

13807 TRANS



DECISION

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

[Claim Filed by Carrier More Than Three Years After Accrual]

FILE: B-197661

DATE: May 22, 1980

MATTER OF: Peralta Shipping Corporation

DIGEST:

1. Under section 322 of the Transportation Act of 1940, as amended, formerly 49 U.S.C. 66, claim for freight charges is barred from consideration unless, prior to transfer of transportation audit, claim was received in GAO, or, after transfer of transportation audit, claim was received in GSA or in agency out of whose activities claim arose within 3 years of date of delivery of shipment.
2. Burden is on claimant to present evidence of receipt of claim in proper office within statutory period of limitations.

Peralta Shipping Corporation (Peralta) requests review by the Comptroller General, pursuant to 4 C.F.R. 53 of the refusal of the General Services Administration (GSA) to consider Peralta's claims for outstanding ocean freight charges on four shipments. Claims for the charges presented by Peralta were returned by GSA without payment on the grounds that consideration of the claims was barred by section 322 of the Transportation Act of 1940, as amended, formerly published in 49 U.S.C. 66.

A report has not been requested from GSA since the request for review and supporting documents furnished by Peralta fail to show that the determination by GSA was incorrect.

The documents furnished by Peralta with and in support of its request for review show that four shipments were made by the United States Naval Medical Research Unit from Cairo, Egypt, consigned to various destinations in the United States under Government bills of lading (GBLs) Nos. K-2411609, K-2411611, K-2411621 and K-2411622. The shipments were loaded on the M/S "Lotte Skou" Voyage 2-WB at Alexandria, Egypt, and offloaded at the port of Baltimore, Maryland, on September 11, 1975.

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The original bills of lading were lost in the mail and billing was delayed while certificates in lieu of the lost originals were sought from the officer with the Naval Medical Research Unit in Cairo. The certificates in lieu were finally secured on or about March 2, 1979, and supporting billing was sent to the Navy Regional Finance Center under cover of Peralta letter dated April 12, 1979.

At the time the shipments were delivered section 322 of the Transportation Act of 1940, supra, required that a claim be received in the General Accounting Office (GAO) within three years of the date of accrual of the claim. The regulations of the GAO, 4 C.F.R. 54.6(a) (1975) and 54.6a (1975) notified carriers of the three-year period of limitations and that a claim might be filed directly with the Transportation and Claims Division of GAO if the statute of limitation was about to expire.

Effective October 12, 1975, the transportation audit function was transferred to GSA pursuant to the GAO Act of 1974. This act also amended section 322 of the Transportation Act of 1940, supra, which then provided that every claim for transportation must be received by the GSA or by its designee within three years of the date of accrual of the claim. Also effective October 12, 1975, GSA issued Federal Property Management Temporary Regulations G-23, published in 40 F.R. 47942. These regulations in section 101-41.602 also warn carriers of the three-year statute of limitations.

Section 54.5 of the GAO regulations and section 101-41.603-3 of the GSA regulations require the claim to be supported by evidentiary data. However, where, as here, the effort to secure such evidentiary support results in excessive delay the claimant may protect its rights from the bar of limitations by filing a claim with GAO, prior to the transfer of the audit, or subsequent to such transfer, with GSA or the agency out of whose activities the claim arose, subject to later completion of the supporting evidence.

A claim for freight charges accrues when the shipment is delivered. ^{of} Baggett Transportation Company v. United States, 319 F.2d 864 ~~868~~ (Ct. Cl. 1963); =

Air Express International Corporation v. United States, 439 F.2d 157, 158 and 160 (1971). These four shipments were offloaded at the port of Baltimore on September 11, 1975. The cause of action, therefore, accrued on that date, and the three-year period of limitations expired on or about September 11, 1978.

Peralta alleges that it billed either the Navy Regional Finance Center in Washington, D.C., the Military Traffic Management Command Baltimore Outport or the Military Sealift Command, Atlantic in Bayonne, in 1976 or 1977. Section 54.6a of the GAO regulations, governing prior to transfer of the transportation audit, requires, as provided by the statute, that the claim be received in GAO within three years, and section 101-41.602 of the GSA regulations, governing after the transfer, requires that the claim be filed with the GSA or with the agency out of whose activities the claim arose, here the Department of the Navy. There is no evidence in the file to show that a claim or claims were received by any of the agencies mentioned by Peralta or by GAO, GSA or the Navy. The burden is on claimants to furnish evidence satisfactorily establishing their claims and all matters incidental thereto requisite to establish the clear legal liability of the United States and the claimant's right to payment. 31 Comp. Gen. 340 (1952); 18 Comp. Gen. 980 (1939). Since there is no evidence that the claims were received in or by a proper agency within three years of accrual consideration of the claims is barred by the provisions of the statute of limitations.

Accordingly, the action of GSA is sustained and the documents furnished by Peralta are returned.



For the Comptroller General
of the United States

Enclosures