



Comptroller General  
of the United States

552146

Washington, D.C. 20548

## Decision

Matter of:        Tri-State Motor Transit Company  
File:                B-256084  
Date:                June 10, 1994

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### DIGEST

Reduced shipping charges offered by a carrier pursuant to 49 U.S.C. § 10721 for moving U.S. material cannot be applied to a Government Bill of Lading (GBL) transaction where the GBL included a notation indicating that the shipment was part of a foreign military sale and the government offers no evidence to prove either that the notation was erroneous or that the U.S. government ultimately bore the burden of the transportation charges.

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### DECISION

Tri-State Motor Transit Company requests our review under 31 U.S.C. § 3726(g) (1988) of the settlement of the General Services Administration (GSA) with respect to the company's claim of \$812.40 in additional charges under Government Bill of Lading (GBL) C-8,133,465. We reverse the settlement.

In June 1990, Tri-State transported a shipment of Class A explosives from Dover Air Force Base, Delaware, to the Naval Weapons Station in Yorktown, Virginia. The shipment was imported at Dover AFB, and the GBL contained the Department of Defense Transportation Control Number (TCN) "PGRP4Z 0149 0001 XXX." Tri-State contends that this TCN indicated that the shipment was a foreign military sale (FMS) involving Greece.

Tri-State's initial billing was based on the reduced rates it offers the government pursuant to 49 U.S.C. § 10721 (1988), which permits carriers to propose lower rate schedules for government traffic. Such reduced rates, however, apply only when a direct and substantial monetary benefit flows to the United States; government rate tenders therefore generally cannot be applied to shipments involving FMS, because in such sales the foreign government reimburses the United States for the shipping charges. See Baggett Transportation Co. v. U.S., 670 F.2d 1011 (Ct. Cl. 1982). In FMS cases, the lowest standard charge otherwise available in tariffs filed with the Interstate Commerce Commission by the carrier would apply. *Id.* The additional charges Tri-State seeks are based on public tariff rates.

GSA does not dispute Tri-State's interpretation of the TCN annotation, but points out that the shipment was imported back into the United States, and that so far as it can determine, a repairable FMS item was not involved. GSA appears to be suggesting that the TCN annotation by itself thus does not prove that the shipment involved an FMS in which Greece ultimately reimbursed the United States for the transportation charges. The Military Traffic Management Command (MTMC), which is responsible for managing Department of Defense motor freight transportation, believes the record establishes that the shipment was FMS-related and that the carrier should be paid in accordance with the public tariff.

In these circumstances, we agree with Tri-State that the reduced tender rates for moving government traffic should not be applied. GSA has offered no evidence to contradict the TCN notation as establishing that the shipment was FMS-related, as MTMC confirms. GSA also does not explain how the United States ultimately might have borne the transportation charges despite the shipment's association with the FMS program. See Baggett, supra, at 1013.

GSA's settlement is reversed.

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