

Kenneth Siegel
Transp.

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DECISION



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

FILE: B-186314

DATE: January 12, 1977

MATTER OF: Navajo Freight Lines, Inc.

DIGEST: In dispute over factual questions of the size and type of vehicle on which a shipment was transported, the rule of the General Accounting Office is to accept the administrative report of those facts as correct in the absence of sufficiently convincing contrary evidence.

Navajo Freight Lines, Inc. (Navajo), by correspondence of April 8, 1976, requests review by the Comptroller General of the United States of a deduction action taken by the former Transportation and Claims Division (TCD) of the General Accounting Office, now a part of the General Services Administration. See the General Accounting Office Act of 1974, 88 Stat. 1959, approved January 2, 1975. A deduction action constitutes a settlement within the meaning of Section 201(3) of that Act, 49 U.S.C. 66(b) (Supp. V 1975) and of 4 C.F.R. 53.1(b)(1) and 53.2 (1976). Navajo's April 8, 1976, communication was in substantial compliance with the requirement of 4 C.F.R. 53.3 and 53.4 (1976), establishing the carrier's right to a review of a GSA settlement by the Comptroller General.

TCD's action was taken on a shipment of electronic guidance control apparatus transported in two trailers (Nos. 510 and X520A) on Government bill of lading No. C-4879250, dated April 19, 1972, from Avondale, Colorado to Oakland, California. The part of the shipment in each trailer weighed 18,900 pounds and consisted of 18 crates. The bill of lading shows that two 40-foot trailers were ordered and furnished and that the carrier furnished pick up service at origin.

Navajo collected freight charges of \$1,944 on the shipment. However, following an audit of the freight charges TCD issued a Notice of Overcharge on October 11, 1973, for \$516. When Navajo failed to make a voluntary refund of the overcharge, it was deducted from other monies due the carrier by the Government. 49 U.S.C. 66(a) (Supp. V 1975).

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Navajo asserts that the deduction action was improper and that it is entitled to the transportation charges originally assessed and collected.

Navajo and GSA agree that Item 2260 of Rocky Mountain Motor Tariff Bureau, U.S. Government Quotation 19-A, I.C.C. 26, applies to the shipment. Item 2260 is subject to Item 620 of the same quotation. Item 620 prescribes minimum weights based upon lineal feet of the loading space utilized on each vehicle and reads in part:

"Where specific reference is made hereto, and except as otherwise provided, shipments, the extreme dimension of which exceeds four (4) feet in width, shipped from points as indicated under COLUMN A herein below, destined to points as indicated under COLUMN B herein below, will be subject to a MINIMUM WEIGHT PER LINEAL FOOT OF the loading space utilized on a trailer as indicated under COLUMN C herein below, but no less than the minimum weight specified, or actual weight of the shipment if greater at the rate applicable to the shipment."

* * * * *

The minimum weight per lineal foot indicated under Part I, column C, of Item 620 applies to this shipment and is 750 lbs.

Exception 1, Item 620 reads:

"When a shipment consists wholly or in part of one or more of the commodities named below, each truck-tractor-trailer combination require(d) for the transportation thereof shall be considered as being loaded with a truck-load and loading thereon shall be treated as a separate shipment and charged at the applicable rate and actual weight, subject to a minimum weight of not less than fourteen thousand (14,000) pounds per truck used or the applicable minimum weight per lineal foot as provided in Parts I and II, of this item, whichever is greater."

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The shipment consisted of commodities named below the exception.

Exception 2, Item 620 reads:

"Shipments which utilize in excess of thirty-two (32) feet of the lengthwise loading space of a trailer shall be considered as loaded to the capacity of the trailer, and the applicable weight per lineal foot shall be computed on the basis of forty (40) feet."

Navajo alleges that each vehicle contained 18 crates, each crate 12'4" long, 2'5" wide and 3'7" high, loaded three long, three wide and two high thereby using 37 feet of lineal floor space in each 40-foot trailer ordered and used. The use of 37 feet of lineal floor space of each trailer would result in the application of Exception 2 of Item 620 of Quotation 19-A; this requires the computation of the applicable minimum weight on a 40-foot basis which equals 30,000 pounds. If a 30,000-pound minimum weight is applied to each vehicle the freight charges on the shipment as derived from Item 2260 of Quotation 19-A would be \$1,944 (\$972 for each vehicle), or the amount assessed and collected by Navajo.

The Military Traffic and Management Command (MTMC) also reports that each vehicle contained 18 crates. However, MTMC reports that the dimensions of the crates were 12'3-1/2" long, 2'5" wide and 3'6-1/8" high, and that they were loaded two long, three wide and three high on two 26-foot rag-topped vans, supplied for carrier convenience. This means that a little more than 24-1/2 lineal feet of loading space was utilized on each of the 26-foot vans. Under Item 620, this length results in the use of a 20,000-pound minimum weight which, when applied to each vehicle, yields freight charges on the shipment of \$1,428. (\$714 for each vehicle), derived from Item 2260 of Quotation 19-A, and an overcharge of \$516.

There is a conflict here between the facts alleged by the carrier and those in the administrative report. Disputed are the way in which the crates were loaded and the type of vehicles used to transport the shipment. These facts are pertinent to a determination of the lineal feet of loading

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space used, a factor critical to the proper determination of the applicable freight charges.

Although the bill of lading shows clearly that two 40-foot trailers were ordered and furnished, MTMC states "that the GBL should have been annotated 'one 40 foot flatbed trailer ordered and two 26 foot rag top vans furnished for carrier convenience.'" Moreover, it is undisputed that trailer numbers 510 and x520A were actually furnished and used to transport the shipment. And the U.S. Army Depot Activity Pueblo advises that "Navajo was contacted * * * and Mr. Chuck Bressler confirmed that trailer numbers 510 and x520A were 26-foot open-top pups."

Navajo has furnished copies of photographs purporting to show the actual two trailers used for this shipment. But the copies are practically illegible and do not definitely show the length of the trailers used.

It long has been the rule of the General Accounting Office that when a dispute of fact is thus raised, it accepts the administrative report as correct in the absence of sufficiently convincing contrary evidence. 51 Comp. Gen. 541, 543 (1972); 46 Comp. Gen. 740, 744 (1967).

Navajo has not come forward with evidence of a convincing nature to overcome the presumption of correctness attached to the administrative report, particularly evidence rebutting the administrative report of the method of loading the crates on two 26-foot rag-topped vans. Absent such evidence the General Accounting Office must accept the administrative report as correct.

In these circumstances, the settlement action of the General Services Administration is sustained.

Deputy

R. J. K. Hill
Comptroller General
of the United States