Transp.

DECISION

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

10,094

FILE: B-192872 DATE: May 7, 1979

MATTER OF: Yellow Freight System, Inc. CNG 02016

[Request for Adjustment of Freight Charge Deduction for Alleged Overcharge by Carrier]

DIGEST:

1. Presumption that bill of lading correctly described the article tendered for transportation is not conclusive; the important fact is what moved, not what was billed.

2. Aircraft maintenance platform may be considered "knocked down" when lowered and taken apart in such a manner as to reduce its bulk at least 33 1/3 percent from its normal shipping cubage when set up or assembled.

3. Where guardrails of aircraft platform are removed and banded to platform, the shipment is a "bundle" and is acceptable alternative to tariff requirement that commodity be "in packages."

4. Carrier has burden of proving correctness of transportation charges originally collected on shipment.

AGC00017

Yellow Freight System, Inc. (Yellow Freight), in a letter dated September 7, 1978, requests review by the Comptroller General of the General Services Administration's (GSA) action in collecting an alleged 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) (1976). 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 (1978)); Yellow Freight's letter complies with the criteria for requests for review of such an action. 4 C.F.R. § 53.3 (1977).

GSA's action was taken on a shipment of two aircraft maintenance platforms, described on Government bill of lading (GBL) No. M-0068206 as "2 LS [loose] NMFC 178160 SUB 2 STAIRWAY, A/C, SU" weighing 1,700 pounds, and transported by Yellow Freight in July 1975 from Peterson Field, Colorado, to March Air Force Base, California.

Item 178160 of the National Motor Freight Classification (NMFC) 100-B publishes ratings on articles called "Stairways; Ramps, . . .; Platforms; Stands; or Chutes; aircraft . . . loading, unloading or service, portable . . ."; it offers two less than truckload (LTL)

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ratings depending on whether the commodity is shipped set up (SU) or knocked down (KD). When shipped set up, the NMFC provides in item 178160, sub 1, a class 300 any quantity rating; when the commodity is shipped knocked down, the NMFC provides in item 178160, sub 2, a class 125 LTL rating. There is no packaging provision for shipping the article set up, but the knocked down rating requires the shipment to be "in packages".

Yellow Freight assessed transportation charges based upon the class 300 any quantity rating because the shipment was described as set up on the GBL. Upon a post payment audit, the GSA determined that there was an overcharge of $502.01 by the carrier. GSA's basis for the overcharge was that the platforms shipped conformed to the Item 178160, sub 2, classification (KD in packages) and that therefore the transportation charges should have been assessed at the lower rating. Following GSA's deduction by setoff for the alleged overcharge, Yellow Freight requested review by this Office.

Yellow Freight contends that its billing based upon the description in the original GBL was proper and that GSA has failed to present sufficient evidence to prove that the platforms were "knocked down" and "in packages". Yellow Freight objects to GSA's reliance on statements by Government administrative officers to resolve disputed questions of fact. GSA's Transportation Audit Division apparently relied on a report from the Department of the Air Force (Air Force) that the correct classification of the platforms was "knocked down in packages". The carrier states:

> "We cannot rely on the word of the administrative officer, and see no legal reason why any common carrier should allow a change in description based solely on certification. This was further stressed in Janice Inc, vs Acme Fast Freight Inc., (sic) wherein the commission disallowed a certified statement from the President of the shipper stating the shipment was comprised of an article other than shown on the B/L. They went on to state, 'The mere categorical statement, without supporting evidence is not sufficient to prove the nature of the commodity shipped. The burden is upon the complainant to show by convincing evidence that the commodity descriptions in the shipping papers were erroneous, and that the commodity was of a character embraced within the description on which the rate claimed was applicable. Brewster, Co., Inc. vs National Carloading Corp 273 I.C.C. 419, 421, and National Automotive Fibres, Inc., vs Baltimore & O.R. Co., 226 I.C.C. 627, 630.'"

The cases cited by Yellow Freight concern adversary administrative proceedings in the Interstate Commerce Commission where the

burden of proof is placed on the complainant, the one bringing the action. Here, GSA's action concerns a carrier bill paid by the United States under Section 322 of the Transportation Act of 1940, as amended, 49 U.S.C. 66(a) (1976). That section provides in part that carrier bills shall be paid upon presentation prior to audit by GSA but reserves to the United States the right to deduct overcharges from any amount later found to be due the carrier. The Supreme Court has made it abundantly clear that the payment is conditional and that the burden of proof remains with the carrier to prove the correctness of the freight charges it collected initially when overcharges are administratively determined by GSA. New York, New Haven & Hartford R.R. v. United States, 355 U.S. 253 (1957); see, also, Pacific Intermountain Express Co. v. United States, 167 Ct. Cl. 266, 270 (1964).

