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

FILE: B-186017 DATE: MAR 9 1977

MATTER OF: Trans Country Van Lines, Inc.

DIGEST:

Where a carrier transports goods without operating authority, carrier can be paid quantum meruit based on the usual or going rates of other duly authorized carriers for the same services.

Trans Country Van Lines, Inc. (Trans Country), by letter dated June 21, 1976, requests review by the Comptroller General of the United States of the settlement action taken by the former Transportation and Claims Division (TCD) of the General Accounting Office, now a part of the General Services Administration (GSA), on its claim for transportation charges. See Section 201 of the General Accounting Office Act of 1974, 88 Stat. 1959, approved January 2, 1975, 49 U.S.C. 66(b) (Supp. V 1975) and 4 C.F.R. 53.3 and 53.4 (1976).

TCD issued a settlement certificate dated August 15, 1974 (TK-958531), allowing part of Trans Country's claim for a balance of $2,112.82 in transportation charges allegedly due on a shipment described on Government bill of lading No. D-1049458, dated January 29, 1970, as "INSTITUTIONAL EQUIPMENT" and transported from San Francisco, California, to Silver Spring, Maryland. TCD allowed $422.32 of the amount claimed and disallowed $1,690.50, stating that the settlement was based, among other things, on our decision of July 3, 1974, B-181137, to Trans Country.

Our decision in B-181137 concerned the transportation of steel shipping containers, set up. Since Trans Country's household goods operating authority did not cover shipments of steel containers, set up, we held that the contract of carriage was unenforceable but that Trans Country could recover a quantum meruit for its services because the shipper had received the benefit of those services. We said that the quantum meruit should be based on the usual or going rates of other duly authorized carriers for the same or similar services.

In the settlement under review TCD based the quantum meruit in part on a line haul rate in Trans Country's Tender ICC 50 (Tender ICC 50). Trans Country, in its request for review, interprets this as meaning, in Trans Country's words, "* * * that we were without

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authority to handle 'institutional equipment'" and contends that TCD should have used a line haul rate in Government Rate Tender I.C.C. No. 1-V (Tender 1-V), published by the Movers' & Warehousemen's Association of America, Inc., Agent. TCD now agrees that the quantum meruit should be based on a line haul rate in Tender 1-V; we agree, but not for the reason advanced by Trans Country.

GBL No. D-1049438 was issued by Trans Country in California on January 29, 1970, and shows that Trans Country and no other carrier or carriers transported a shipment of "INSTITUTIONAL EQUIPMENT" from San Francisco, California, to Silver Spring, Maryland.

Trans Country is authorized by the Interstate Commerce Commission to transport goods between certain points and places in interstate commerce. It is a participating carrier in tariffs issued by Movers' & Warehousemen's Association of America, Inc., Agent. One of these tariffs is Tariff No. 3-K, MF-I.C.C. No. 79 (Tariff 3-K), titled "Participating Carrier and Scope Tariff", effective June 9, 1969. Section 1, page 77 of that tariff shows that on January 29, 1970, Trans Country had no operating authority to transport anything from an origin in California to a destination in Maryland.

Based on the present record, the action of Trans Country in transporting this shipment was in apparent violation of Sections 203 and 206 of the Interstate Commerce Act, as amended, 49 U.S.C. 303 and 306 (1970). See B-181197, July 5, 1974. Thus, we sustain TCD's decision to use quantum meruit as the basis for the allowable charges for the services furnished by Trans Country under GBL No. D-1049438.

We also agree with GSA that for this shipment of institutional equipment the line haul rate in Tender 1-V is a better measure of the quantum meruit than the line haul rate in Tender ICC 30, which, as here pertinent, applies on shipment of office furniture, files, fixtures and equipment. This is especially so because the shipper reports that the institutional equipment shipped is more specifically described as laboratory equipment, consisting of cabinet hoods, work benches, steel and wood cabinets, and sinks and air vent hoods.

In these circumstances, GSA should reopen the settlement of August 13, 1974, and allow Trans Country $1,690.30, if otherwise correct.

R.F.KELLER

Acting Comptroller General
of the United States