



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: A-Transport Northwest Company - Rate
Applicability - Tender Interpretation
File: B-226311
Date: March 2, 1988

DIGEST

1. A tender offered a decreasing scale of rates to correspond with an increasing scale of weights, up to 6,000 pounds. The carrier assessed the higher 2,000-pound rate on weights in excess of 6,000 pounds, for example, on 2,000 pounds of an 8,000-pound shipment. We sustain the General Services Administration's (GSA) determination that the 6,000-pound weight was a truckload minimum weight and thus, the 6,000-pound rate is applicable to the entire shipment.
2. Even though a carrier fully loads its vehicles to satisfy government requirements, merely loading a vehicle to full capacity does not provide a basis for exclusive-use-of-vehicle charges without a request for such service annotated on the bill of lading.
3. A carrier claimed additional charges where some of the GSA Notices of Overcharge show that the overcharges were based on gross weights while others did not specify gross or net. In the absence of compelling contrary evidence, it was not improper for GSA to accept the shipping agency's report indicating that all Government Bills of Lading involved contained the gross weights of shipments, as required by the carrier's tender, rather than net weights. Thus, GSA's disallowance of the carrier's claims is sustained.

DECISION

A-Transport Northwest Company (Northwest) requests the Comptroller General to review transportation audit actions taken by the General Services Administration (GSA).^{1/} A

^{1/} The carrier has requested us to investigate the shipping practices at the installations involved here. Our review of GSA's audit action in this case, however, was based on the written record, including the carrier's statements and agency reports, in accordance with our usual practice.

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factual question was raised as to whether GSA used the gross weight of shipments in computing charges. In addition, two legal questions were raised. One was whether the weights shown in the carrier's tender were the minimum or maximum weights of shipments, and the other question was whether exclusive-use-of-vehicle charges applied when a vehicle was loaded to capacity. For the reasons that follow we sustain GSA's actions.

BACKGROUND

During the relevant period, 1983-1986, Northwest regularly transported foodstuffs from cold storage warehouses located within the Seattle, Washington area to various naval facilities in the State of Washington under its Line Haul Perishable Subsistence Carrier Rate Tender No. MC 147649. In its post-payment audit of the carrier's bills GSA issued numerous Notices of Overcharge which contested the validity of Northwest's charges. Northwest disagreed with GSA's determination of which, among several, columnar rates were applicable (the minimum-maximum weight issue) and with the determination that exclusive-use charges were not applicable on shipments that fully loaded and sometimes overflowed the cubic capacity of a single vehicle.

In addition to these legal issues Northwest raised a factual question, claiming additional charges on the theory that the charges it had collected were not based on the gross weight of the shipments. The parties agree that under Item 6 of the tender Northwest was entitled to be paid on the basis of gross weight which was calculated by adding a 10 percent tare weight factor to the average net weight. Northwest, however, observed that some Notices of Overcharge did not show that freight charges were computed on gross weight, while others did. Northwest assumed from the absence of specific reference to gross weight on some notices that GSA calculated charges on the basis of net weight. GSA rejected the assumption on the basis of an administrative report stating that the weights shown on the Government Bills of Lading (GBLs) were gross weights; therefore, according to GSA, the notices accurately reflected the applicable freight charges and the overcharge amounts.

Minimum-Maximum Weight Issue

Resolution of the minimum-maximum weight issue requires consideration of the tender's rate tables. For each destination point one column provided multiple increasing truckload minimum weights and another column provided decreasing rates per 100 pounds (CWT). For example, the

following minimum weights and rates applied from the Seattle area to the Naval Commissary Store in Bremerton, Washington:

<u>Truckload Minimum Weight</u>	<u>Per CWT Rate</u>
2,000	\$ 4.40
3,000	3.95
4,000	3.05
6,000	2.20

On a representative shipment transported (apparently in a single vehicle) to the Bremerton commissary (GBL S-8604163), weighing 13,498 pounds, Northwest treated each incremental weight of 6,000 pounds as a maximum weight, applied the \$2.20 rate to each 6,000-pound increment, and considered the additional 1,498 pounds as an overflow, to which Northwest applied the higher \$4.40 rate that would be applicable to a minimum weight of 2,000 pounds. Although GSA acknowledges that the billing practice was approved by the shipper, the Defense Subsistence Office, Seattle, GSA contends that such rate-weight application is improper. Headquarters, Military Traffic Management Command (MTMC) agrees with GSA, contending that the carrier's interpretation is illogical and at variance with customary practice.^{2/}

Resolution of this issue turns on the tender's language, the general understanding of its meaning, and the controlling rule of objective tender interpretation. The rates in the rate table clearly decline as the weights increase, and the weights are expressly described as "minimum" weights.^{3/} As MTMC reports, minimum weights customarily are not viewed as maximum weights; thus, it would be generally understood, within the context of this form of rate table, that any weight in excess of 6,000 pounds (the heaviest minimum

^{2/} Letter from the Office of the Staff Judge Advocate to the General Accounting Office, dated July 1, 1987.

