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S. Kerner

DECISION



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

FILE: B-189097

DATE: MAY 17 1978

MATTER OF: Trans Country Van Lines, Inc. - Reconsideration

DIGEST:

Where household goods carrier transports goods without Interstate Commerce Commission operating authority carrier should be paid quantum meruit based on its household goods tender or quotation rates. Prior decision affirmed.

Trans Country Van Lines, Inc. (Trans Country), by letter dated July 26, 1977, requests reconsideration of our decision of July 19, 1977, B-188097, wherein we sustained the General Services Administration's disallowance of Trans Country's claim for additional transportation charges. The claim is based upon the carriage of Government property for the Department of the Air Force under Government bill of lading (GBL) No. H-0751389, dated January 26, 1973. The Government property, weighing 28,480 pounds, was shipped by the Hamilton Standard Division of the United Aircraft Corporation, Windsor Locks, Connecticut, to Wright-Patterson Air Force Base, Dayton, Ohio. The commodities described on the GBL fall into three general categories: electrical equipment and appliances, hand tools and tool cabinets, and airplane propeller blades.

In our decision we held that Trans Country had household goods operating authority to transport the part of the shipment consisting of electrical instruments and appliances, and that the applicable rates on that part of the shipment are those in Trans Country's Tender I.C.C. #150, Sub #5 (Tender 150). We also held that since Trans Country had no such operating authority to transport the balance of the shipment (hand tools, tool cabinets and propeller blades), the compensation due Trans Country for that part of the shipment must be computed on the basis of quantum meruit, measured by the lower of the rates in Tender 150 or in Government Rate Tender I.C.C. No. 1-W a rate tender published by the Movers' and Warehousemen's Association of America, Inc., Agent.

Trans Country now agrees that Tender 150 contains the applicable rates on electrical instruments and appliances; its request for reconsideration concerns the balance of the shipment. The issues raised are: (1) whether the hand tools, tool cabinets and airplane propeller blades fall within the purview of the Household Goods Commodity description defined and interpreted by the Interstate

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Commerce Commission (ICC) in 49 C.F.R. 1056.1 (a); (2) whether the Military Traffic Management Terminal Service (MTM/TMS) has the necessary authority to make a determination of facts regarding commodity descriptions; and (3) whether Tariff No. 52, MF-I.C.C. No. 77 is applicable to the recording equipment which was transported by Trans Country.

Trans Country continues to argue that the tools are the personal property of a mechanic and are covered in subsection (a) (1) of the ICC's Household Goods Commodity description which reads: "The term 'household goods' means (1) personal effects and property used or to be used in a dwelling when a part of the equipment or supply of such dwelling."

In order for personal effects to fall within the coverage of "household goods" they must have been purchased by the householder with the intent to use them in his dwelling and they must be transported at the request of, and the transportation charges paid to the carrier by, the householder. The only evidence which Trans Country proffers on this point is Hamilton Standard Packing Slips which state that the tool box is "personal property of the mechanic." Entwined with this evidence is Trans Country's argument that because a person uses tools on a job does not mean that they would not be personal effects since many of the tools could be utilized for repair work in the mechanic's own home.

This evidence and argument are not convincing because the obvious reason for shipping the tools was for use directly related to the mechanic's employment not for repair work in his home. We note too that the Government is not in the business of transporting a person's household goods unless it is related to his employment with the Government. Even though the packing slips indicate that the tools are personal effects nowhere is there any evidence that the mechanic is a householder who purchased the tools for intended use in his dwelling nor is there any proof that he paid Trans Country for their transportation.

Trans Country again contends that the commodities described as "airplane propeller blades" fall within the definition of household goods. It is clear that airplane propeller blades cannot be classified as personal effects or property within the meaning of subparagraph 1; Trans Country appears to be attempting to place them in the category of subsection (a)(3). In order for the shipment to qualify under this subsection it would be necessary to show that the articles shipped were of an unusual nature or value and required the specialized handling and equipment usually employed in moving household goods.

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As was stated in our decision, there is nothing in the bill of lading or in the nature and value of the shipment which would permit a finding that subparagraph (a)(3) would apply.

In an enclosure to its letter of July 26, 1977, Trans Country directs our attention to an excerpt from Practices of Motor Common Carriers of Household Goods, Ex Parte No. MC-19, 95 M.C.C. 252, 256 (1964), where the ICC interpreted subparagraph 2 of paragraph (a) of the household goods description to include the "commodities mentioned therein when transported between location/s_/_/ in an establishment and a repair or storage facility." Trans Country argues that this phrase would enable them to handle the shipment in question. However, in Movers Conference of America v. United States, 251 F. Supp. 882 (S.D. Cal. 1966), the court vacated the ICC's order in Practices of Motor Common Carriers of Household Goods, supra. By order issued June 13, 1966, and published at 31 F.R. 8915 (1966) the ICC revised the interpretation of household goods to exclude the phrase "between location/s_/_/ in an establishment and a repair or storage facility."

In order for the items included in the shipment to qualify as household goods under subparagraph 2 as it now reads they must have been moved "pursuant to the removal of the establishment or a portion thereof, from one location to another." There is nothing in the record which suggests that the shipment was made pursuant to the removal of an establishment or portion thereof. Instead, the shipment moved from a private corporation to a military installation.

Trans Country cites 53 Comp. Gen. 602 (1974), reconsidered at 53 Comp. Gen. 868 (1974), for the proposition that since the Military Traffic Management Terminal Service (MTMTS) routed the shipment via Trans Country, the Government made a binding fact determination that Trans Country had the authority to transport the articles.

In 53 Comp. Gen. 868 the Government bills of lading indicated that the goods consisted of machines NOI (an abbreviation generally meaning not otherwise identified by name) but administrative reports received through the Commander, Eastern Area Military Management and Terminal Service showed that the articles moved consisted of office furniture, machines and supplies. We held that the administrative report was sufficient to overcome the presumption of the correctness of the bill of lading. We did not hold that if the Commander, MTMTS, routes goods via a particular carrier, the carrier has authorization to transport those goods. A carrier must determine whether it is authorized to transport goods that are tendered to it, and it must refuse to transport the goods if it is unauthorized to do so.

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Trans Country's final contention is that the shipment also contained recording equipment which is covered under their Tariff No. 52, MF-I.C.C. No. 77. The short answer to this contention is that the recording equipment is rated as electrical equipment and appliances which Trans Country agrees is covered by Tender 150.

Our decision of July 19, 1977, B-188097, has not otherwise been shown to have been in error and is affirmed.

R.F.KELLEN
Deputy
Comptroller General
of the United States