



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

Decision

Matter of: Tri-State Motor Transit Company
File: B-258343, B-258458
Date: February 14, 1995

DIGEST

A carrier claiming additional charges based on the actual identity of an article transported years earlier has the burden of establishing the true identity of the article, where, at the time of shipment, the carrier knew from the contents of the bill of lading description prepared by the shipping agency that there were two possibly applicable classification ratings and the carrier failed to inspect the article or inquire concerning its pertinent classification characteristics.

DECISION

The question to be resolved is whether transportation charges for two shipments made by the Department of Defense should be based on a rate applicable to "ammunition, explosives . . ." or on a rate applicable to "Missiles or Rockets, guided with warheads . . ."

Tri-State Motor Transit Company, requests that we review the General Services Administration's (GSA) denial of its claims for additional charges of \$1,283.43 and \$600.72 respectively for services it performed for the Department of Defense under Government Bills of Lading (GBL) C-7,654,012 and D-1,236,868.

Tri-State provided dromedary service on both shipments in June 1990. Both GBLs were prepared by the shippers, and each shipper described the content of its shipment as Explosive Projectile(s), Class A Explosive(s). Both GBLs indicated that Tri-State's Tender 200 was the applicable rate authority. The shippers also annotated each GBL with the Department of Defense Unique (Commodity) Code (DODUC) 064300, and on the first GBL, the shipper added "SUB 1" after the code to indicate that it tendered a commodity that it classified as "Ammunition, explosives, fireworks or chemical munitions, NUBN, Class A . . ." See page 10 of the Revised Instructions for Use of DOD MT Form 364-R, Standard Tender of Freight Services, effective June 1, 1989.

The carrier based its original charges in both shipments on its Tender 200, which included rates for DODUC 064300 Sub 1. However, in its claims, Tri-State argues that its Tender 200 did not apply on either shipment because both consisted of articles properly classified as DODUC 064300 Sub 4; that is, "Missiles or Rockets, guided with warheads . . ." Id.

Tri-State argues that at the time of the shipments the rates in Tender 200 did not apply to Sub 4 material, and that the higher rates in its Tariff 4000B did apply. The carrier also claims exclusive use charges if Tariff 4000B did apply.

We considered a similar situation in Tri-State Motor Transit Company, B-256085, Aug. 5, 1994, and we believe that our decision in that case is dispositive here. Tri-State, as the claimant, must furnish evidence to clearly and satisfactorily establish its claim, and establish the clear legal liability of the United States and its right to receive payment. See I & V Audit Co., B-211465, Nov. 18, 1983. Generally, the presumption that the bill of lading correctly described the article tendered for transportation is not conclusive. The important fact is what moved, not what was billed. See Yellow Freight System, Inc., B-192872, May 7, 1979, as distinguished by Yellow Freight System, Inc., B-197298, Sept. 12, 1980, 80-2 C.P.D. ¶ 193. However, the carrier has the burden of establishing the true description of the article shipped. At the time of receipt of the shipment, the carrier knew from the contents of the GBL description prepared by the shipper that there were two possibly applicable classification ratings and the carrier failed to inspect the article or inquire concerning its pertinent classification characteristics. See Yellow Freight System, Inc., B-197298, *supra*.

Tri-State offered no evidence to establish the exact identity of the articles shipped. It alleged, but did not prove, that the articles were guided missiles. This is contradicted by the shipper's specific notation in one shipment that the item was Sub 1 (ammunition, explosives, fireworks or chemical munitions) and not Sub 4 (a guided missile with a war head). It is also contradicted by the "Class A Explosive(s)" description on both shipments, which is associated with Sub 1 materials. There is no indication that, at the time of the shipments, Tri-State objected to the shippers' classifications, sought to inspect either shipment, or inquired about the classification characteristics of either one. In view of the wording of the GBLs, which is the only available evidence on the record, we see nothing which suggests that the content of either shipment was a guided missile with a warhead, rather than just Class A Explosive(s) as stated on the GBLs.

Since there is no evidence that Tariff 4000B applied, we will not consider Tri-State's claim for exclusive use services. We affirm GSA's settlements.

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