



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Coast Counties Express - Dispute over Applicable
Rate Because of Conflicting Service Requests
Annotated on Government Bills of Lading

File: B-227179

Date: March 23, 1988

DIGEST

Government shippers orally requested dromedary service on numerous shipments and annotated the Government Bills of Lading (GBLs) with dromedary rate tender references. The carrier transported the shipments in larger closed vans for its own convenience because smaller dromedary equipment was not available, but it billed and was paid on the basis of the dromedary rates. Subsequently the carrier submitted supplemental bills based on higher van service rates on the basis that the GBLs showed that van service was provided and the GBLs did not contain an annotation of the request for dromedary service as required by the dromedary tenders. The total circumstances show that shippers and carrier understood that dromedary service was requested as evidenced by the dromedary tenders noted on the GBLs (which in these circumstances satisfies the tenders' requirement for annotation of the request) and the carrier's billing on that basis. At the least there was an ambiguity on the GBLs which would have required the carrier, if it was in doubt, to inquire about the service desired. Accordingly, the General Services Administration's disallowance of the carrier's supplemental bills is sustained.

DECISION

INTRODUCTION

Coast Counties Express (Coast) asks the Comptroller General, pursuant to 31 U.S.C. § 3726 (1982), to review the General Services Administration's (GSA) actions of disallowing Coast's requests for additional charges on 68 shipments for closed van service rather than dromedary service.^{1/} We sustain GSA's audit actions.

^{1/} GSA reported that it disallowed 269 other claims involving the same issue.

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BACKGROUND

The Government Bills of Lading (GBLs) issued by Coast relate to many less than truckload (LTL) shipments originating from military installations at Concord, California, or Herlong, California, and destined to various points in the United States. The GBLs were annotated with Coast's rate tenders that offered rates for the transportation of relatively small shipments in a specialized service called dromedary service. The dromedary rates were lower than rates offered for the transportation of shipments in ordinary closed vans. Originally, Coast billed the government and collected charges based on the lower dromedary rates, and subsequently filed the supplemental bills for higher non-dromedary service, which, as stated, GSA disallowed.

The dromedary tenders were restricted in application to shipments in which dromedary equipment or service "is requested at the time a vehicle is ordered" with "such request appearing on the bill of lading or shipping order." The GBLs were annotated in the "Rate Authorities" block with the dromedary tenders' numbers. However, the GBLs did not contain an express notation of a request for dromedary equipment or service, while the block on each GBL reserved for the kind of equipment used contained the symbol "AV" which, under applicable military traffic regulations, described a closed van, rather than "AD" which relates to dromedary equipment. Defense Traffic Management Regulations DLAR 4500.3, Dec. 15, 1982, para. 214021.1.

These latter two facts, the absence of a notation of an expressed request on the GBLs for dromedary equipment or service and the existence of an equipment symbol indicating that closed van service was used, gives rise to the issue here. Coast contends that these facts preclude applicability of the dromedary tenders, while GSA contends that other evidence establishes Coast's understanding that the carrier agreed to transport the shipments at dromedary rates, even though it used closed van equipment for the transportation.

There are documents in the record from the military transportation officers at Concord and Herlong indicating that dromedary service generally was requested from Coast, and based on its inquiry about those documents GSA states that:

". . . Both shippers stated that dromedary service was always requested by the shipping office at the time CCOI [Coast Counties Express] was called to pick up any LTL shipment of the cubic measurement and within the cube or dimensional restrictions published in each LTL dromedary tender."
(Emphasis supplied.)

GSA further asserts that because Coast lacked a sufficient number of small trucks or vans to accommodate all the requests for dromedary service, Coast told the installations that it would substitute the larger, full-size closed vans for its own convenience. Coast states that its records do not indicate that dromedary service was requested on any of the shipments in issue, and it indicates that it provided regular closed van service for all the shipments. Coast also states that regardless of the service actually requested, annotations of the tender numbers on the GBLs were not sufficient to comply with the tenders' annotation requirement that a shipper's request for dromedary service appear "on the bill of lading or shipping order." The carrier argues that tender numbers alone do not satisfy the substantial compliance test of Campbell "66" Express, Inc., v. United States, 302 F.2d 270 (Ct. Cl. 1962).

ANALYSIS AND CONCLUSION


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). As a result, we find that the government shipping officers requested dromedary equipment or service when they called Coast, and Coast furnished closed vans solely as an operating convenience because no dromedary equipment was available. It also appears that the GBLs were annotated "AV" to conform to the fact that closed van equipment was furnished, rather than as a request for such equipment, and that the dromedary tender references were placed on the GBLs in recognition of the request for dromedary service and with the understanding that the dromedary rates in those tenders were applicable.

This view is supported by the fact that Coast billed and collected the lower dromedary tender charges on at least 337 shipments under these circumstances. It was not until later that Coast presented supplemental bills for the higher non-dromedary charges. The cumulative effect of these facts is to show an understanding between Coast and the government at the time the shipments were received by the carrier that regardless of the "AV" annotation and the use of closed van equipment, the lower rates in Coast's dromedary tenders were applicable. There is nothing in the record to suggest that Coast was misled. In addition, although there was not a specific statement on the GBLs that dromedary service had been requested, at the least there was an obvious conflict on the GBLs--the symbol "AV," which describes closed van service, and the specific tender numbers which refer only to shipments for which dromedary service has been requested. It is settled that ambiguities in the contractual terms are

to be resolved against the carrier, who is responsible for the bill of lading document, and in favor of the shipper. Starflight, Inc., 65 Comp. Gen. 84 (1985). If Coast was unsure as to the type of service it was requested to perform, it had the obligation of seeking clarification and correction of the documents before the shipments were accepted for transportation. Since it did not, it ran the risk of any resulting damages. Riss International, B-226006, Feb. 19, 1988; Starflight, Inc., 65 Comp. Gen. 84, supra; Continental Van Lines, Inc., B-206558, Nov. 29, 1983.

Concerning the question of whether the tender references on the GBLs complied with the tender's requirement for a request thereon, our cases concerning tariff or tender annotation requirements follow the holding in Campbell "66" Express, Inc. v. United States, supra, that if an annotation on a bill of lading substantially complies with the specific requirement, then the tariff or tender is applicable. The tenders here required that dromedary service be requested at the time the vehicle is ordered, a requirement with which the shippers state they complied. As to the annotation of the request, the tenders contained only a general annotation requirement that the requests for dromedary service would appear "on the bill of lading or shipping order," rather than some exact language in specific form. In a case where there was a general requirement to annotate the GBL to show a request for exclusive use of vehicle service (in no particular form), our Office held that the phrase "Do not break seals" substantially complied with the tender's general annotation requirement. American Farm Lines, Inc., B-203805, et al., Dec. 24, 1981. The words "exclusive use of vehicle" did not appear anywhere on the bills of lading, yet the carrier was allowed the higher premium charges for exclusive use of vehicle service. In our view that case is analogous and supports our conclusion here that a specific tender number annotated on a GBL, along with the other circumstances, substantially complies with the tenders' requirement that an annotation of the request for dromedary service appear on the GBL.

Accordingly, we agree with GSA that Coast's tenders for dromedary service were applicable to the shipments involved in this case and that Coast's claims for higher charges for those shipments, based on closed van service, should be disallowed. Therefore, GSA's actions are sustained.

for 
Comptroller General
of the United States