



Decision

Matter of: Tri-State Motor Transit Company

File: B-256165

Date: July 29, 1994

DIGEST

Tenders offered to the government for Department of Defense (DOD) shipments may be applied to shipments of ammunition or explosive materials from military installations for transfer to civilian agencies, which paid the shipment charges, with DOD retaining substantial responsibilities with respect to the shipments until receipt by the civilian agencies.

DECISION

Tri-State Motor Transit Company requests review of the General Services Administration's (GSA) denial of four claims for higher tariff rates on shipments in which the Department of Defense, (DOD) was not the sole beneficiary of Tri-State's services.¹ We sustain GSA's settlements.

During the period from November 1989 to April 1990, Tri-State transported each shipment of ammunition or explosives from one military installation to another, or directly to a civilian agency. As evidenced by the "BILL CHARGES TO" block (Block 13) on the government bills of lading (GBL), part or all of each shipment ultimately was intended for the United States Coast Guard or another non-DOD agency.

Tri-State initially billed for each shipment under its Tenders 200 or 342, both offering to DOD rates lower than the applicable tariff. The company now argues that it should not have applied the tenders to these shipments because an agency other than DOD benefitted from the services.

In rejecting Tri-State's claims, GSA's settlement certificates cited our decision 45 Comp. Gen. 118 (1965) which, in part, held that if a GBL is issued by a military installation and charges are billed to and paid for by a

¹The government bills of lading and additional amounts claimed are C-7,666,516 for \$754.75; D-0,703,559 for \$652.01; C-7,622,569 for \$185.50; and C-8,775,501 for \$128.44.

civilian agency, a tender offered to the military agency that issued the GBL generally would be available for application to the shipment because it was, in fact, the military agency that entered into the transportation contract. The agency has the status of an ordinary consignor that would be liable for freight charges if the consignee defaulted.

Tri-State contends that our 1965 decision should not apply. It rejects our characterization of DOD as no more than an "ordinary consignor," because the government (not a specific agency) is liable for the charges, and a carrier can file a claim with the consignee agency without recourse to DOD as consignor. Tri-State also argues that the two tenders in issue were offered pursuant to the Military Traffic Management Command's Freight Traffic Rules Publication No. 1A (MFTRP 1A), which did not exist in 1965, and notes that this publication indicates that its purpose is to articulate the needs of DOD, not those of a non-DOD agency. Tri-State maintains that a carrier may limit the application of a tender to a specific agency, and believes application of the two tenders in issue here should be limited to situations where DOD receives the "actual" and "total" benefit of the lower rates.

We find no merit in Tri-State's arguments. MFTRP 1A states that it applies to "DOD shipments," and we are not aware of any provision in it that limits tenders offered under it to certain types of DOD shipments. Section C, Carrier's Offer and Instructions, of the DOD Standard Tender of Freight Services (MT Form 364-R), upon which Tri-State offered its tender rates, merely stated that those rates were offered "to the U.S. Department of Defense." Although the record does not disclose the basis upon which the ammunition or explosive materials involved here were transferred to the civilian agencies, the fact is that DOD was responsible for effecting the shipments, along with the maintenance of certain controls over the explosives, until they were received by the civilian agencies. In these circumstances, it is reasonable to conclude that these were DOD shipments for purposes of MFTRP 1A and the carrier's tenders.

We sustain GSA's settlements.

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