



Comptroller General
of the United States

Washington, D.C. 20548

1416493

Decision

Matter of: SEKO Air Freight, Inc.

File: B-245855

Date: April 27, 1992

DIGESTS

Department of Defense Guaranteed Traffic agreement provides that a participating carrier or forwarder will not be released from its obligation to furnish service until the expiration date of the agreement unless the Military Traffic Management Command assigns a replacement carrier with a definite start-up date. If such an agreement is extended by mutual agreement, the expiration date becomes the expiration date of the extension.

DECISION

SEKO Air Freight, Inc., requests review of GSA's deductions of approximately \$250,000 from current bills to collect overcharges arising in more than 1,500 Government Bill of Lading (GBL) transactions with shipment dates between May 31, 1987, and September 16, 1987. We sustain GSA's audit actions.

GSA's overcharge claims arose after SEKO attempted to withdraw, by letter to the Defense Mapping Agency (DMA) dated May 8, 1987 (effective COB May 30), from four Guaranteed Traffic agreements executed with the Department of Defense on behalf of DMA. These agreements had been extended by mutual agreement from April 3, 1987, to September 16, 1987. GSA and the Military Traffic Management Command (MTMC) contend that SEKO's withdrawal was not effective until after September 16, because SEKO only notified a DMA official of the company's intent to withdraw, and did not formally notify MTMC (the negotiating agency) by tender supplementation. GSA and MTMC also point out that MTMC had not assigned a replacement carrier with a definite start-up date, and contend that under Item 35b of each agreement such action was a condition to SEKO's release

before the expiration date of the extension.¹ Accordingly, GSA applied SEKO's Guaranteed Traffic agreements (Tenders 15 through 18) to the shipments in issue. Among other things, these contracts contained a 5-day delivery requirement; GSA's overcharges generally are based on SEKO's failure to deliver within that time.

SEKO contends that its withdrawal was effective because Item 35b did not apply during extensions of the original agreements, and that there was no legal requirement to file a tender supplement to effect a withdrawal (a copy of the DMA letter to the MTMC point of contact was sufficient). As a result, SEKO contends, the Guaranteed Traffic agreements did not apply, and there is no basis for GSA's overcharge claims. SEKO contends that the higher rates and charges of its Tender 8603 or Tender 1 applied to services provided by it after May 30, 1987.

We are not convinced that SEKO was required to file an actual tender supplement to initiate its request to withdraw voluntarily, as argued by GSA and MTMC. Nevertheless, we do not agree with SEKO that Item 35b applied only to the initial expiration dates of the agreements and not to their extensions. The item specified that a carrier who decides to withdraw (or has to be removed) from participation "will remain obligated as primary carrier until . . . MTMC assigns alternate carrier responsibility and has established a definite start-up date." Item 35b obviously was intended to assure continuity of service in the event a carrier unilaterally decided to leave (or had to be removed from) the Guaranteed Traffic program before its obligated term of service expired. The language of each agreement did not limit application of Item 35b where contract extensions might be involved.

The fundamental purpose of construing a contract is to accomplish the intention of the parties. Trans Country Van Lines, Inc., B-190624, Aug. 29, 1978. SEKO's interpretation conflicts with the clear intent and broad scope of the language of Item 35b in each agreement. In our view, then, the Guaranteed Traffic agreements applied until after September 16, 1987, or until MTMC assigned an alternate carrier with a definite start-up date, whichever came first.

¹MTMC officials informed us that they were unsuccessful in their effort to find a replacement carrier because the balance of the period of the extension was too short.

GSA audit actions are sustained.

for Faymon Epps
James F. Hinchman
General Counsel