



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: United Van Lines, Inc. & Ramar Moving Systems, Inc.

File: B-258491

Date: April 18, 1995

DIGEST

Item 510 of the Military Traffic Management Command's Freight Traffic Rules Publication No. 1A (MFTRP 1A) provides rules for the movement of all Department of Defense "third proviso" items within the scope of 49 U.S.C. § 10102(11)(C). When a carrier's individual rate tender offered under MFTRP 1A covers such third proviso items and offers the lowest charge available for the service provided, it will apply to the exclusion of higher charges offered under a household goods bureau tender even if agency officials believed that the bureau tender would apply.

DECISION

United Van Lines, Inc. and its agent Ramar Moving Systems, Inc., hereafter collectively referred to as Ramar, request review of the General Services Administration's (GSA) audit action with respect to Government Bill of Lading (GBL) transaction D-0,926,501. In this decision, the parties ask us to decide which of two mutually exclusive rate authorities applied to this and similar shipments.¹ For the following reasons the carrier's individual rate tender, which offers the lowest charge available, is applicable.

BACKGROUND

On April 17, 1990, Ramar received 4 items from the David Taylor Research Center in Carderock, Maryland and transported them to the Naval War College Museum in Newport, Rhode Island. The GBL described the 4 items as: "MODEL BOATS w/tables & misc. boxed painting (oil)." The GBL also stated that the "MODELS ARE HAND CRAFTED TO EXACT SCALE AND DETAIL. ARE EXTREMELY DELICATE: TO BE REGARDED AS 'OBJECT D'ART.'" The GBL cited a released value not exceeding

¹Ramar notes that GSA's audit actions and overcharge amounts in the following transactions may be affected by this decision: D-,253,450 (\$1,294.69); D-0,926,765 (\$3,716.19); D-0,926,752 (\$4,102.52); and D-1,503,834 (\$2,386.65).

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".60"² cents "per pound" and referenced National Motor Freight Classification (NMFC) number 137580 as the commodity classification for the 4 items. The rate authority block is not legible. Ramar delivered the 4 items to the Naval War College on April 19, 1990. In May 1990, the firm billed the Navy (and the Navy later paid) \$2,097.62 citing Household Goods Carriers' Bureau, Domestic Household Goods Government Rate Tender (GRT) 1-S, ICC HGB 415-B, as the applicable rate authority.

During its audit of this transaction, GSA found that United Van Lines' Tender 50711 applied to this transaction in lieu of GRT 1-S. Referring to Department of Defense Unique Commodity 999920, Tender 50711 provided charges for transporting "Third Proviso Commodities As Defined in Item 510 of MFTRP No. 1-A RVNE \$2.50 Per Pound." MFTRP No. 1-A is the Military Traffic Management Command's (MTMC) Freight Traffic Rules Publication 1A (MFTRP 1A). In turn, Item 510(2) of MFTRP 1A defined "third proviso" commodities as "those commodities described in 49 U.S.C.A. § 10102(11)(c)." 49 U.S.C. § 10102(11)(C) describes such commodities as follows:

"(C) articles, including objects of art, displays, and exhibits, which because of their unusual nature or value require the specialized handling and equipment usually employed in moving household goods and such other similar articles as the Commission may provide by regulation; except that this subparagraph shall not be construed to include any article whether crated or uncrated, which does not, because of its unusual nature or value, require the specialized handling and equipment usually employed in moving household goods."

Under Tender 50711, GSA calculated total charges of \$1,116.60; this resulted in an overcharge of \$1,042.06. MTMC, the issuing authority of MFTRP 1A, agrees with GSA's application of Tender 50711 except that it found no basis for Ramar's origin labor charge of \$87 which GSA allowed.

RAMAR'S POSITION

Ramar disagrees with GSA's application of Tender 50711. First, the President of Ramar Moving Systems, Inc. noted that he transported the same items (at another company) for the Navy for 20 years as model boats at \$.60 per pound released value, and he billed under the same rate authority (GRT 1-S and its predecessors). Thus, Ramar's position is that the Navy selected a released value not to exceed 60 cents per pound based on an accepted classification for these items which was tied to their characteristics and which reflects the carrier's risk in transporting them. As a result Ramar argues that

²The carrier noted that ".60" cents is nonsensical. For purposes of this decision, we agree that the transportation officer did not intend to release the shipment to only .6 of a cent, and he probably intended to release it to 60 cents or \$.60.

Tender 50711 did not apply because under it no party could have decreased Ramar's liability to the level noted on the GBL. Ramar argues that GRT 1-S is the only rate authority that is consistent with this released value, and that GRT 1-S, not Tender 50711, covers the transportation of these items which are classified under NMFC number 137580.

Ramar argues that models, mockups and prototypes are not included in the definition of third proviso goods under Item 510, but that they are included in the definition of third proviso goods for item 100 of GRT 1-S. Item 510 does not specifically mention models or mockups. In support of this argument, Ramar contends that instructions to the movers emphasizing the delicate nature of the models cannot contradict the specific classification noted on the GBL (NMFC Number 137580 - Model Boats).