^{3/} We have viewed similar truckload minimum weight devices as alternating minimums. See American Farm Lines, B-201175, Aug. 6, 1981. Generally, under alternating minimums the shipper is entitled to the combination of weight and rate that produces the lowest charges.

weight shown in the example) would take the rate corresponding to the 6,000-pounds minimum.^{4/} The fact that the carrier or the shipping agency agrees with the opposing interpretation is not controlling. Tariffs are construed objectively, according to their language, and their terms must be taken in the sense generally used and accepted. Yellow Freight System, Inc., 60 Comp. Gen. 135 (1980). As a result, the term "minimum" cannot reasonably be construed as a maximum. Thus, as GSA determined, the entire weight of a shipment exceeding the heaviest minimum weight takes the lower rate.

Exclusive-Use-of-Vehicle Issue

The carrier's contention that exclusive-use charges apply whenever a shipment loads a vehicle to capacity involves consideration of other tender provisions. Item 10 of the tender is the Exclusive-Use-of-Vehicle Rule, paragraph a. of which provides:

"Upon request of the shipper, carrier will furnish a vehicle assigned to and exclusively used by the carrier for transportation of the shipment. Bill of Lading bearing a notation indicating that shipper requests exclusive use must be provided for each vehicle."

Item 7, the Capacity Loads and Overflow Rule, provides methods for calculating overflow charges when a shipment more than loads a vehicle to capacity. It defines a fully loaded vehicle as a vehicle loaded to capacity subject to loading restrictions required by the Navy, including the requirement to permit proper air circulation. Paragraph d. provides:

"This will only apply where trailers of 1400 cubic feet or more are furnished. Where trailers of less than 1400 cubic feet are furnished, the applicable truckload rate will be considered as a volume rate and Item 9 of this tender will not apply."

Item 9, a Minimum-Charge-Per-Vehicle Rule, provides:

"The minimum charge per vehicle will be the truckload minimum weight and applicable rate

^{4/} This, of course, would be subject to any other applicable tender rules.

thereto which results in the lowest charge to the Government."

In effect, Northwest contends that even though the shippers did not request exclusive-use service, such service was necessary to satisfy changing government packaging; therefore, exclusive-use charges are applicable. The carrier explains that the government's practice of shipping foodstuffs specially wrapped on pallets and loading vehicles to provide for air circulation reduced the weight that could be loaded on a single vehicle, thereby often requiring more than one vehicle to transport a shipment.

GSA contends that exclusive-use charges do not apply because the shippers did not request exclusive-use service, and the GBLs did not contain a written request therefor. The agency does acknowledge, however, that the carrier may be entitled to overflow charges under Item 7 of the tender.

Our resolution of the exclusive-use issue is guided by considerable precedent and the tender's precise language. Item 10 expressly provides that the carrier will furnish a vehicle "upon request," and that a bill-of-lading notation indicating such request "must be provided." Neither a request nor a notation exists here. Generally, both conditions must be met before exclusive-use charges are applicable. See American Farm Lines, B-203805, B-204113, Dec. 24, 1981. Even assuming that a vehicle of 1400 cubic feet capacity was loaded to capacity, that an additional vehicle was provided to accommodate the overflow, and that the vehicle was loaded to satisfy the government's requirements, there is no basis for applying exclusive-use charges.

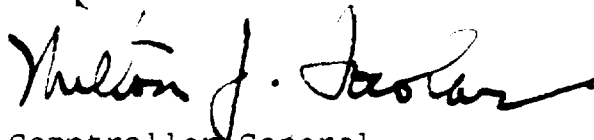
Loading a vehicle to full visible capacity, alone, does not reflect a shipper's intent to obtain exclusive-use service. Compare 41 Comp. Gen. 266 (1961). We have held that a carrier is not entitled to exclusive-use charges even where the shipper seals the vehicle and notes the seal numbers on the GBL, without a request for exclusive-use service or a statement that the seals may not be broken. Leonard Brothers Trucking Company, Inc. - Reconsideration, B-215958, Feb. 18, 1986; American Farm Lines, *supra*. The reference in paragraph d of Item 7 (the Capacity-Overflow Rule) to Item 9 (the Minimum-Charge Rule) rather than to Item 10 (the Exclusive-Use Rule) suggests that where a trailer of 1400 cubic feet is loaded to capacity, Item 9's minimum charge may be applicable, rather than Item 10's exclusive-use charge. As indicated by GSA, the overflow charges in Item 7 may be applicable to any overflow weights. We assume GSA

will reaudit the bills to determine whether overflow charges were applicable. In any event they are not in issue here.

Gross Versus Net Weight Issue

Concerning the factual question of whether the freight charges determined by GSA to be applicable were based on gross or net weight, we point out that the burden of proof is on the claimant. Where there are disputed questions of fact, we rely on the statements furnished by the administrative officers of the government. Dan Barclay, Inc., 64 Comp. Gen. 612 (1985). In this case, although some of the GBLs did not specifically so state, in response to an inquiry by GSA, the shipper has specifically stated that the weights shown on the GBLs represented gross weights;^{5/} in other words, they were computed according to the tender's requirements.

Accordingly, GSA's audit actions are sustained.



Acting Comptroller General
of the United States

^{5/} Letter of May 21, 1986, to GSA's auditors from the Chief, Office of Transportation and Traffic Management, Defense Logistics Agency, Defense Subsistence Region Pacific, Alameda, California.