

04759

DECISION



R. H. [unclear]
7. [unclear]

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

FILE: B-189100

DATE: December 27, 1977

MATTER: Yellow Freight System, Inc.

DIGEST:

1. Carrier has burden of proving correctness of transportation charges originally collected on shipment. See cases cited.
2. Presumption that bill of lading correctly describes the article tendered for transportation is not conclusive; important fact is what moved, not what was billed. See cases cited.
3. In reviewing GSA settlements GAO must rely on written record and, in the absence of clear and convincing contrary evidence, will accept as correct facts in GSA's administrative report. Carrier has burden of affirmatively proving its case.

Yellow Freight System, Inc. (Yellow Freight), in a letter dated May 11, 1977, requests the Comptroller General of the United States to review the General Services Administration's (GSA) action on its bill for transportation charges. See Section 201(3) of the General Accounting Office Act of 1974, 49 U.S.C. 66(b) (Supp. V, 1975). GSA, after auditing the bill, notified Yellow Freight of an overcharge of \$2,634.38 which in the absence of refund was collected by deduction. 49 U.S.C. 66(a). Under regulations implementing Section 201(3) of the Act, a deduction action constitutes a reviewable settlement action [4 C.F.R. 53.1(b)(1) and 53.2 (1977)]; Yellow Freight's letter complies with the criteria for requests for review of that action. 4 C.F.R. 53.3 (1977).

GSA reports that its action was taken on a shipment weighing 8,750 pounds, described on Government bill of lading (GBL) No. A-6018184 as 25 "CONTAINERS, SHIPPING, O/T CYL SU [other than cylindrical, set up] [at] 350 #" and transported by Yellow Freight in April 1974 from the Naval Air Station, Norfolk, Virginia, to the Naval Air Station, San Diego, California. The bill of lading also contained in parentheses the notation "NMFC-A 10-41050."

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Yellow Freight collected freight charges of \$3,567.18 on the shipment. It used a rate which apparently was based on the rating in item 41050 of the National Motor Freight Classification (NMFC) which is in accord with the notation on the GBL and which covers "Containers or Vans, shipping other than cylindrical. . . . capacity not less than 135 cubic feet." Because the applicability of this rating depended in part on the cubical capacity of the containers, GSA asked the shipper for further information. The shipper replied: "CONTAINERS WERE STEEL USED, CORRECT NMFC ITEM NUMBER IS 41060, CONTAINERS STEEL 16 GAUGE OR THICKER, NOI, NOT LESS THAN 165 GALLONS OR 22 CUBIC FEET CAPACITY."

Based on this information, GSA issued to Yellow Freight a notice of overcharge for \$2,634.38 and sent with it a copy of the information from the shipper.

Yellow Freight protested the overcharge. It stated in part:

"Please note item 41060 applies only when cylindrical and according to all information submitted these were not cylindrical and item 41050 should apply as rated."

GSA responded in part:

"Concerning questions of disputed fact between a claimant and the administrative officers of the Government, the unbroken rule of the accounting officers is to accept the statements of facts furnished by the administrative officers. See in this connection, 14 Comp. Gen. 927, 929 and 16 Comp. Gen. 325, 329."

GSA then collected the overcharge by deduction and Yellow Freight requests review of that action.

In its request for review Yellow Freight questions GSA's reliance on statements by Government administrative officers to resolve disputed questions of fact. The carrier points out that the Interstate Commerce Commission requires shipments to be rated as shown on the original bill of lading and believes that the administrative statement used here by GSA was a mere categorical statement which it states is not acceptable evidence to change a commodity description.

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We remind Yellow Freight that it has the burden of proving the correctness of the freight charges it originally collected on the shipment transported under GBL No. A-6018184. United States v. New York, New Haven & Hartford RR, 355 U.S. 253 (1957); Pacific Intermountain Express Co. v. United States, 167 Ct. Cl. 266, 270 (1964). Here, as part of that proof, Yellow Freight relies on the description shown on the original bill of lading, which describes the containers as other than cylindrical. However, the presumption that a bill of lading correctly describes the article tendered for transportation is not conclusive; the important fact is what moved, not what was billed. Penn Facing Mills Co. v. Ann Arbor RR, 162 I.C.C. 614, 615 (1932); Buch Express, Inc. v. United States, 122 Ct. Cl. 772 (1955). GSA, in reliance on this rule and in discharging its audit responsibilities under 49 U.S.C. 66(a), requested clarifying information from the shipper. GSA believed that the information supported its use of a freight rating applying to cylindrical containers.

We agree with Yellow Freight that the information furnished by the shipper and used by GSA to support its overcharge does not adequately establish the fact that the containers were cylindrical; it is merely the shipper's opinion that the containers should be rated under NMFC item 41060 which applies to cylindrical containers. However, GSA now has obtained additional evidence consisting of a photograph and a further report from the shipper which establishes that the containers were, in fact, cylindrical. Copies of the photograph and report will be furnished to Yellow Freight. Based on this additional evidence we agree with GSA that NMFC item 41060 applies to the shipment transported under GBL No. A-6018184.

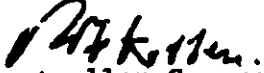
GSA also reports that NMFC item 41050, relied on by Yellow Freight, applies to shipments of containers with a capacity of not less than 135 cubic feet, whereas the containers shipped on GBL No. A-6018184 had a capacity of 52 cubic feet. We agree with GSA that in any event NMFC item 41050 would not apply to the shipment.

Yellow Freight's concern about GSA's reliance on statements of Government administrative officers to resolve disputed questions of fact is unfounded. We believe that GSA follows the "unbroken rule of the accounting officers" because in its audit of paid transportation bills and in its examination and settlement of claims [49 J.S.C. 66(a)] it relies solely on the written record with no opportunity, as in a court proceeding, to obtain sworn testimony, cross-examine witnesses, or to use more formal fact finding procedures. See 41 C.F.R. 101-41.604 (1976).

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In the review of GSA claims settlements authorized by Section 201(3) of the General Accounting Office Act of 1974, 49 U.S.C. 66(b), we also must rely on the written record, and, in the absence of clear and convincing contrary evidence, we will accept as correct the facts set forth in GSA's administrative report. The carrier seeking review, however, has the burden of affirmatively proving its case.

Based on the present record, GSA's settlement action on the shipment moving under GBL No. A-6018184 is correct and it is sustained.


Deputy Comptroller General
of the United States