



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Tri-State Motor Transit Company

File: B-257287

Date: February 14, 1995

DIGEST

A carrier's revised claim for additional charges is untimely under 31 U.S.C. § 3726 when the carrier initially files a claim for separate charges on a second movement under a Government Bill of Lading (GBL) transaction with the Administrator of General Services (or his designee) within 3 years of the original payment on the GBL, and then, on review to this Office, more than 3 years after original payment, the carrier revises its claim to assert that a different and higher line-haul rate should have applied to both movements.

DECISION

Tri-State Motor Transit Company requests that we review the General Services Administration's (GSA) denial of its claim for \$571.40 in additional charges for the services it performed under Government Bill of Lading D-1,372,230. In its request for review, Tri-State revised the basis of its claim and increased the amount of its primary claim to \$848.42. Alternatively, it claims \$37.40 as the amount still owed to it under the claim it filed with GSA. We disallow Tri-State's revised primary claim because it is time-barred under 31 U.S.C. § 3726, but we modify GSA's settlement and allow Tri-State an additional \$37.40 based on its timely original claim.

The carrier transported 860 pounds of explosives between Colts Neck, New Jersey, and Charleston, South Carolina, on August 28, 1990. For reasons that are unclear, Tri-State did not transport another portion of the load weighing 22 pounds which the shipper also intended to ship on August 28. The carrier transported this portion on September 26, 1990. The shipper, Naval Weapons Station (NWS) Earle, treated the September 26th portion as astray freight from the August 28th shipment.

The Navy paid Tri-State \$571.40, as originally billed, on October 5, 1990. The Navy paid an additional \$534 for expedited service on December 11, 1990. The carrier timely filed an additional claim of \$571.40, asserting specifically that the September 26th shipment was not free astray freight from the August 28th shipment. Tri-State argues that under the provisions in the GBL, the shipper accepted responsibility for loading the shipment, and unfortunately, it loaded the shipment into the carrier's dromedary and sealed it without including the additional 22-pound portion. Tri-State believes that Item 65 of the Military Traffic Management Command's (MTMC) Freight Traffic Rules Publication 1A (MFTRP 1A), which is related to astray freight, did not apply because the

September 26th shipment was a separate shipment for which Tri-State earned new charges.

On March 30, 1994, GSA denied Tri-State's claim on the basis that expedited service was inappropriate; it did not address the issue of the separate shipment in its Settlement Certificate. In its report to us on this matter, MTMC stated that the record from NWS Earle was no longer available, but it noted that the shipper had the responsibility to load. In interpreting Item 65 of its Rules Publication, MTMC concluded that freight should not be considered "astray" before it is tendered to the carrier.

In its May 3, 1994, request for review, Tri-State admitted that an expedited service charge did not apply to this transaction, but it amended its claim to set forth a new basis of recovery in the higher amount of \$848.42. The company believes that each of the two shipments was a leg of an export movement, and the rates it billed or claimed previously did not apply to such movements. Instead, higher rates (\$.2683/cwt vs. \$.1655/cwt as billed) applied. Alternatively, Tri-State claims that it is still due \$37.40 from its claim at GSA.

We need not decide the merit of Tri-State's amended primary claim; it is untimely.¹ Under 31 U.S.C. § 3726(g)(1), a carrier may request the Comptroller General to review GSA's settlement if the request is received not later than 6 months after GSA acts or, in relevant part, if it is received within 3 years after accrual of the claim or payment for the transportation (whichever is later). But, when reviewing a disallowed claim, a revision of the basis for the claim, or an increase in amount, is a new claim and must be filed within the statutory period. See Trans Country Van Lines, Inc., B-188647, Dec. 28, 1977; and 39 Comp. Gen. 448, 450 (1959). The basis of Tri-State's amended primary claim is unrelated to the basis of the claim it filed at GSA, and the carrier did not assert the new basis until almost 7 months after the third anniversary of the original payment.

The basis for Tri-State's new alternative claim is no different than its timely claim before GSA. The total charge for the August 28th shipment, less the charge for expedited service, was \$571.40. Tri-State had claimed this amount with GSA for the separate September 26th shipment. Based on the record available, there is no basis to conclude that the September 26th shipment was anything other than a separate shipment. At the same minimum weight (2,500 pounds) and mileage (712), the total charge was the same as the proper charge for the August 28th shipment, \$571.40. Crediting the Department of Defense for the improper charge the Navy paid for expedited service (\$534), DOD still owes Tri-State \$37.40.

We modify GSA's settlement to allow Tri-State an additional \$37.40.

¹Even if it had been timely, we would suspend our consideration of the amended primary claim because Tri-State is litigating the same issue in Actions 94-347 and 94-450 at the United States Court of Federal Claims.

\s\ Seymour Efros
for Robert P. Murphy
General Counsel