

DECISION

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

*Shipman
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FILE: B-214559**DATE:** September 25, 1984**MATTER OF:** Coast Counties Express, Inc.**DIGEST:**

Motor common carrier transportation wholly within a single state, preceded or followed by overseas transportation by privately owned vessels in private carriage, is not interstate or foreign commerce under the Interstate Commerce Act and is not subject to charges applicable to interstate or foreign commerce.

Coast Counties Express, Inc. (CCEI), requests, pursuant to the provisions of section 322 of the Transportation Act of 1940, as amended, 31 U.S.C. § 3726(d)(1) (1982), and 4 C.F.R. 53 (1984), review of the recovery by the General Services Administration (GSA) of \$1,731.12 on 17 shipments of government property.

We agree with the action by GSA.

Eight of the shipments in question were transported in government-owned ships from overseas points to the Naval Weapons Station, Concord, California, and there tendered to CCEI for movement to various points in California. The remaining shipments were tendered to CCEI at various points in California and moved to Concord, California, where the shipments were loaded onto government-owned ships for movement to overseas points. Each of the government bills of lading (GBL's) was marked either "imported" or "exported" with a code designation for the overseas point of origin or destination together with the identity of the ship.

For the transportation services rendered, CCEI collected charges including a fuel-surcharge applicable to interstate or foreign commerce. On audit of the payments, GSA determined that the transportation services performed were intrastate and the fuel-surcharges were not applicable. Therefore, GSA assessed overcharges in the amounts of the fuel-surcharges, which were subsequently recovered by administrative set-off.

In Ex Parte No. 311, June 1, 1979, June 14, 1979, and April 9, 1980, the Interstate Commerce Commission (ICC)

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authorized regulated carriers to publish a fuel-surcharge to be paid to the party which actually bore the increased fuel costs. Apparently, CCEI provided for such fuel-surcharges in rate tenders filed with the government. Copies of the tenders have not been made a part of the record. However, there is no contention that the fuel-surcharges apply unless the transportation services are interstate or foreign commerce regulated under the Interstate Commerce Act, 49 U.S.C. § 10101 (1982).

CCEI contends that the fuel-surcharge is applicable because the shipments were either imported or exported from or to foreign overseas points or territories or possessions of the United States. GSA contends that the shipments are wholly intrastate because the transportation by carrier for hire was wholly between points in California and the overseas transportation was private carriage in government-owned ships.

The Interstate Commerce Commission (ICC) has held that motor common carrier transportation wholly within a single state following transportation from overseas by privately owned vessels is not subject to the economic regulation of the ICC. Allen-Investigation of Operations and Practices, 126 M.C.C. 336 (1977).

CCEI contends that the ocean transportation was not private carriage because the ships were not owned by the government, they carried property owned by others, for which a charge was made and, therefore, should be treated as carriage by common carrier. However, no evidence has been submitted by CCEI in support of these allegations and GSA states the ships were owned by the government, operated by the United States Navy and are used solely for the transportation of explosives. Accordingly, we conclude that the ships were privately owned rather than common carriers.

Therefore, the transportation services performed by CCEI for GSA were not interstate or foreign commerce under the Interstate Commerce Act, 49 U.S.C. § 10101 (1982), and were not subject to the fuel-surcharge.

CCEI also contends that it relied on the notations on the GBL's showing import and export and collected the fuel-surcharges which were passed to the owner-operators who performed the transportation services for CCEI. However, the GBL's also named intrastate origins and destinations and, in connection with the export or import notations, named the government-owned ships involved.

Accordingly, we find the deductions to have been proper.

for *Milton J. Acker*
Comptroller General
of the United States