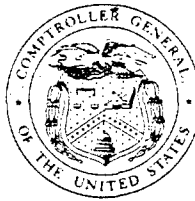


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DECISION



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

FILE: B-197183

DATE: June 26, 1980

MATTER OF: Yellow Freight System, Inc.

DIGEST:

1. GSA's settlement action improper where overcharges are deducted on applicability of all freight rate quotation's 10,000-pound minimum weight and rate to 11,457-pound shipment that occupies full visible capacity of 45-foot trailer ordered by Government.
2. In applying provisions of capacity load rule to shipment of bomb racks, only rates or ratings and minimum weights provided by items specifically referring to bomb racks by name are applicable.

Yellow Freight System, Inc. (Yellow Freight), under the provisions of 49 U.S.C. 66(b) (1976) and 4 C.F.R. 53 (1979), requests the Comptroller General to review settlement action taken by the General Services Administration (GSA), relating to Government bill of lading (GBL) K-3966562, dated December 15, 1976.

For the transportation of a shipment, described on the GBL as "BOMB RACKS, AIRCRAFT, IN W/BOXES (EMPTY) (NMFC ITEM 145820)," weighing 11,457 pounds, from Naval Air Station, San Diego, California, to Naval Air Station, Virginia Beach, Virginia, Yellow Freight was paid the amount billed, \$2,328, in February 1977. GSA's audit of the carrier's bills resulted in the determination that the applicable charges were \$1,440.14, and in the deduction of \$887.86, as an overcharge, from monies otherwise due the carrier.

Although the record is conflicting, it appears that Yellow Freight, based on the class 55 truckload rating on bomb racks named in item 145820 of the National Motor Freight Classification 100-C, ICC NMF

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100-C (Classification), applied the class 55 truckload rate of \$9.70 per 100 pounds in Rocky Mountain Motor Tariff Bureau, Inc., Tariff ICC RMB 521-A (Tariff ICC RMB 521) to a minimum weight of 24,000 pounds. This weight is provided in item 997 of Tariff ICC RMB 521 as an exception to the truckload minimum weight of 30,000 pounds named in connection with the class 55 truckload rating in item 145820 of the Classification.

The foundation of GSA's settlement action is U.S. Government Quotation ICC RMB Q33-A (Quotation RMB 33), which names rates on Freight, All Kinds. GSA applied the rate of \$12.57 per 100 pounds, named in item 2200 of Quotation RMB 33, to the actual weight of 11,457 pounds. Item 2200 contains a scale of incentive rates which decrease as column minimum weights increase. Commencing with a column designated "LTL" (less than truckload), it names rates per 100 pounds applicable to minimum weights of 500, 2,000, 5,000, 10,000, and 15,000 pounds. The rate applied by GSA was derived from the column applicable to shipments having a minimum weight of 10,000 pounds. Item 2200 is silent as to whether the rates shown are truckload and there is nothing elsewhere in Quotation RMB 33 to indicate that the rates published therein are truckload rates.

Yellow Freight does not challenge the rate applied by GSA (except by implication) or dispute GSA's assumption that bomb racks, unmixed with other articles, are covered by the description for freight, all kinds. The carrier's disagreement over the settlement is with the minimum weight, contending that the applicable minimum weight is 24,000 pounds provided in the class Tariff ICC RMB 521 and that the GSA basis does not comport with all applicable rules.

The issue concerning the applicable minimum weight and applicable tariff rules arises from the fact that the shipment occupied the full visible capacity of the carrier's vehicle. The National Motor Freight Classification ICC NMF 100 and Rocky Mountain Motor Tariff Bureau, Inc., Tariff ICC RMB 120 (Tariff ICC RMB 120), among others, govern through operation of item 100 of

Quotation RMB 33. Among the provisions in Tariff ICC RMB 120 is item 610-5, captioned "Minimum Charge - Capacity Loads." This so-called capacity load rule provides in pertinent part:

"When any shipment that is subject to LTL, Volume, or truckload rates is tendered to the carrier and occupies the full visible capacity of one or more vehicles, the minimum charge for that quantity of freight loaded in or on each vehicle will be the charge based on the truckload or volume minimum weight, at the truckload or volume rate applicable."