The reliance of Yellow Freight on the description of the commodity on the GBL is misplaced. It is a well-settled principle of transportation law that the description on the bill of lading is not necessarily controlling in determining the rate to be applied. The important fact is what moved, not what was billed. Mead Corp. v. Baltimore & Ohio R.R., 308 I.C.C. 709, 791 (1959), 57 Comp. Gen. 649 (1977); 57 id. 155 (1977); 53 id. 868 (1974). The nature and character of each shipment at the time it is tendered to the carrier determines its status for rate purposes. Union Pacific R.R. v. Madison Foods, Inc., 432 F. Supp. 1033 (D. Neb. 1977); Chicago, Burlington & Quincy R.R. v. Duhamel Broadcasting Co., 337 F. Supp. 481 (D. S.D. 1972).

Furthermore, the bill of lading description relied on by Yellow Freight is ambiguous and inconsistent. The general written description of ". . . LS . . . Stairway, A/C, SU" conflicts with the item number's classification of 178160, sub 2, on the bill of lading, which applies to stairways or platforms that are "knocked down in packages". Therefore, it is unclear from the face of the bill of lading exactly how the platforms were shipped.

This ambiguity no doubt caused GSA to write to the administrative office and it would seem that the administrative office would be best qualified to make the determination of what actually was shipped. When GSA's action taken in reliance on that determination is questioned, as here, GSA follows the long-established rule of the Government's accounting officers to accept the statements of fact furnished by the administrative office in the absence of clear and convincing evidence to the contrary. 41 Comp. Gen. 47, 54 (1961); 51 id. 541, 543 (1972). If in any particular case a carrier needs further or clarifying evidence of what moved we see no reason why GSA would not furnish it at the carrier's request.

GSA has now obtained additional evidence consisting of diagrams of the platforms and a further report from the Air Force describing the platforms when shipped. This information is relevant to the determination whether the commodity should be considered "knocked down" and "in packages" and thereby within the lower rating classification of Item 178160, sub 2. We are furnishing Yellow Freight copies of the relevant documents.

In order for a platform to be within the Item 178160, sub 2, classification, it must be considered "knocked down". Item 110 of the NMFC provides that ". . . knocked down means that an article must be taken apart, folded or telescoped in such a manner as to reduce its bulk at least 33 1/3 percent from its normal shipping cubage when set up or assembled." The Air Force has indicated that the aircraft platforms were shipped in a lowered position with the guardrails removed and banded to the platform.

The information and diagrams of the maintenance platform obtained by GSA from the Air Force support the position that the platforms were "knocked down" when shipped. The specifications for the platform indicate that the platform can be extended to 10 feet and lowered to 3 feet (plus or minus 6 inches). The base of the platform is 4 feet wide and 11 feet long. The cubage of the platform when set up and extended is 440 cubic feet ((10' x 4' x 11') = 440 cubic feet). The cubage of the platform when shipped at its lowest height with the guardrails banded to the platform is approximately 154 cubic feet ((3' 6" x 4' x 11') = 154 cubic feet). Therefore, when the platform is collapsed to its lowest elevation the bulk of the shipment is reduced greater than 33 1/3 percent from its cubage when assembled. With the guardrails banded to the platform the reduction is greater. Thus, the shipment was "knocked down" pursuant to the requirements of Item 110 of the NMFC. Cf. Tower Construction Co. v. C.B.&Q. R.R., 305 I.C.C. 107, 109 (1958); Payne Furnace & Supply Co. Inc. v. A.T. & S.F. Ry., 188 I.C.C. 207 (1932).

To qualify for an Item 178160, sub 2, classification, the platform must also be "in packages". Item 680 of the NMFC provides that "when the term 'in packages' is provided in connection with the separate descriptions of articles, such articles will be accepted for transportation in any container or in any other form tendered to carrier which will permit handling into or out of vehicles as units, providing such containers or tendered forms will render the transportation of the freight reasonably safe and practicable . . .". The Air Force indicates that when the maintenance platforms are shipped, the guardrails are removed and banded to the platform.

We agree with the GSA that this method of shipment satisfies the "in packages" requirement. Item 685 of the NMFC provides alternative

forms of packaging which are acceptable when the commodity description provides for shipping "in packages". This item permits the shipping in "bundles" as an alternative form of shipping. A "bundle" is anything wrapped or tied up for carrying. American Heritage Dictionary (New College Edition 1976); see Item 235 of the NMFC. A bundle may consist of only one article whose parts are bound together. Hoover Steel Ball Co. v. Michigan Central R.R., 163 I.C.C. 561, 562 (1930). Therefore, the binding of the guardrails to the platform qualify the shipment as a "bundle". Since a bundle is an acceptable alternative to "packages" and it permits the handling of the commodity into or out of vehicles as units (as required by Item 680 of the NMFC), the shipment of the platforms satisfies the packaging requirement of Item 178160, sub 2.

Based on the present record we agree with GSA that the platforms shipped as described by the Air Force are within the Item 178160, sub 2, classification and thus should be classified at the class 125 LTL rating.

GSA has advised our Office that the actual weight of the two platforms was 2,200 pounds, rather than the 1,700 pounds noted on the bill of lading. This increases the freight charges and the GSA settlement should be adjusted to allow Yellow Freight the additional amount, if otherwise correct.

R.F. Keller

Deputy Comptroller General
of the United States