DECISION

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

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FILE: B-183331 DATE: JUN 10 1975

MATTER OF: Service Storage, Inc.

DIGEST:

Allowable transportation claim or bill submitted by agent properly set off against principal's indebtedness to the United States.

In a letter dated December 23, 1974, Service Storage, Inc. (Service), protests the action of the General Accounting Office's Transportation and Claims Division in setting off an allowable claim or bill for transportation charges, filed by Service as agent of Trans World Movers, Inc. (Trans World), against Trans World's indebtedness to the United States.

Government bill of lading (GBL) No. F-0795328 was issued on October 12, 1972, by Pioneer Moving & Storage, as agent for Trans World, to cover the transportation of Technical Sergeant Charles A. Statuchi's household goods from Hill Air Force Base, Utah, to Newark, New York. Storage of the household goods at destination for a period not to exceed 90 days was authorized.

The bill of lading and a certificate signed by Trans World indicate that on October 26, 1972, the household goods were delivered by Trans World to Service, as an agent of Trans World, and placed in Service's warehouse in Rochester, New York. The certificate also granted authority to Service to bill and collect storage charges on the household goods. A copy of the bill of lading and of the certificate will be sent to Service.

The certificate is required by our regulations [4 C.F.R. 52.42(c) (1974)] and is necessary to allow Trans World to collect the transportation charges applicable from the origin of the shipment to the destination storage point; that is, the executed certificate permits Trans World to receive payment of part of the transportation charges before the transportation contract is fully performed by the delivery of the household goods to the serviceman's residence.

Our regulations [4 C.F.R. 52.42(c) (1974)] also give Trans World the option to designate in the certificate the warehouse (here, Service) as its agent to voucher and receive payment in

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the name of Trans World for all storage, handling and delivering charges incurred by the agent. Trans World exercised that option.

Trans World's properly supported bill dated November 1, 1972, for the transportation charges applicable to the services rendered from Hill Air Force Base to the Rochester warehouse was received in the General Accounting Office and the amount found due on that bill was set off against Trans World's indebtedness to the United States.

The serviceman's household goods remained in storage for 11 days, or until November 6, 1972, when they were removed from storage and delivered by Service to the serviceman's residence in Newark, New York.

Service's bill dated December 28, 1973, for storage, handling and delivering charges was sent to the U.S. Army Finance Center who sent it here on January 25, 1974.

Service billed the Government by complying with 4 C.F.R. 52.38 (1974) which provides instructions for the presentation and payment of carrier's bills for transportation services. Section 52.38(a)(4) of 4 C.F.R. states that an agent of the carrier can be paid "so long as the bill is submitted in the name of the principal." A check is then drawn in the name of the principal and mailed to the agent.

Service's bill for $343.57 was allowed in full. However, since its principal, Trans World, still was indebted to the United States, the $343.57 found due was applied in reduction of Trans World's indebtedness to the United States.

The regulations in 4 C.F.R. 52.38 and 52.42 (1974), some of which are referred to here, are more than mere guidance for the paying agencies; they implement the so-called anti-assignment statutes, 31 U.S.C. 203 (1970) and 41 U.S.C. 15 (1970). The courts have declared the purposes of 31 U.S.C. 203 to be: (1) that the Government might not be harassed by multiplying the number of persons with whom it had to deal, (2) to prevent possible multiple payment of claims, (3) to make unnecessary the investigation of alleged assignments, powers of attorney and other authorizations, (4) to enable the Government to deal only with the original contractor (claimant), and (5) to save to the United States defenses which it has to claims by an

assignor by way of setoff and counterclaim which might not be applicable to an assignee. United States v. Shannon, 342 U.S. 288 (1952); United States v. Aetna Casualty and Surety Co., 338 U.S. 366 (1949); United States v. Hill, 5th Cir., 171 F.2d 404 (1948), opinion supplemented on other grounds, 174 F.2d 61.

The purposes of those statutes and of our regulations are demonstrated by this case because Trans World, the principal, still is indebted to the United States.

Service contends that it was not appointed destination agent by Trans World but that it was selected by the cognizant Government installation to perform destination service for the serviceman's household goods; it also contends that it had no signed contract (presumably, an agency contract) with Trans World, and that it is considering a proceeding against the serviceman who is the consignee named in the bill of lading contract.

The record shows clearly that whether or not a written agency contract existed between Service and Trans World, Service's actions indicated that an implied agency relationship did exist. An implied agency is also an actual agency, the existence of which as a fact is proved by deduction or inferences from the other facts and circumstances of the particular case, including the words and conduct of the parties. 3 Am. Jur. 2d Agency, Section 19 (1962).

The GBL and the certificate both indicate that Service accepted the household goods at its warehouse as the agent of Trans World; its bill for $343.27 was submitted in an agency capacity and is supported by documents showing that Service was acting as agent for Trans World.

The Government bill of lading among other things sets forth the terms on which the transportation is to be made and it operates upon acceptance as a contract between the shipper and the carrier. Michigan Central R.R. v. Mark Owen & Co., 256 U.S. 427 (1921); Northern Pacific R.R. v. Wall, 241 U.S. 87 (1916). The United States had no contract with Service and the Government is not legally liable to Service for the storage, handling and delivering charges; Service's only recourse is against the line-haul carrier (Trans World), with which Service at the least impliedly contracted for payment of those charges. Since there

is no privity of contract between Service and the Government, no payment can be made by the Government directly to Service for the warehouse services. As a general rule, a contract cannot be enforced by a person who is not a party to it or in privity with it. McClendon v. T. L. James & Co., 231 F.2d 802 (5th Cir. 1956); United States v. Voges, 124 F. Supp. 543 (E.D. N.Y. 1954); 17A C.J.S. Contracts, Section 518.

The contract between the Government and Trans World was fulfilled and Trans World was entitled to payment of the proper charges for the transportation services performed under that contract. Thus, the fulfillment of that contract insulates the serviceman from any presumed liability as the consignee under the contract of carriage.

We have been advised informally by the Interstate Commerce Commission that Trans World, whose address is 2575 South Meade Street, Denver, Colorado, still is in business and that several financial dockets are pending with the ICC in which Trans World is attempting to sell its operating rights.

The action taken by our Transportation and Claims Division was correct and is sustained.

R.F.KELLER

Acting Comptroller General
of the United States