It should be noted that the rule refers to the applicable rates and minimum weights on individual articles shipped and applies to both straight and mixed shipments.

GSA's position that the applicable minimum weight on this shipment, within the meaning of the capacity load rule, is the 10,000-pound minimum weight in item 2200 of Quotation RMB 33, flows from the following provisions of item 100:

"Where notes or other qualifying statements in NMF 100 refer to 'LTL', 'LTL shipments' or 'LTL provisions', such references will be taken to refer to shipments on which charges are based on a weight of less than 10,000 pounds. Where such notes or other qualifying statements in NMF 100 refer to 'TL', 'TL shipments' or 'TL provisions', such references will be taken to refer to shipments on which charges are based on weight of 10,000 pounds or greater."

Yellow Freight contends that GSA cannot rely on the minimum weights in item 2200 for the minimum weight on a truckload capacity load because the rates therein

are LTL rates (not truckload) and are offered in connection with 10,000-pound (and 15,000-pound) shipments only as an incentive to ship larger LTL quantities, there being no intention that the minimum weights in item 2200 be used as truckload minimum weights in connection with the capacity load rule. The carrier argues that the capacity load rule requires the shipper to refer to the Classification ICC NMF 100 for the applicable truckload minimum weight. The Classification covering Item 145820 "BOMB RACKS, airplane" provides the truckload minimum weight of 30,000 pounds and because of the exception to this weight in item 997 of Tariff ICC RMB 521, the minimum charge should be based on the applicable truckload minimum of 24,000 pounds.

Apparently GSA believes that if there is merit to the carrier's contention, then the Classification is in conflict with item 100 of Quotation RMB 33, because under Note 1 thereof, conflicts are resolved in favor of Quotation RMB 33. Note 1 reads as follows:

"Note 1 - The classes rules and regulations, estimated and minimum truckload or volume weights, shipping and packing requirements, allowances and privileges, or other provisions or conditions published in this quotation, abrogate and supersede those in the governing publications in conflict."

We do not agree with GSA that there is any conflict between item 100 of Quotation RMB 33 and the Classification. Nor do we believe that item 100 establishes a 10,000-pound truckload minimum weight as contended by GSA. All the language does is explain that notes or qualifying statements in the Classification for purposes of differentiating between truckload or less-than-truckload shipments is to establish an arbitrary dividing line based on the weight of the lading of 10,000 pounds. That is, for the purpose of notes or qualifying statements in the Classification, any lading under 10,000 pounds is considered a less-than-truckload shipment and any lading over 10,000 pounds is considered a truckload shipment. The foregoing interpretation of the quoted

provisions of item 100 is in accord with the rule that the terms of a tariff must be taken in the sense in which they are generally or commercially understood. Federal Glass Co. v. Cleveland, Columbus and Cincinnati Highway, Inc., 43 M.C.C. 721, 724 (1944).

Note 1 of item 100 does not create any conflict with the Classification, since Quotation RMB 33 does not provide any truckload minimum weights applicable to bomb racks. It is our view that GSA's erroneous assertion that item 100 provides a truckload minimum weight of 10,000 pounds which conflicts with note 1 of item 100 reaches improbable and inconsistent results. It is well settled that reasonable doubts as to the meaning of a tariff must be resolved in favor of the shipper. It also is well settled, however, that neither carriers nor shippers can be permitted to urge for their own use a strained or unnatural tariff construction, and that all of the tariff provisions must be considered together and given a fair and reasonable construction. Willard Storage Battery Co. v. Associated Transport, Inc., 49 I.C.C. 536, 538 (1949).

Accordingly, GSA's settlement action was incorrect and refund of \$887.86 should be made to Yellow Freight.

Milton J. Fowler

Acting Comptroller General
of the United States