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DECISION

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

FILE: B-195297

DATE: November 14, 1979

MATTER OF: Seaboard Coast Line Railroad Company

[Request For Review of GSA Deduction Action]

DL602182

DIGEST:

1. Source of freight rates and charges on original carrier bills presented to Government for payment before audit does not determine Government's obligations for payment at law.
2. Section 22 quotations apply to Government foreign military sales (FMS) shipments where carrier fails to carry its burden of producing evidence proving Government did not bear cost and receive entire benefit of lower rates.

Seaboard Coast Line Railroad Company (SCL) requests review of action taken by the General Services Administration (GSA) in which \$8,526.21 was deducted from other monies due the carrier. See, 49 U.S.C. 66(b) (1976) and 4 C.F.R. 53 (1978).

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The record relied on by GSA shows that during November 1977, SCL and its connecting carrier transported under Government bill of lading (GBL) No. M-2109343 a shipment consisting of five carloads of ammunition for cannon with solid projectiles, class B explosives, from Milan Army Ammunition Plant, Tennessee, to the Military Ocean Terminal, Sunny Point, North Carolina. The GBL was endorsed "FOREIGN MILITARY SALES SHIPMENT, SECTION 22 DOES NOT APPLY," and the "Marks" section of the GBL showed "ISRAEL-VYD; BIS085 2 A23; PROJECT: 4M VESSEL: ESHKELL A-0314. FOR EXPORT."

Freight charges of \$20,926.04 were collected on SCL bill No. 320428. The Government paid the carrier's bill upon presentation and prior to audit as required by 49 U.S.C. 66(a). GSA's audit determined that SCL

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collected an overcharge of \$8,526.21 arising from the shipment on GBL No. M-2109343. This overcharge was collected by deduction from subsequent SCL bills on June 7, 1979. SCL requests review of that action.

The authority for the applicable rate shown on the notice of overcharge is SFA Section 22 Quotation Advice A-4673-A. The rates originally collected and now asserted as correct by SCL are published in Southern Freight Tariff Bureau Tariff S-1011-A, a class rate tariff for general commercial application. Following our decision of March 30, 1978, B-190739, to True Transport, Inc., GSA determined that the lower rates contained in SCL's Section 22 Quotations were applicable. In the True Transport decision we stated that Section 22 quotations apply to transportation performed for the Government if the direct and entire benefit of the lower rates accrues solely to the Government and if the Government bears the transportation cost. We then held among other things that lower rates in rate tenders offered to the United States under Section 22 of the Interstate Commerce Act, 49 U.S.C. 22(1976), were applicable to foreign military sales (FMS) shipments where the carrier failed to carry its burden of producing clear and convincing contrary evidence that would prove that the Government did not bear the cost and receive the entire benefit of the lower rates.

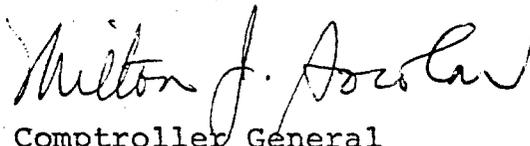
In its request for review of the GSA overcharge determination, SCL did not present documentary evidence or argument in support of its bare contention that section 22 rates will apply. SCL relies primarily on the fact that the GBL was annotated in the following manner: "FOREIGN MILITARY SALES SHIPMENT, SECTION 22 DOES NOT APPLY." In a recent decision concerning Baggett Transportation Company, B-195482, October 16, 1979, we held that this language simply reflects the opinion of the acting General Counsel of the Department of Defense based on the belief that the FMS customers do, in fact, reimburse the United States. This assumption was shown

to be incorrect in a Report to the Secretary of Defense entitled, Improvements Are Needed To Fully Recover Transportation And Other Delivery Costs Under The Foreign Military Sales Program, LCD-77-210, B-165731, August 19, 1977, which found that FMS customers were not fully reimbursing the United States for transportation and handling costs.

Further, we have held in both the True Transport and Baggett cases that the source of rates and charges used by a carrier on its original bills presented to the Government does not determine the Government's obligation for payment at law. The material facts are that the carrier billed the United States for its services and was paid from appropriated funds. See, Procurements Involving Foreign Military Sales, 58 Comp. Gen. 81 (1978), 78-2 CPD 349.

We find the situation here to be factually indistinguishable from those in the Baggett and True Transport cases since in all three cases the shipments were transported on GBL's, the carriers billed the Government for their services and were paid by the Government. SCL has failed to carry its burden of proving that the United States did not incur the cost and would not obtain the economic benefit of the lower Section 22 rates.

GSA's deduction action is sustained.



For The Comptroller General
of the United States

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United States General Accounting Office
Washington, DC 20548

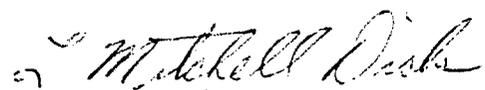
Office of
General Counsel

In Reply
Refer to: B-195297

November 16, 1979

RE: Seaboard Coast Line Railroad Company

A corrected copy of page 2 of the referenced decision is attached; the original contained a typographical error which has been corrected. Please discard the copy originally furnished.



L. Mitchell Dick
Assistant General Counsel

Attachment



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In its request for review of the GSA overcharge determination, SCL did not present documentary evidence or argument in support of its bare contention that section 22 rates will not apply. SCL relies primarily on the fact that the GBL was annotated in the following manner: "FOREIGN MILITARY SALES SHIPMENT, SECTION 22 DOES NOT APPLY." In a recent decision concerning Baggett Transportation Company, B-195482, October 16, 1979, we held that this language simply reflects the opinion of the acting General Counsel of the Department of Defense based on the belief that the FMS customers do, in fact, reimburse the United States. This assumption was shown