DECISION

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

FILE: B-187282 DATE: December 22, 1976

MATTER OF: Navajo Freight Lines

DIGEST: A shipper is entitled to construe a tariff under normal rules of contract construction so as to entitle itself to the lowest applicable rate published in a tariff.

Navajo Freight Lines, Inc. (Navajo), by correspondence of June 23, 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. 1950, 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 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 less truckload shipment of miscellaneous freight weighing 9,368 pounds which was transported in June 1973 from Andover, Massachusetts, to Avondale, Colorado, under Government bill of lading (GBL) No. H-0754437.

The carrier was paid $1,423.11 for this transportation prior to audit. See 49 U.S.C. 66 (1970). Its charges were based on less truckload (LTL) ratings published in the National Motor Freight Classification A-13 (NMFC A-13) and on class rates provided in Rocky Mountain Motor Tariff Bureau Tariff ICC RMB 303 (Tariff 303).

Following an audit, TCD issued a Notice of Overcharge for $501.51 based on lower charges of $921.60 derived from Navajo's Tender ICC No. 1452. The tender was issued by Navajo under Section 22 of the Interstate Commerce Act, as amended, 49 U.S.C. 22 (1970), made applicable to motor carriers by Section 217(b) of the Act, 49 U.S.C. 317(b); it

provides a class 50 freight, all kinds, truckload rating, minimum weight 18,000 pounds per vehicle used, which applies to all types of freight except for certain listed commodities which collectively are called contraband. When Navajo failed to refund the overcharge, it was collected by deduction from monies otherwise due the carrier.

Navajo protests the deduction action urging that 8,490 pounds of set up steel shelving, one of the five commodities included in the shipment, is listed as contraband in its Tender 1452.

The contraband list in Navajo's Tender 1452 includes "Furniture, rated class 100 LTL and higher." According to item 82360 of NMFC A-13, the LTL rating applicable to the steel shelving is class 150. Thus, Navajo's contention is correct.

However, upon reconsideration GSA found that charges lower than those originally collected by Navajo are applicable to the shipment. The lower charges are derived from the mixed shipment rule in item 645 of Tariff 303. Paragraph (3) of item 645 reads:

> "When the aggregate charge upon the shipment is made lower by assessing the volume or truckload rate and minimum weight for one or more of the articles and the LTL or AQ rate or rates on the other article or articles, the shipment will be charged for accordingly. In no case will the weight of the articles charged for at LTL or AQ rates be used to make up the minimum weight of the mixed shipment."

This provision permits the application of a class 85 truckload rating and truckload minimum weight of 10,000 pounds to the steel shelving and class 85 less truckload ratings to the balance of the articles in the shipment. The total charge resulting from the application of the rates assigned to those ratings is $961.58.

In construing the language of a tariff, the parties must resort to the normal rules of contract construction.

Brown Lumber Co. v. Louisville & N.R.R., 299 U.S. 393, 397 (1937). The shipper may construe the provisions of a tariff in the manner which provides the lowest charge. Atlantic Coast Line R.R. v. Atlantic Bridge Co., 57 F.2d 654, 655 (5th Cir. 1932); Burrus Mill & Elevator Co. v. Chicago R.I. & P.R.R., 131 F.2d 532 (10th Cir. 1942); and Strickland Transportation Company v. United States, 334 F.2d 172, 176 (5th Cir. 1964). The Government is thus entitled to the lower charges resulting from the General Services Administration's use of the mixed shipment rule in item 645 of Tariff 303.

The charges collected by Navajo were $1,423.11. The applicable charges are $961.58. As a result of the deduction action Navajo has been paid $921.60 and a balance of $39.98 is due the carrier. On October 8, 1976, GSA issued a Statement of Settlement of Claim (No. TK-008593) allowing Navajo the amount due, $39.98.

GSA's settlement action is consistent with this decision and it is sustained.

Deputy Comptroller General
of the United States