11736 TRANS

DECISION

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

FILE: B-194029 DATE: October 22, 1979

MATTER OF: Interstate Van Lines, Inc. - Reconsideration

DIGEST:

1. Although carrier is responsible for transportation under bill of lading which covers all charges including storage and delivery, GSA regulations permit carrier to submit bill for services from point of origin to point of storage in transit (SIT). Regulations also allow carrier, as principal, to designate warehouseman its agent to bill in carrier's name for SIT and delivery charges.

2. Carrier's attempt to change certificate permitting payment for services from point of origin to SIT point by disclaiming its liability for overpayment of SIT charges unless billing for those charges was tendered directly to it varied certificate terms set out in GSA regulations and is contrary to law.

3. Disbursing agency's payment of bills containing disclaimer of carrier's liability for SIT overpayments did not constitute modification of contract, since only GSA, not disbursing agency, could agree to such disclaimer which varies from GSA regulations and is contrary to law. United States cannot be bound beyond actual authority conferred upon its agents.

4. Courts and Comptroller General have consistently held that persons or corporations erroneously paid by Government agency or officials acquire no right to money and are bound in equity and good conscience to make restitution.

~~00744~~ 110641

Contract modification

Interstate Van Lines, Inc. (Interstate), requests reconsideration of our decision of June 18, 1979, B-194029, in which we sustained the General Services Administration's [GSA] audit action on ~~three~~ notices of overcharges sent to ~~Interstate~~ [carrier] [or to its subsidiary Star World Wide Forwarders, Inc. (Star)].

The notices of overcharges resulted from multiple payments for the same services made to Interstate and its agents on three shipments of household goods. The multiple payments include charges for storing the household goods in transit, for transporting them from storage to their destinations (SIT charges), and for reweighing them at destination.

Each payment is supported in part by a certificate required by GSA regulations when household goods are stored in transit in a warehouse prior to delivery to the consignee at the destination shown on the GBL. 41 C.F.R. § 101-41.309-2(b) (1977). As permitted by GSA's regulations, the line-haul carrier, Interstate or Star (the carrier transporting the goods to the warehouse), also designated in the certificate its warehousemen as its agents to bill for the SIT and other applicable charges. 41 C.F.R. § 101-41.309-2(b)(3) (1977).

The certificates issued by Interstate or by Star complied with all the conditions required by GSA regulations, but were modified by the addition of this condition:

> "such charges [i.e., the SIT charges authorized on the covering GBL] to be audited before payment as carrier assumes no liability for overpayment unless billing is tendered directly to carrier."

We held in the decision that the attempted modification varied the terms of the certificate required by GSA's regulations and hence was unlawful and could not preclude the United States from collecting the overcharges from Interstate.

In its request for reconsideration Interstate argues first that the modification to the certificate was accepted by the Government when invoices containing the modified certificate were not rejected but were paid by the Government disbursing officers. We must reject this argument.

GSA pursuant to statutory authority issued the regulations which were modified. Any deviation from these regulations must be authorized, 41 C.F.R. § 101-41.003 (1977), and the necessary authorization was not given. Nor has GSA delegated authority to disbursing agencies to waive requirements in the regulations. See, 41 C.F.R. § 101-41.800, et seq. (1977). It is well established law that the United States cannot be bound beyond actual authority conferred upon its agents by statute or regulation, Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380, 384 (1947); United States v. Crance, 341 F.2d 161, 166 (8th Cir. 1965), and, in this case, the disbursing agency had no such authority. Furthermore, the demand in Interstate's certificate for audit by GSA prior to payment is contrary to the procedure found in 49 U.S.C. 66(a) (1976) and the regulations promulgated thereunder, 41 C.F.R. 101-41.000, et seq. (1977). Therefore, payment on the voucher containing the waiver does not prohibit the audit actions taken by GSA.

We note too that in our decision of September 14, 1972, B-176837, to Interstate, we ruled invalid the identical modification to the certificate that is involved here. Thus, since 1972 Interstate apparently has ignored that decision.

Interstate also argues that it issued only one modified certificate which "was accepted two and sometimes three times." Interstate knows, however, that the original certificate prepared by it was submitted with its billing for the line-haul transportation charges into the destination SIT warehouse and that a copy of the original certificate was supposed to be used once by its agent, the warehouseman, in support of the warehouseman's bill for the SIT and other applicable transportation charges. The fact that Interstate's agent submitted additional bills was made possible by Interstate, the principal, and and should be controlled by it.

Under the applicable law and implementing regulations "Payment for transportation . . . of property for or on behalf of the United States by any carrier or forwarder shall be made upon presentation and prior to audit by the General Services Administration . . .." Section 322 of the Transportation Act of 1940, as amended, 49 U.S.C. 66(a) (1976); 41 C.F.R. 101-41.401 (1977). The law and regulations are designed to facilitate the payment of transportation bills. United States v. New York, New Haven & H. RR., 355 U.S. 253 (1957). GSA in its post audit under the law and regulations is responsible for examining the paid transportation charges for compliance with proper transportation rates, classifications or other rate agreements. While the disbursing officers have primary responsibility to establish procedures to prevent duplicate payments and to recover any that are made, 41 C.F.R. § 41.401(b)(2) (1977), GSA is not precluded from taking proper action when in its audit it uncovers obvious instances of erroneous payments. In any event, Interstate has the burden of proving the correctness of the freight charges it collected initially. United States v. New York, New Haven & H. RR., supra; Pacific Intermountain Express Co. v. United States, 167 Ct. Cl. 266, 270 (1964); B-192856, March 15, 1979.

The duplicate and triplicate payments in this case were made in error. It is well settled that persons or corporations receiving money erroneously paid by a Government agency or official acquire no right to the money, and the courts and the Comptroller General have consistently held that such persons are bound in equity and good conscience to make restitution. See, United States v. Sutton (Sutton), 11 F.2d 24 (4th Cir. 1926) and cases collected and discussed therein. B-193550, February 15, 1979; B-188595, June 3, 1977; B-124770, September 16, 1955. This rule would apply even where the record suggests negligent conduct on the part of the disbursing office. B-124770, September 16, 1955. Interstate is charged under law with responsibility for the overpayments as the principal and billing party and therefore is obligated to refund the erroneous payments. See, Sutton, supra.

Interstate's final argument is that the Government checks were improperly prepared by the disbursing agencies and thereafter improperly endorsed.

The record discloses no evidence that the checks issued as payment for the shipments in these cases were improperly prepared by the disbursing agency. The checks were prepared by the disbursing agency using names and addresses provided in the carrier's bills for services rendered and that listing would generally not be questioned by that agency. 41 C.F.R. § 101-41.310-4(a)(3) (1977). Interstate has the burden of clearly and satisfactorily establishing this allegation, 56 Comp. Gen. 459, 466 (1977); 31 Comp. Gen. 340 (1952), and it has not proved it here.

Our decision of June 18, 1979, B-194029, is sustained.

Deputy Comptroller General
of the United States