Transp. Bureau

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DECISION

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

[Request for Reconsideration of GSA Deduction Action]

FILE: B-192951 DATE: March 17, 1980

MATTER OF: American Van & Storage, Inc. -- Reconsideration

DIGEST:

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

American Van & Storage, Inc. (American) requests reconsideration of our decision of May 9, 1979, B-192951, in which we sustained the deduction action taken by the General Services Administration (GSA) to recover overcharges collected by American on five intrastate shipments of household goods owned by military personnel. The facts in this case were fully stated in that 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.

The overcharges on the five shipments represent the difference in transportation charges between amounts collected by American, derived from Government Rate Tender I.C.C. No. 1-X (Tender 1-X), and those derived from Florida Household Goods Carriers' Bureau Tariff 12, HG-FPSC 12 (Tariff 12), GSA's audit basis. Most of the overcharges consist of a bridge charge of $4 per 100 pounds, found in item 290-A of Tender 1-X and applicable to transportation performed through Islamorada, Florida, and points south and west in the Florida Keys. The bridge charge was not contained in Tariff 12, the Florida intrastate tariff. In our prior decision, we agreed with GSA that the Florida tariff contains the lowest applicable charges on the shipments transported by American.

In its request for reconsideration, American contends that our opinion did not adequately consider two of its arguments: First, that the shipments were tendered under the rate terms in Tender

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1-X (which contained the bridge charge) and that the military authorities intended Tender 1-X to apply. Second, by utilizing the rate sections of Tariff 12, but not honoring the tariff's 60-day storage in transit provision, the Government is selectively applying the terms of Tariff 12.

We believe that these issues were fully discussed in our opinion. Furthermore, the same issues were considered and resolved in our decisions in 58 Comp. Gen. 375 (1979), to Hilldrup Transfer and Storage Co. (Hilldrup), affirmed, B-192411, November 30, 1979, and in our decision of December 27, 1979, B-195219, to AA Sunshine Movers, Inc. (AA). We are furnishing American copies of these decision.

In our decision, we stated that while Tender 1-X was intended to apply, it included an item 23. In item 23 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 under the intrastate tariff, the latter must be applied. Since both shipper and carrier agreed to item 23 of Tender 1-X, and since we determined that the tender and the intrastate tariff covered the "same services," we held that application of item 23 requires use of the Florida tariff. AA, supra; Hilldrup, supra.

In response to American's second contention, we stated that 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) was not relevant. Only two of the shipments were stored and neither for a period exceeding the 60-day limit in Tariff 12. Therefore no question as to storage time under the applicable tariff was raised in the record.

Furthermore, the suggestion by American that the different lengths of time permitted for SIT under

the tender as opposed to the tariffs constitutes a different service and thus renders the intrastate tariff inapplicable under the "otherwise applicable" language in the tender was rejected by this Office in the Hilldrup and AA decisions as well as our decision in this case. As we stated in Hilldrup, and reaffirmed in later decisions, "The fact that . . . 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."

Since this request for reconsideration presents no evidence demonstrating an error in fact or law and no arguments not previously considered, our prior decision is affirmed. See B-192411, November 30, 1979; Professional Carpet Service - Reconsideration, B-194443, October 29, 1979, 79-2 CPD 301.

Milton J. Socolar

For the Comptroller General
of the United States

Enclosures