



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

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B-177354

June 21, 1973

United Transportation Company  
272 Nashua Street  
Lowminster, Massachusetts 01453

Attention: Nicholas Martinez

Gentlemen:

We refer again to your letter of October 25, 1972, requesting review of the propriety of a deduction of \$1,099.84 made by our Transportation and Claims Division in payment of your bill No. 950. The deduction was made to recover charges collected by you for the transportation during July and August 1970 of eight truckload shipments of firearms or parts from Worcester, Massachusetts, to the Military Ocean Terminal, Bayonne, New Jersey (hereafter MOTBY), in excess of those considered applicable under your tender I.C.C. No. 8 which applies between Worcester, Massachusetts, and "Piers located in \* \* \* New Jersey \* \* \*."

For these transportation services you collected freight charges of \$2,797.92 apparently based on the class rates found in New England Motor Rate Bureau, Tariff 3-K, MF-I.C.C. A-255. When reached in the audit (see section 322 of the Transportation Act of 1940, as amended, 49 U.S.C. 66), our Transportation and Claims Division determined that lower charges of \$1,698.08 were applicable to the shipment. The lower charges are based on United Transportation Section 22 Quotation I.C.C. No. 8, effective January 15, 1962, which names a rate of \$.88 per 100 pounds, truckload minimum weight 20,000 pounds, on shipments of firearms or parts MOTBY, from Worcester, Massachusetts, to Piers located in New York and New Jersey and the Brooklyn Port of Embarkation. You were notified of the overcharges totaling \$1,099.84, and after your protests were duly considered, the amount of the overcharges was collected by deduction (49 U.S.C. 66).

It is your contention that the MOTBY is not a pier for the purposes of your tender, and only that portion used for the loading and unloading of vessels qualifies as such.

Tenders such as I.C.C. No. 8 are rate quotations made to the United States by carriers under section 22 of the Interstate Commerce Act, as amended, 49 U.S.C. 22, made applicable to motor

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carriers by 49 U.S.C. 317(b) and are continuing unilateral offers to perform transportation services at named ratings or rates subject to the terms and conditions stated therein. C & H Transportation Co. v. United States, 193 Ct. Cl. 872, 496 F. 2d 480 (1971). The offer ripens into an agreement or contract when accepted by the Government by making any shipment or settlement under its terms. As such, it is subject to interpretation according to established principles of contract law. In determining the intention of the parties to the contract, a tariff is to be construed as having the meaning which it would reasonably have to such shippers. Where words in a contract, if construed literally, would produce an unfair, unusual or improbable result, such construction is to be avoided if possible. Union Pacific Railroad Company v. United States, 152 Ct. Cl. 523, 532.

It is not only incumbent upon the drafter of the tariff to be precise; it is vital to the interest both of the carrier and the shipper that the tariff be free from ambiguity or doubt. Where a tariff is ambiguous or doubtful, it should be construed against the carrier who prepared it. Peter Bratti Associates, Inc. v. Prudential Lines, Ltd., 8 F.M.C. 375 (1964); United States v. Strickland, 200 F. 2d 234 (1952); United States v. Hellenic Lines Limited, F.M.C. Docket 70-44 (1970).

Applying these principles here, it is clear that the \$.88 rate in Tender I.C.C. No. 8 is applicable.

Information developed by this Office indicates that the shipments were actually delivered to Military Ocean Terminal, Bayonne, New Jersey, as stated in your letter of July 24, 1972. We were informed that all freight consigned to the Transportation Officer, Military Ocean Terminal, Bayonne, New Jersey, is delivered to the pier area, and since the shipments in question were delivered in U.S. Line containers, they were delivered to the container storage area, which is located within the pier operations area of the ocean terminal.

Accordingly, and because the deduction action taken by our Transportation and Claims Division is not otherwise shown to have been erroneous, it is sustained.

Sincerely yours,

Paul G. Dembling

For the Comptroller General  
of the United States