DECISION

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

10,106

FILE: B-192951 DATE: May 9, 1979

MATTER OF: American Van & Storage, Inc. DL79 1543

[Propriety of Deduction by GSA for Alleged Carrier Overcharges]

DIGEST:

1. Rates and charges in intrastate tariff are "otherwise applicable" within meaning of alternation provision in tender.

2. Carrier cannot refuse to carry shipment except upon an exclusive use of vehicle or storage in transit basis when imposition of such conditions is in derogation of its common carrier obligations.

3. Difference between tender and tariff in the length of storage time permissible in transit relates only to carrier's potential liability for loss and damage, not to shipper's liability for freight charges and is not an additional benefit or privilege relating to freight charges.

In a letter dated September 8, 1978, American Van & Storage, Inc. (American), requests the Comptroller General of the United States to review the General Services Administration's (GSA) action on five of its bills for transportation charges. See 49 U.S.C. 66(b) (1976), and 4 C.F.R. 53.3 (1978). After auditing the five bills, GSA notified American of overcharges that in the absence of refund were collected by deduction from subsequent American bills. A deduction constitutes a reviewable settlement action [4 C.F.R. 53.1] and American's letter complies with the criteria for requests for review of that action. 4 C.F.R. 53.3 (1978).

American transported five shipments of household goods, property of military personnel, from Key West, Florida, to various Florida intrastate destinations after April 17, 1974, when weight restrictions were in effect on the overseas highway, U.S. Route 1, in Monroe County, Florida. The shipments were transported under Government bills of lading (GBL) Nos. K-1024537, K-1024815, K-1024800, K-1024624 and K-1024793.

The carrier based his charges on Government Rate Tender I.C.C. No. 1-X (Tender 1-X). Item 290-A in supplement 11 of this tender, in effect at the time these shipments moved, contained a "Bridge Charge" of $4 per 100 pounds applicable to traffic from, to, or via "Islamorado, Florida, and points south and west thereof in the Florida keys." The bridge charge contained in Tender 1-X is applicable

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on intrastate traffic crossing the Florida keys. It was a response to the Florida Department of Transportation decision to place weight restrictions on bridges between Islamorada and Key West. These restrictions limited the pay load trucks could haul to about half their normal loads.

GSA's audit basis is derived from Florida Household Goods Carriers' Bureau Tariff 12, HG-FPSC 12 (Tariff 12), and its superseding issue. Tariff 12 was not amended to contain a bridge charge.

GSA contends that Tariff 12, the intrastate tariff, is applicable to this shipment for three reasons. First, GSA relies on item 23 of Tender 1-X which provides that the tender will not apply for a carrier where the total charges accruing under the tender exceed the total charges otherwise applicable for that carrier for the same services. Second, GSA refers to its regulations naming the terms and conditions governing the use of GBLs. One of those terms provides that a shipment made on a GBL "shall take a rate no higher than that chargeable had the shipment been made on the uniform straight bill of lading . . . provided for commercial shipments." 41 C.F.R. 101-41.1302-3(c)(1978). Third, GSA argues that Section 22 of the Interstate Commerce Act, as amended, 49 U.S.C. 22 (1976), which permits carriers to transport property for the United States free or at reduced rates, does not authorize officers of the Government to contract for transportation at rates higher than those available to the general public for the same services. GSA therefore applied Tariff 12, not Tender 1-X, to the five shipments and found these overcharges:

GBL	Overcharge
K-1024800	$493.93
K-1024793	417.49
K-1024537	465.61
K-1024815	314.71
K-1024624	366.77
Total	$2,058.51

American requests review of GSA's action. The issues presented by American are similar to those considered and resolved in our decision of March 29, 1979, B-192411, to Hilldrup Transfer and Storage Co. We are furnishing American a copy of that decision.

First, American argues that the shipments were accepted under the rate terms in Tender 1-X, which included the bridge charge. It submits that the agreement between Government and carrier did not involve use of Tariff 12. Second, American contends that had the shipments been tendered under Tariff 12, American would not have accepted them except upon an exclusive use of vehicle or storage in

transit basis. Such terms would have resulted in substantially higher charges to the Government, but apparently would have resulted in an acceptable rate of return for performing the service. Third, American suggests that the Government is selectively applying the terms of Tariff 12; while utilizing the rate sections of Florida Tariff 12, the Government does not honor the tariff's 60-day storage in transit provision.

American's first argument has no merit. Tender 1-X was intended to apply but it included item 23. By this provision, American agreed that Tender 1-X would not apply if the total charges thereunder exceeded the total charges otherwise applicable for the same service. Thus, if the services and privileges offered to the United States under Tender 1-X are substantially similar to those available to the general public, the intrastate tariff must be applied.

In B-192411, March 29, 1979, in response to Hilldrup's similar argument, we said:

> "The existence of [the Tender] . . . cannot preclude the applicability of intrastate rates for similar services. It long has been the rule that officers of the Government have no authority to contract for interstate or intrastate transportation at rates higher than those available to the general public for the same or similar service. See 57 Comp. Gen. 584 (1978). Indeed, item 23 of [the] Tender . . . is a recognition of that fact."

In that decision we determined that the tender and the tariff covered substantially the same services. Therefore the intrastate tariff was "otherwise applicable" within the meaning of item 23 of the tender. The same is true here since application of item 23 of Tender 1-X, which both shipper and carrier agreed to, requires use of the Florida tariff.

American alleges that because of the weight restriction imposed by the Florida Department of Transportation the tender of the shipments under Tariff 12 would not have been accepted by American unless exclusive use of vehicle and storage in transit was ordered. This does not provide a legal basis for overturning GSA's action. There is no rule by tariff, law or regulation which permits American to impose such conditions in disregard of its common carrier obligations. For example, paragraph (e) of Tender 1-X states that in order to utilize the exclusive use of vehicle service, the Government must affirmatively order such service and the Government bill of lading must be annotated to reflect such request. Only then may the carrier

provide the service and legally apply the charge specifically applicable to exclusive use of vehicle service. See, e.g., 44 Comp. Gen. 799 (1965).

The record shows that American's contention regarding the failure to utilize the 60-day limit in Tariff 12 for storage in transit [Tender 1-X provides up to 180 days storage in transit] is not relevant in this case. The shipments on GBL Nos. K-1024793 and K-1024800 were delivered directly to residences. The shipments on GBL Nos. K-1024537, K-1024624 and K-1024815 were stored in transit at their respective destinations, but all within the 60 days permitted under rule 17c of Tariff 12. Therefore, no question as to storage time under the applicable tariff arises.

American also is suggesting that the different lengths of time permitted for storage in transit under Tariff 12 as opposed to Tender 1-X indicate that each offers a different service and that therefore the alternation permitted by item 23 of Tender 1-X would not apply. We considered and rejected this argument in B-192411, the Hilldrup decision, based on our conclusion that the storage in transit time related to carrier liability for loss and damage, not to freight charges. We there stated that the fact that the carrier's "potential liability for loss and damage may be made more extensive under the tender than under the tariff is irrelevant because a common carrier's liability for loss and damage is distinct from the shipper's liability for freight charges . . . and is not an additional benefit or privilege relating to freight charges."

Based on the foregoing, GSA's deduction action was correct and is sustained.

R.F. Keller

Deputy Comptroller General
of the United States