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

FILE: B-190624 DATE: August 29, 1978

MATTER OF: Trans Country Van Lines, Inc.

DIGEST:

1. Provisions in carrier's individual section 22 Tender 150 incorporating by reference classification rules and exceptions, and accessorial charges in group Tender 1-W, do not disclose intention to combine excess-distance, rate factor in Tender 1-W for purpose of computing line-haul rates on distances in excess of 3,000 miles.

2. Carrier's individual Tender 150 incorporating some rules from Tender 1-W shows clear intention to deny operation of other rules omitted from incorporation.

3. Neither carriers nor shippers can be permitted to urge for their own purposes a strained and unnatural tariff construction.

4. In settlement by GSA, no amounts should be allowed constituting upward revision over original bill paid carrier more than 3 years previously, B-188647, December 28, 1977.

Trans Country Van Lines, Inc. (Trans Country), in a letter dated October 31, 1977, requents review by the Comptroller General of the United States of the General Services Administration's (GSA) action in disallowing two of its claims for a total of $3,902.24. See section 201(3) of the General Accounting Office Act of 1974, 49 U.S.C. 66(b) (Supp. V, 1975). GSA disallowed the claims on the basis of a settlement certificate and by a letter to Trans Country sustaining its original disallowance. Under regulations implementing section 201(3) of the Act, the disallowance of a claim constitutes a reviewable settlement action [4 C.F.R. 53.1(b)(2) and 53.2 (1977)]; Trans Country's letter complies with the criteria for requests for review of that action. 4 C.F.R. 53.3 (1977).

The record shows that two shipments are involved. For transportation of a shipment of electrical equipment from Sunnyvale, California, to Plattsburg Air Force Base, New York,

on Government bill of lading No. H-1876085, dated August 17, 1972, the carrier was paid $3,153.90 on October 19, 1972. Delivery was made on August 25, 1972, after transportation for a distance of 3,081 miles. Following audit, GSA issued a Notice of Overcharge for $1,242.64 and collected that amount through deduction action on November 8, 1974, and June 9, 1975. The carrier's claim of June 24, 1977, was for $1,433.75 or $191.10 in excess of the amount deducted.

For transportation of a shipment of accounting card machines and parts 3,009 miles from Kingston, New York, to Brisbane, California, under Government bill of lading No. F-8824363, dated June 29, 1972, the carrier billed the Government $7,151.85. The record shows that $4,061.40 was deducted to collect for loss and damage, the balance of $3,090.45 being paid on September 6, 1972. The record does not contain documents relating to deduction for the overcharge. The administrative report states that $2,468.50 was deducted, but there is no indication as to the date of deduction. It appears that Trans Country's claim of June 24, 1977, is for the precise amount deducted.

Applicability of the carrier's section 22 Tender I.C.C. No. 150 (Tender 150), which provides distance, column rates per hundredweight is the basis for issuance of the overcharge. Since the greatest distance shown in the table of rates in Tender 150 is 3,000 miles, GSA added 40 cents per hundredweight per 100 miles for the distance in excess of 3,000 miles, a method for computing freight charges which is published as paragraph (1) on page 7 of Movers' and Warehousemen's Association of America, Inc., Government Rate Tender 1-W (Tender 1-W). Paragraph (1) is shown in section entitled: "APPLICATION OF TENDER [Tender 1-W]" and reads as follows:

> "Unless otherwise provided herein, where rates are stated in amounts per hundred pounds, charges shall be computed by multiplying the total weight involved by the rate shown for a hundred pounds.
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> When a shipment is transported a distance in excess of that shown in the rate tables, charges shall be computed as follows:

(A) First find the rate in the applicable weight column for the greatest distance shown in the applicable table of rates.

(B) Add to the above rate, 40 cents for each additional 100 miles or fraction thereof in excess of the distance shown in the rate table to obtain per hundred pound rate applicable on the shipment."

