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DECISION



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

FILE: B-188072

DATE: NOV 28 1977

MATTER OF: Navajo Freight Lines, Inc.

DIGEST:

Carrier's claim for amount administratively deducted from it for an overcharge is disallowed where there is substantial compliance with tariff item so that rates may be applied and where carrier had knowledge of application of special rate.

Navajo Freight Lines, Inc. (Navajo), under its Claim No. 52059, requests a review of a final settlement and subsequent deduction action in the amount of \$415.80 taken by the General Services Administration (GSA) on September 9, 1976. The review of settlement is being made by this Office under the provisions of 49 U.S.C. 66(b) (Supp. V, 1975), and 4 C.F.R. 53.3 (1977).

The record shows that Navajo picked up a shipment on September 26, 1973, of 100 cylinders described on Government bill of lading (GBL) H-4766092 as, "Cylinders helium empty for shipping air, gas, or liquid steel NOI old used." The shipment was picked up at the Jet Propulsion Lab, Pasadena, California, and was consigned to the Bureau of Mines, Soncy, Texas.

Navajo billed and was paid freight charges of \$900.24, based on a rate of \$6.82 per hundred pounds, applied to the actual weight of the shipment. GSA determined in its audit of transportation charges that a lower rate of \$3.67 per hundredweight was available and published in Item No. 4370 of Tariff No. 26-1, HS-ICC 155, published by the Rocky Mountain Motor Tariff Bureau, Inc. (later redesignated as ICC RMD 226). Item No. 4370, entitled "CARRIERS, SECOND HAND, EMPTY, RETURNED," states in part:

"Note 1- Except as otherwise provided in Note 2 not germane, rates apply only when the immediate preceding transportation of the filled containers to the shipping point of the empty containers was made by the identical carrier or carriers transporting the empty containers and to which fact the shipper has certified on the bill of lading at the time of shipment."

Navajo contends that Item No. 4370 does not apply in this case because the shipper's annotation on GBL H-4766092 is meaningless as it

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is stated. We do not agree. The GBL is annotated as follows: "This shipment of empty cylinders is made upon receipt this date of 100 filled helium cylinders from consignee shown above." The consignee on GBL H-4766092 is the Bureau of Mines Amarillo Helium Plant, Soncy, Texas. Thus, the annotation makes the carrier aware that the commodity is the same as that prescribed in Item No. 4370.

Further, a shipment of filled cylinders was transported by Navajo and received the same date, and from the same shipper (now the consignee, the Bureau of Mines Amarillo Helium Plant, Soncy, Texas) on GBL H-4765974. And the tariff item does not prescribe specific wording or express language to be certified on the bill of lading. Thus, there is substantial compliance with the tariff item so that the rates contained therein may be applied. Strickland Transportation Company v. United States, 334 F.2d 172, 179 (5th Cir. 1964); Campbell "66" Express, Inc. v. United States, 302 F.2d 270, 272 (Ct. Cl. 1962).

It is our view, that when, as is the case here, there appears on the bill of lading some written notation (certification), which reasonably apprises the carrier that the cylinders tendered are being returned in connection with the immediate transportation performed by that same carrier, that this is sufficient compliance with the tariff to make the rates in item 4370 applicable.

Provisions of tariffs filed with the Interstate Commerce Commission as published are binding upon both the shipper and the carrier as a matter of law, but they are not to be read or applied in a manner which would lead to an unjust or absurd conclusion. Glickfeld v. Howard Van Lines, 213 F.2d 723 (9th Cir. 1954). The only fact that seems to be missing in the annotation on GBL H-4766092 is the name of the carrier, however, the evidence indicates that Navajo was aware of the inbound shipment, and the proper tariff application. The shipment was tendered to Navajo, and Navajo issued the bill of lading under the provisions of 49 U.S.C. 20(11) (1970). The GBL also refers to "RM 226," the redesignated rate tariff as its rate authority, and Item No. 4370 is in that tariff.

The annotation itself indicates that an inbound shipment was received and it can be implied that the subsequent tender of the shipment to Navajo was a tender to the same carrier for the purpose of obtaining the special rate. Thus, Navajo had knowledge of this fact. See Union Pacific R.R. v. United States, 172 F. Supp. 668 (Ct. Cl. 1959), in which the court held that where an export rate was made available to the Government for shipments destined for export under an agreement requiring an authorized Government representative to furnish the carrier a certificate of export, and the carrier knew that the shipments were going

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into export and they actually went into export, the carrier was not entitled, upon the failure of the Government to furnish the certificate, to recover the difference between the domestic rate and the export rate.

Accordingly, the claim of Navajo for \$415.80 is disallowed.

R.F. KELLER

Deputy Comptroller General
of the United States