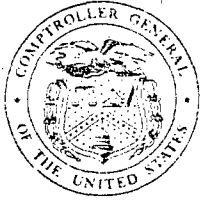


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DECISION

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

FILE: B-195573

DATE: February 12, 1980

MATTER OF: Yellow Freight System, Inc. *CN 602016*

DIGEST:

Req.

1. Presumption that bill of lading correctly describes the article tendered for transportation is not conclusive; important fact is what moved, not what was billed.
2. In reviewing GAO settlements GAO must rely on the written record and, in the absence of clear and convincing contrary evidence, will accept as correct facts in GSA's administrative report.

By letter dated August 23, 1979, Yellow Freight System, Inc. (Yellow), requests review by the Comptroller General of a deduction action taken by the General Services Administration (GSA) to recover an alleged overcharge of \$1,375.92. See 49 U.S.C. 66(b) (1976); 4 C.F.R. 53 (1978).

AGC00017

Protest Involvement

On September 14, 1976, under Government bill of lading (GBL) No. K-1810364, Yellow was tendered a 4,200-pound shipment for transportation from the Naval Air Station, Norfolk, Virginia, to Davis Monthan Air Force Base, Arizona. Yellow delivered the shipment at destination on September 23, 1976, and, in October 1976, collected transportation charges of \$2,758.14 from the Navy Regional Finance Center, Washington, D.C. The charges apparently are based on a class 400 less than truckload (LTL) rate of \$65.67 per 100 pounds.

AGC00772

DLG003903

AGC00161

The commodity shipped was described on the GBL as "1 . . . CONTAINER NMF 100 X 41030 DMN 194X62X72 CU* 502-8". Because of the indefiniteness of this description, GSA asked the shipper for clarification; the shipper advised that the commodity shipped was covered by a class 200 LTL rating published in item 41030, sub 2, of the National Motor Freight Classification (NMFC) to apply on: "Containers, bulk commodity shipping, NOI, loose, SU, aluminum wall 1/4 inch or more in thickness." Based on this information, GSA issued a notice of overcharge for

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\$1,375.92 and sent it to Yellow with a copy of the shipper's advice. The overcharge was collected by deduction in July 1979 and Yellow requests review of that action.

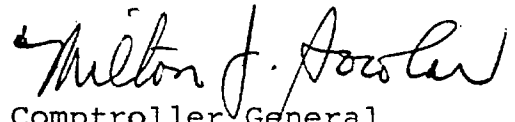
Yellow agrees that the presumption that a bill of lading correctly describes the article tendered for transportation is not conclusive and that the important fact is what moved, not what was billed. Penn Facing Mills Co. v. Ann Arbor RR, 182 I.C.C. 614, 615 (1932); Buch Express, Inc. v. United States, 132 Ct. Cl. 772 (1955). However, Yellow disagrees that a change in description should be based merely on the advice of the shipper, and requests a copy of the GSA catalog (description) covering the stock number of the commodity shipped.

The Naval Air Station (Navy) advised GSA that the commodity's national stock number is 8145 00 587 2431 which in the Federal Item Logistics Data Record applies to a steel, cylindrical engine shipping and storage container with dimensions of 16.167 feet long by 5.167 feet wide and 7.083 feet high. Based on this description, on a photograph of the commodity and on information received from the Navy in Norfolk as to the gauge of the steel, GSA determined that the shipment should have been rated under item 41060, sub 1, of NMFC 100-C. This item applies to a "Container, steel, 16 gauge or thicker, cylindrical, empty, over 14 feet in length and over 30 inches in other smallest dimensions," and like the basis used on the notice of overcharge carries a class 200 LTL rating. In view of this additional evidence obtained by GSA, we agree that NMFC item 41060, sub 1, applies to the shipment transported under GBL No. K-1810364. (We have furnished Yellow a copy of the description in the Federal Item Logistics Data Record and of the photograph.)

Yellow Freight is concerned as to GSA's reliance on statements of Government administrative officers to resolve disputed questions of fact. We have stated, however, in 57 Comp. Gen. 155 (1977), to Yellow, that GSA follows the "unbroken rule of the accounting officers" in relying solely on the written record developed in its audit of paid transportation bills and in its examination and settlement of claims [49 U.S.C. 66(a)] without resort to sworn testimony or more formal fact finding procedures. See 41 C.F.R. 101-41.604 (1979).

The General Accounting Office must also rely on the written record when reviewing claim settlements, 49 U.S.C. 66(b), and in the absence of clear and convincing evidence to the contrary we will accept as correct the facts set forth in GSA's administrative report. 57 Comp. Gen. 155, supra.

Based on the present record, GSA's settlement action on the shipment moving under GBL No. K-1810364 is correct and it is sustained.



For The Comptroller General
of the United States