



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Tri-State Motor Transit Company

File: B-258336; B-258342

Date: March 7, 1995

DIGEST

In the absence of other supporting evidence, the Department of Defense may pay a carrier's claim for an additional charge for providing an accessorial or special service lacking the required bill of lading annotation from the shipper requesting the service, when the administrative agency confirms that the shipper, in fact, requested and received the service and nothing in the contract prohibits payment.

DECISION

Tri-State Motor Transit Company requests that we review the General Services Administration's (GSA) denials of its claims for additional charges for security tarpaulins at \$100 per shipment on two 1990 government bill of lading (GBL) shipments: D-1,372,431 (B-258336) and D-0,513,094 (B-258342). The issue in dispute is whether the Department of Defense (DOD) actually requested Tri-State to provide security tarpaulins on each shipment prior to or at the time of shipment even though the request for such service was not annotated on the GBL. There is no dispute that tarping occurred. For the following reasons it is our view that Tri-State's claims should be allowed.

GSA denied the claims because DOD did not issue correction notices providing for the tarping of each shipment until more than 3 years after the shipment had moved. As GSA points out, Item 178 of the Military Traffic Management Command's (MTMC) Freight Traffic Rules Publication 1A, the governing authority for these movements, did require the shipper to annotate the GBL with the phrase: "PROTECTIVE TARPING FOR SECURITY PURPOSES REQUESTED." However, MTMC reports to us that the respective shipping offices, in fact, did request Tri-State to provide security tarping even though each failed to annotate the GBL as required. MTMC urges that we allow these claims.

The long delay between the issuance of the GBL and the issuance of the correction notice raises questions concerning the true nature of the correction notice. A correction notice is not valid if it is an attempt to create a fact rather than remedy some discrepancy in fact. See Lee Way Motor Freight, Inc., B-185283, June 22, 1978. However, MTMC, as the agency overseeing the acquisition of motor freight services in DOD, investigated the facts surrounding both shipments, and it found that both shippers, in fact, had requested security tarping for their respective shipments. The administrative office is in a better

position to consider and evaluate the facts, and we generally defer to such findings of fact in the absence of clear and convincing contrary evidence. Compare McNamara-Lunz Vans and Warehouses, Inc., 57 Comp. Gen. 415, 419 (1978).

Tri-State's claims are supported by the findings of the administrative agency, and the record does not contain factual evidence suggesting that the shippers had not requested security tarping prior to or at the time of shipment. Accordingly, we reverse GSA's settlements.

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