The firm provided us a statement from Dana Wegner, Curator of Ship Models at the David Taylor Research Center. Mr. Wegner stated that his collection of over 1,800 models includes "a museum-quality exhibition ship model" of every new type of warship built since 1883. He says that some models were built as early as 1813. He describes the models as "highly detailed artifacts" which are considered by the experts to be "examples of some of the finest craftsmanship in the world." Mr. Wegner believes that most models, "because of their age and historical significance, cannot be replaced." While some are valued at a few thousand dollars, Mr. Wegner says that several are "conservatively valued" at over \$13 million. His models are designated as a National Treasure.

Mr. Wegner's comments about the special care required in shipping these items likewise is significant. Describing the items as "precious" and "fragile," he says that they are shipped uncrated either in their glass display cases or with no covering. Despite the weight often involved, the items must be lifted and secured manually, without forklifts. Often it is necessary for the movers to actually touch the models and to disassemble/re-assemble display cases. Only trained personnel with requisite skill and precision can move them.

ANALYSIS

GSA correctly applied Tender 50711 to this shipment. Tender 50711 does not "specifically [state] that it applies only to the shipment of commodities no. 999920" as Ramar contends, but this number is listed next to the commodity description in paragraph 14 of Tender 50711 and is entirely consistent with it. (Emphasis in original.) Both expressly cover the entire scope of third proviso goods in 49 U.S.C. § 10102(11)(C). The copy of DOD's tender filing instructions provided by Ramar indicate that DOD Unique Commodity Code 999920 involves "Third proviso commodities as defined in

Item 510, MFTRP No. 1A, released value not exceeding \$2.50 per pound."³ The commodity description in Tender 50711 states that it applies to "Third Proviso Commodities As Defined in Item 510 of MFTRP No. 1-A RVNE \$2.50 Per Pound."

We find nothing in Item 510 which limits its application to some types of third proviso goods and not to others. The language of Item 510 clearly is coextensive with the limits of the statutory authority in 49 U.S.C. § 10102(11)(C); *i.e.*, "those commodities described in 49 U.S.C.A. § 10102(11)(c)." Subsection 10102(11)(C) does not mention models or mockups, but even Ramar does not dispute that models and mockups may be included in this subsection. Moreover, Mr. Wegner's comments reasonably suggest that these items are, in fact, objects of art, displays, and/or exhibits, which because of their unusual nature or value required the specialized handling and equipment usually employed in moving household goods. Therefore, under either theory, the 4 items in dispute were included within the meaning of Item 510.

Ramar's emphasis on the appearance of item 137580 of the National Motor Freight Classification (NMFC) on the GBL is misplaced. It is well established that charges are based on what was moved, not what was billed. See Trans Country Van Lines, Inc., 53 Comp. Gen. 868, 869 (1974). NMF 100-P, the version of the NMFC in effect at the time of the movement, offered a less-than-truckload rating of 200, and a truckload rating of 100, for model boats in barrels or boxes carried by general commodity carriers. As indicated above, the items transported here were not in boxes or barrels. GRT 1-S was not a general commodity carrier tariff or tender in which NMFC number 137580 would have had some relevance, and it does not appear that Ramar had applicable Class 200 or 100 tariff or tender rates in effect. Thus, the reference to NMFC item 137580, even if the shipper added it when it prepared the GBL, is not as probative as other factors in determining the true nature of the commodity shipped. Clearly, Ramar moved these items as third proviso goods.

Because, as we demonstrated, Tender 50711 applies, Ramar's reliance on the released value annotation on the GBL is misplaced. Notwithstanding any confusion about whether the annotation should have been written as "60" cents instead of ".60" cents, we note that Item 2 of GRT 1-S generally provided for a released value on a per pound per article basis, not the per pound basis contained on the GBL. Thus, the annotation is not as consistent with the GRT as Ramar suggests. Furthermore, a shipment is made at the restricted valuation specified in the tariff, tender or other rate authority "under which the lowest rate is available, unless otherwise indicated on the face of the GBL." See 41 C.F.R. § 101-41.302-3(e). This GBL provided for a released valuation which was lower than that required by the applicable rate authority, and to that extent, was contrary

³Ramar provided us a copy of the instructions issued June 8, 1994, effective June 24, 1994, for this 1990 movement, but they are illustrative of the instructions in effect at the time of movement.

to general principles of transportation law that a carrier properly limits its liability by offering customers an opportunity to choose between higher or lower liability through correspondingly greater or lesser charges. See O.K. Trucking Company, 53 Comp. Gen. 747, 748 (1974). No agent of the government has authority to accept higher charges or lower benefits (such as lower released value) without appropriate consideration. See 65 Comp. Gen. 563, 568 (1986).

In response to MTMC's argument that there was no basis for the origin labor charge, GSA informed us that applicable carrier loading and unloading (LU) charges were available at the time of shipment through United Van Lines' Accessorial Services tender, Tender 2000A. While it appears that such charges were available, we do not understand how the application of the LU rates in Tender 2000A resulted in a \$87 charge. We remand this matter to GSA for the resolution of this issue; otherwise we affirm GSA's settlement.

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