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DECISION

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

FILE: B-189252 DATE: November 15, 1977

MATTER OF: Yellow Freight System, Inc.

DIGEST:

1. Since carrier has burden of proving applicability of its freight charges, bare assertion that carrier's manner of loading shipment subjected it to higher charges based on capacity load rule of applicable tariff is insufficient where another feasible manner of loading would not subject shipment to the higher charges based on that rule.

2. Carrier not entitled to freight charges based on capacity load rule where vehicle furnished by carrier has smaller loading area than those defined in the rule.

Yellow Freight System, Inc. (Yellow Freight) requests review by the Comptroller General of the United States of the General Services Administration's (GSA) action in collecting an alleged transportation overcharge by deduction from freight charges otherwise due the carrier.

A deduction action constitutes a settlement within the meaning of Section 201(3) of the General Accounting Office Act of 1974, 49 U.S.C. 66(b) (Supp. V 1975), and of 4 C.F.R. 53.1(b)(1) and 53.2 (1977). Yellow Freight's request is in compliance with the provisions of 4 C.F.R. 53.3 (1977) and the request for review is granted.

GSA's action was taken on a shipment tendered to Yellow Freight on September 16, 1974, under Government bill of lading No. K-6655267. The shipment was described on the bill of lading as "2 S MACHINERY OR MACHINES NOI * * *." The larger skid measured 15' 1" long by 5' wide by 7' 6" high; the other measured 10' 6" long by 2' 3" wide by 1' 9" high.

The shipment weighed 13,800 pounds, was loaded into the carrier's trailer No. 6438 and was transported by the carrier from Watervliet, New York, to Pico Rivera, California.

Yellow Freight collected freight charges of $1,804.80 on the shipment. GSA in its audit discovered an overcharge of $330.30. The carrier protested the audit action and, dissatisfied with GSA's response to its

protest, asked for our review. Meanwhile, the imminent tolling of the applicable statute of limitations forced GSA to cause the overcharge to be collected by deduction. 49 U.S.C. 66(a) (Supp. V 1975).

GSA states, and Yellow Freight apparently agrees, that the applicable transportation charges are derived from U. S. Government Quotation ICC RMB 33, issued under 49 U.S.C. 317 on behalf of Yellow Freight and other motor carriers by the Rocky Mountain Motor Tariff Bureau, Inc. The quotation, among other things, is governed by Rocky Mountain Motor Tariff Bureau, Inc., Tariff ICC RMB 120, MF-ICC 198 (Tariff ICC RMB 120). One of the rules in that publication is item 610-5, titled "MINIMUM CHARGE - CAPACITY LOADS." (GSA originally contended that in any event item 610-5 was not applicable to shipment; it has abandoned that contention.)

The issue here is simply stated: Yellow Freight contends that item 610-5--the capacity load rule--applies to the shipment; GSA contends that it does not and GSA's contention is the basis for the overcharge.

GSA says that when this shipment was transported item 610-5 read in pertinent part:

"MINIMUM CHARGE - CAPACITY LOADS
(Subject to Notes 1 Thru 5)

(1) When any shipment that is subject to LTL, Volume, or Truckload rates is tendered to the carrier and occupies the full visible capacity of one or more vehicles, the minimum charge for that quantity of freight loaded in or on each vehicle will be the charge based on the truckload or volume minimum weight, at the truckload or volume rate applicable.

* * * * *

Note 1 - The terms 'occupies the full visible capacity,' 'loaded to capacity' or 'capacity load' refers [sic] to the extent each vehicle is loaded and means [sic]:

(a) That quantity of freight which, in the manner loaded so fills a vehicle, that no additional article in the shipping form tendered identical in size to the largest article in the shipment can be loaded in or on the vehicle; or

(b) That maximum quantity of freight that can be legally loaded in or on a vehicle because of the weight or size limitations of State or regulatory bodies.

Note 2 - The term 'vehicle' as used in this item means a trailer, or combination of trailers of not less than 2400 cubic feet capacity, or with 310 square feet of floor space if flat bed or open top equipment is requested or furnished, propelled or drawn by a single power unit and used on the highways in the transportation of property. On request of the shipper, the carrier shall endeavor to furnish the largest vehicle available. The shipper will have the right to refuse the vehicle offered, but once loading has begun, provisions of this item will apply.

[Notes 3 through 5 not involved]

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Yellow Freight furnished with its request for review some statistics on its trailers. These indicate that trailer No. 6438 is a 40-foot open top trailer with these inside dimensions: 39 feet, 7 1/4 inches long, 91 1/2 inches wide and 98 7/8 inches high.

The carrier argues that because of the height of the larger skid (90 inches), the two skids in the shipment could not be loaded one on top of the other and that when loaded end to end the two skids measured 25 feet, 7 inches long. The carrier concludes that the capacity load rule applies because "* * * no additional article in the shipping form tendered identical in size to the largest article in the shipment" could have been loaded on the 40-foot trailer. The carrier means that when the two skids are loaded end to end another skid equal in size to the larger skid (15 feet, 1-inch long) could not have been loaded on the trailer.

GSA disagrees. It argues that the two skids could have been loaded side by side using a total width of 87 inches (the inside width of the trailer is 91 1/2 inches) and that another skid equal in size to the larger skid (15 feet, 1-inch long) could have been loaded end to end with the larger skid on the trailer.

We agree with GSA.

The bill of lading indicates that the carrier performed pick-up services at origin. This is a strong indication that the manner of loading trailer No. 6438 was determined by the carrier at its terminal. This is important because the definitions in Note 1 of item 610-5, particularly the phrase "in the manner loaded so fills a vehicle," dictate whether a shipment is to be considered and charged for as a "capacity load." However, other than the mere assertion by Yellow Freight that the two skids were loaded end to end in the trailer, the record contains no proof that the shipment, in fact, was loaded in that manner. It seems clear that the manner of loading determines the applicability of the freight charges claimed by Yellow Freight. And the burden of proving the applicability of these freight charges rests with the carrier. See United States v. New York, New Haven & Hartford R.R., 355 U.S. 253, 260 (1957). Since it is obvious that an alternate method of loading exists, the carrier's bare assertion that the shipment was loaded in a certain manner, does not sustain the carrier's burden of proving the applicability of the freight charges it claims are due it.

We have another reason for agreeing with GSA's contention that item 610-5 of Tariff ICC RMB 120, the capacity load rule, does not apply to the shipment transported under GBL No. K-6655267.

610-5 applies to shipments in a "vehicle" or "vehicles." Note 1 to the item defines a "vehicle" to mean, among other things, ". . . trailer . . . with 310 square feet of floor space if . . . open top equipment is . . . furnished . . ."

Trailer No. 6438 is described in statistics furnished by Yellow Freight as an open top trailer having an inside length of 39 feet, 7 1/4 inches, and an inside width of 91 1/2 inches. These dimensions yield 302 square feet, which is less than the 310 square feet required by item 610-5. The capacity load rule in item 610-5 therefore does not apply to the shipment transported under GBL No. K-6655267.

GSA's action in collecting the transportation overcharge by deduction has not been shown to have been in error otherwise and it is sustained.

Deputy Comptroller General
of the United States