and it specifically noted the portion of the notation stating that the application of a shipper's seal does not constitute a request for exclusive use.

Tri-State contends that the same provision in its Tariff 4000-B also applies here, and it argues that the court's decision therefore is dispositive. We disagree. After the transactions which were the subject of Baggett had taken place, the Military Traffic Management Command issued Freight Traffic Rules Publication No. 1A (MFTRP 1A) which, thereafter, generally governed freight services provided by all motor freight carriers doing business with DOD. Item 5, paragraph 2 of MFTRP 1A states that individual carrier tenders (like Tri-State's Tender 200 cited on this GBL as the rate authority) "may not be made subject to any other publications for application of the rates and charges therein." Tariff 4000-B and other individual carrier tariffs are examples of those publications.³ To the extent

²In this case, the government does not contend that Tri-State did not actually provide exclusive use service.

³Thus, whereas in Baggett Tariff 4000-B had been incorporated into Tri-State's tender, such incorporation was not available for Tender 200.

that services are covered by MFTRP 1A, like the services here, the contractual relationship between the carrier and shipper now includes the carrier's tender, the GBL with its annotations, and MFTRP 1A, but no longer the carrier's tariff. Compare Baggett at 265.

Items 105, 205, and 325 of MFTRP 1A contain a comprehensive scheme for determining when a GBL annotation related to the sealing of an ordinary dromedary unit would constitute a request for exclusive use. These rules do not include language similar to that in Tariff 4000-B. Accordingly, we reverse GSA's latest settlement and disallow Tri-State's claim.

/s/ Seymour Efros
for Robert P. Murphy
Acting General Counsel

⁴There, the Claims Court noted that the shipper/carrier contract was defined by the tender and any incorporated tariff, and the GBL as annotated.