12173 Transp Ms. Kraus

DECISION

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

FILE: B-192411 DATE: November 30, 1979

MATTER OF: Hilldrup Transfer & Storage Co.--Reconsideration D 1356

DIGEST:

Where request for reconsideration presents no evidence demonstrating error in fact or law in previous decision and no arguments not previously considered, decision is affirmed.

Hilldrup Transfer & Storage Company (Hilldrup) requests reconsideration of our decision in 58 Comp. Gen. 375 (1979), which sustained deduction action taken in November 1978 by the General Services Administration (GSA) to recover an overcharge collected by Hilldrup on a shipment of household goods owned by a member of the military. The facts in this case were fully stated in the decision and will not be repeated except as pertinent to the present discussion of the case. For the reasons stated below, our decision is affirmed. 2 17

The overcharge of $494.02 represents the difference in transportation charges between the $2,465.90 Hilldrup collected, derived from Government and Military Rate Tender No. 1-H, I.C.C. No. 35 (Tender 1-H), and $1,971.88 derived from Florida Household Goods Carriers' Bureau Tariff 13, HG-FPSC 13 (Tariff 13), GSA's audit basis. Most of this overcharge represents a bridge charge of $4.00 per 100 pounds, found in item 150 of Tender 1-H and applicable to transportation performed through Islamorada, Florida, and points south and west in the Florida Keys. The bridge charge was not contained in the Florida intrastate tariff.

In its request for reconsideration, Hilldrup reiterates its belief that there is a substantial difference between the services required by the military and those required by commercial shippers, and

[ALLegation of OVERCHARGE]

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that therefore the rates and charges in Tender 1-H apply. In addition to the differences discussed in the decision, Hilldrup points to such military requirements as inspection of agent facilities, access to carriers accounting records and the Government nondiscrimination policies, which are conditions of doing business with the Government.

However, as we stated in our decision, such requirements are immaterial to the question whether the two rate authorities, Tender 1-H and Tariff 13, cover the same services. A comparison of the freight charges derived from Tariff 13 and Tender 1-H indicated that, except for the bridge charge and shipment charge, the tender and tariff cover the same services. No benefit or privilege was granted to the Government by the change in Hilldrup's method of operation caused by the bridge charge. Hilldrup's action would have been the same if the shipment were moving commercially rather than on a GBL. Furthermore, the additional differences mentioned by Hilldrup are contained either in GSA's regulations (41 C.F.R. 101-41.302-3(i)) or in the Tender of Service which, as we stated in our decision, is not a rate tariff. 58 Comp. Gen. 375, 380 (1979).

In its reconsideration request, Hilldrup further questions our reliance on Trans Ocean Van Service v. United States, 426 F.2d 329 (Ct. Cl. 1970), claiming that the facts therein could be distinguished from the instant case. We point out, however, that Trans Ocean was cited merely as support for the factual explanation of a Tender of Service. Hilldrup had argued that the Tender of Service required a performance different from that required by the intrastate tariff. We noted in the decision that Section 1A.2a of the Tender of Service reads, "I understand that this is a Tender of Service and not a Rate Tender," and that therefore performance required by the Tender of Service is immaterial to the question whether the two rate authorities, Tender 1-H and Tariff 13, cover the same services. We then cited Trans Ocean, supra, at page 335, to support the proposition that a Tender

of Service does not purport to quote rates or provide formulae for the computation of freight charges. Thus, Hilldrup's understanding that Trans Ocean was heavily relied upon in reaching our decision is not in fact correct.

Where a decision-recipient, in its request for reconsideration, merely indicates general disagreement with the result reached in a decision and presents no evidence demonstrating an error in fact or law or arguments not previously considered, our prior decision is affirmed. See B-183215, July 14, 1977; B-194443, October 29, 1979.

Our decision of March 29, 1979, is affirmed.

Milton J. Socolar

For The Comptroller General
of the United States