It is CSA's contention that computation of the audit rate through combined use of the carrier's individual Tender 150 and group Tender 1-W is correct because paragraph 15 and 16 of Tender 150 incorporates by reference, respectively, the classifications and exceptions, and the accessorial charges from Tender 1-W as follows:

"CLASSIFICATIONS AND EXCEPTIONS

Unless otherwise specifically stated herein, the services, rates, or charges shown herein are subject to the rules of the freight classification or exceptions thereto which at the time of movement would govern the applicable class rates from and to the points and via the routes provided in this tender.

Movers' and Warehousemen's Association of America, Inc. Government Rate Tender I.C.C. 1-V and supplements thereto and reissue thereof

ACCESSORIAL SERVICES

The accessorial services shown below will be furnished by the carrier on request of the shipper at the rates or charges specified in this item, which will be in addition to the rates or charges shown in items 11 and 12. Such requests must be shown on the bill of lading and initialed by the person requesting same.

Movers' and Warehousemen's Association of America, Inc. Government Rate Tender I.C.C. 1-V and Supplements thereto and reissue thereof"

Trans Country contends that the component rate of 40 cents per hundredweight provided on page 7 of Tender 1-W is not an accessorial charge, within the meaning of paragraph 16 of Tender 150, which would justify its incorporation by reference. Further, as the draftsman of Tender 150, Trans Country states that there was no intention for the rates therein to be applied on shipments moving in excess of 3,000 miles.

A section 22 tender is subject to interpretation according to established principles of contract law. The fundamental purpose of construing a contract is to accomplish the intention of the parties. Effect must be given not only to specific language but also to necessary implications of the contract terms. See 37 Comp. Gen. 753 (1958) and cases cited therein; see also B-186928, March 28, 1977. In order to combine a section 22 quotation with another quotation, or with a regular tariff provision, the intention of the parties to accomplish this purpose must be apparent either by express provision or by necessary inference. Gulf, Mobile & Ohio R.R. v. United States, 160 Ct. Cl. 493 (1963).

We see no basis for concluding that paragraph 15 of Tender 150 incorporates the excess-distance computation rule on page 7 from Tender 1-W. To the contrary, it is clear that only rules or exceptions relating to classification of property are incorporated into Tender 150 through paragraph 15. Classification of property is distinct from line-haul rates. The "subject to" provision relates expressly to rates "shown herein," and rates "provided in this tender." The only reasonable inference is that there was no thought given to the possibility that the paragraph would be interpreted to authorize construction of the line-haul rate through a combination of rate factors, one source of which is extraneous to the tender relied upon for the service.

The effect of the language in paragraph 16 is to notify the Government that accessorial services are available and the charges for such services are shown in Tender 1-W. It is unreasonable to assign to the draftsman of Tender 150 the intention to include line-haul service as a component of accessorial service, since accessorial services are in addition to the regular line-haul transportation performed by the carrier.

The express subjection of Tender 150 only to the property classification, classification exceptions and accessorial services and related charges provided in Tender 1-W requires the conclusion that the omission of any provision from Tender 1-W line-haul rates, coupled with the self-contained rates in Tender 150, was by deliberate intent. See 37 Comp. Gen. 753, 756 (1958). Neither carriers nor shippers can be permitted to urge for their own purposes a strained and unnatural tariff construction. Letourneau Company of Georgia v. Southern Ry., 278 I.C.C. 674 (1950). Thus, in our opinion there is no ambiguity in Tender 150 and the rates therein apply only up to and including 3,000 miles. cf B-190700, August 1, 1978; B-190610, June 13, 1978.

In the settlement of these claims, GSA should determine the date of deduction on GBL F-8824363, GSA reference TX-079360, to be certain that the action was authorized. And if so authorized, settlement should allow the claims to the extent that they represent amounts deducted on the overcharge basis, but excluding any amounts constituting an upward revision over an original bill paid more than 3 years previously. B-188647, December 28, 1977.

Settlement should be made by GSA consistent with the above.

R.F.K.-11

Deputy Comptroller General
of the United States