



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Consolidated Freightways, Inc. - Restriction
on Application of Rate Tender - Meaning of
"Vendor" Ambiguous

File: B-226378

Date: August 15, 1988

DIGEST

A carrier's rate tender provides that its rates apply only when the "vendor" refers to the tender at time of shipment. A Government Bill of Lading (GBL), which did not refer to the tender, shows the U.S. Marine Corps as the shipper of members' personal effects, which were picked up at a commercial warehouse. The General Services Administration (GSA) applied the tender rates and deducted overcharges on the theory that "vendor" is limited in meaning to government contractors. GSA's action is sustained. Generally, "vendor" is defined as a seller of property, which neither the Marine Corps nor the warehouseman is. In any event, the use of the term creates an ambiguity, and ambiguities are construed against the carrier issuing the rate tender.

DECISION

Consolidated Freightways, Inc. (CF), requests review of audit action taken by the General Services Administration (GSA) on one of the carrier's bills. Based on GSA's determination that CF's tender was applicable to a shipment of personal effects, the agency deducted the amount of overcharges that CF had collected. GSA's action is sustained.

BACKGROUND

"U.S. Government Bill of Lading - Privately Owned Personal Property" No. DP-505,378 (GBL) shows that on December 28, 1984, the transportation officer at the Marine Corps Base, Camp LeJeune, North Carolina, shipped three pieces of personal effects belonging to two marines from a storage facility of Airway Moving & Storage, Inc., Jacksonville, North Carolina, via CF for transportation to Honolulu, Hawaii. There was no reference on the GBL to any tariff or other rate authority.

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In its post-payment audit of CF's bills, GSA determined that the rates published in CF's Tender No. ICC 1464 (Tender 1464) were applicable and deducted the difference between the amount CF collected and the lower charges that would have been assessed on the basis of rates in Tender 1464. The rates published in Tender 1464 were offered to the U.S. Government by CF for the transportation of Freight-All-Kinds, with certain exceptions, and household goods when packaged as specified in the National Motor Freight Classification, from various points in the United States, including North Carolina, to Hawaii.

CF contends that Tender 1464 rates were not applicable because the GBL did not refer to the tender as required by Exhibit A of the tender, which provides: "Rates apply only when vendor refers to this tender at time of shipment."^{1/}

CF interprets this provision to mean that whoever tenders the freight to the carrier is the "vendor" and must refer to Tender 1464 or the tender's rates do not apply. In this case CF considers the Marine Corps and/or the warehouseman to be the "vendor."

GSA counters that the meaning of the word "vendor," as defined in Black's Law Dictionary and as used in other contexts, is one who sells property such as a merchant, a retail dealer, a supplier or one who buys to sell. Since where the government is a shipper it ordinarily is not the "vendor" of the property shipped in this sense, GSA indicates that this tender requirement would seem to apply only to shipments by contractors who are the sellers of goods being shipped at government expense. In any event, GSA argues that since the provision is ambiguous, any doubt in the word's meaning should be resolved in favor of the government.

In rebuttal, CF contends that its intent was to restrict the tender's application to those transactions that were accompanied by a bill of lading containing reference to the tender; therefore, the word "vendor" was intended to include any entity that tendered shipments to CF, regardless of

^{1/} The quoted provision does not specify that the tender reference must be made on the bill of lading or that it must be in writing. In any event, there is no indication in the record that any reference to the tender was made on the GBL or otherwise.

whether the shipper was the government or a commercial firm. CF explains that in the absence of the limiting provision Tender 1464 would apply automatically to all shipments tendered on GBLs or on commercial bills of lading that contain specified notations indicating that the government would ultimately pay the freight charges.^{2/}

In the interpretation of tariffs, their terms must be taken in the sense in which they are generally used and accepted; they are construed according to their language, and the subjective intentions of the framers are not controlling. Yellow Freight Systems, Inc., 60 Comp. Gen. 135 (1980). GSA's dictionary definition of "vendor" generally describes the meaning of the word as one who sells property. See the similar definition in Webster's Third New International Dictionary 2539 (1966). Further, our decisions generally distinguish between the government on the one hand and vendors on the other, as pointed out by GSA. See, for example, 37 Comp. Gen. 174, 175 (1957). For these reasons the term vendor does not appear to be an appropriate term to use to describe the Marine Corps.^{3/} Similarly, vendor would not appear to be appropriate in referring to the warehouseman who sold no property to the government and whose premises served merely as the pick-up point for this shipment.


We recognize that the offer of free or reduced-rate transportation under a rate tender to the government is voluntary. ABF Freight System, Inc., B-218694, Nov. 25, 1985. For example, carriers may limit the application of tenders to specific agencies, and they may exclude authorized service points from their application. See 45 Comp. Gen. 118 (1965); ABF Freight System, Inc., B-218694, supra. However, in view of the presumed general intention to offer lower rates to the government, we have accepted carriers' claims to have limited the applicability of tenders only where the limiting terms were drafted with reasonable precision. See generally, 45 Comp. Gen. 118, supra.

^{2/} In addition to its intent argument, CF urges us to consider several other factors in understanding the tender. However, CF provides no elaboration or evidence supporting these factors.

^{3/} A Military Traffic Management Command representative informally advised us that the agency never uses the term "vendor" to include the U.S. Government, and the term does not relate to the nature of the services requested.

Since the ordinary meaning of the term vendor does not apply to the government in most cases, it appears that the tender provision in question would apply only, as GSA suggests, to shipments made by government contractors (suppliers of goods) for the account of or to be charged to the government. Since many of such shipments are made on commercial bills of lading, the requirement to refer to the tender at time of shipment would be useful to the carrier to alert it to the fact that it is a shipment to which government rates apply, a fact that the carrier may not be aware of in such cases when a GBL is not used at origin. If the tender provision had been intended to apply to any shipment, the carrier should have used more precise language such as shipper or party tendering the shipment. At the least the carrier's use of the term vendor in this context created a material ambiguity. Such ambiguities generally are construed against the carrier issuing the tender. See ABF Freight System, Inc., B-221646, Sept. 18, 1987; and Standard Transmission, 55 Comp. Gen. 1423, 1428 (1976).

Therefore, we agree with GSA's application of the tender to this shipment, and GSA's action is sustained.

for 
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of the United States