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Billing TRMS T

DECISION

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

[Protest of GSA Settlement Action]

FILE: B-197298 DATE: September 12, 1980

MATTER OF: Yellow Freight System, Inc.

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DIGEST:

1. Rule, that description of article on Government bill of lading (GBL) as originally issued is prima facie correct, is irrelevant in resolving factual issue of what moved where GBL fails to identify pertinent classification characteristics of article.

2. Incident of duty to charge only applicable classification rating and rate is carrier's duty to inspect or inquire at time of receipt of shipment where it has actual notice from face of GBL that pertinent classification characteristics are missing.

3. Where, because of indefinite description of article on GBL, there are two possibly applicable classification ratings, and carrier fails to inspect the article or inquire concerning length and cubic displacement (both pertinent classification characteristics) shipper is entitled to lower rating and rate.

4. Where at time of receipt carrier had notice from GBL that pertinent classification characteristics of article were missing and failed to inspect or inquire, GSA may deduct overcharges from carrier on basis of specific classification description contained in continuation sheet amended by shipping agency at time of audit, despite unavailability of supporting documents or other evidence.

In its letter of December 13, 1979, Yellow Freight System, Inc. (Yellow), requests review by the Comptroller General of deduction action taken by the General Services Administration (GSA) to recover overcharges from freight charges otherwise due the carrier. See 49 U.S.C. 66(b) (1976) and 4 C.F.R. 53 (1979).

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The action arose from the transportation of a shipment from the Naval Air Station, Norfolk, Virginia, to the Naval Air Station, Alameda, California, on Government bill of lading (GBL) K-1809811, dated July 15, 1976. The carrier billed and was paid $1,487.56 upon presentation (without audit), as required by 49 U.S.C. 66(a) (1976), on August 23, 1976. Two years later, in 1978, when the paid bill was being audited, GSA determined that the bill of lading description of the shipment was insufficient for GSA to perform its audit. Therefore, GSA requested the Military Traffic Management Command for additional information about the shipment and clarification of the bill of lading description.

On the GBL's continuation sheet, two containers were described as follows:

"CO STEEL 16 GAUGE OR THICKER CYL EMPTY
(ETY ENG CO) NMF 100 B 41060"

Although the description clearly referred to item 41060 of the National Motor Freight Classification 100-C, ICC NMF 100-C, the item provides two different less-than-truckload (LTL) ratings on empty cylindrical, 16 gauge, steel containers, depending on the physical characteristics of the article. The two sub items, descriptions and LTL ratings are as follows:

| SUB | | LTL RATING |
|---|---|---|
| 1 | "Over 14 feet in length and over 30 inches in other smallest dimension" | 200 |
| 2 | "NOI, not less than 165 gallons or 22 cubic feet capacity" | 100 |

The GBL description obviously did not contain the length or capacity of the containers.

Yellow billed the Government on the basis of the class 200 rating, as though the containers exceeded 14 feet in length. However, GSA in auditing the billing requested the administrative office for the length or capacity of the containers and was furnished an amended GBL continuation sheet which described the containers as follows:

"Containers steel 16 gauge or thicker, cyl, empty NOI, not less than 165 gallons or 22 cu ft capacity NMFC 41060, Sub 2"

Based on this specific classification description, which identified the article with Sub 2 and the lower class 100 rating, GSA issued a Notice of Overcharge for $893.27. In the absence of refund, deduction of the overcharge was made by the U.S. Navy Regional Finance Center.

Both parties recognize that the factual question is whether the containers were over 14 feet long or not less than 165 cubic feet capacity; they differ in their assignment of the legal burden of establishing, for audit purposes, the pertinent classification characteristics of the article.

In Yellow's view of the law and the practicalities, it is the shipper's responsibility upon audit of the carrier's bills to present documentary and other evidence supporting the specific classification description furnished by the agency. In support of its contention, Yellow refers to B-192872, May 7, 1979.

The classification item there (item 178160), similar to item 41060, contained two sub items, depending on whether the article was set up (SU) or knocked down (KD). The article was described as "SU" on the GBL and the carrier billed on that basis. Yellow suggests that we sustained GSA's audit action because the administrative office submitted reports and documentary evidence supporting the change of description from "set up" to "knocked down." GSA and our Office applied the rule that in the absence of clear and convincing evidence to the contrary, the Government accounting officers accept statements of fact furnished by the administrative officers.

We also stated in B-192872, supra, that "[i]f in any particular case a carrier needs further or clarifying evidence of what moved we see no reason why GSA would not furnish it at the carrier's request." Although the carrier requested such evidence in this case none has been furnished, and we have been informed by the shipping agency that the records are no longer available. Therefore, the issue is whether GSA's deduction action was proper in the absence of statements by Government officials

and documentary evidence supporting the amended description. Under the circumstances of this case, we believe that it was.

Yellow, in effect, contends that in the absence of evidence contrary to the original GBL description, the latter is controlling. We agree with the underlying principle. In Navajo Freight Lines, Inc. v. United States, 176 Ct. Cl. 1265 (1966), the court held that the gauge of tanks stated on the GBL (18 gauge) was prima facie evidence of that characteristic. But that principle is not relevant here. GSA does not dispute the prima facie nature of the GBL description: the containers were of steel, 16 gauge or thicker, empty and identified to NMFC 100-B, item 41060. Because the original description failed to describe the length or capacity of the containers, the carrier was unable to identify the article with a specific classification description. Rather than inspect the article or inquire of the shipper, the carrier simply chose the higher of the two possible applicable ratings without knowing the pertinent classification characteristics of the commodity.

It is our opinion that the rule placing the burden on the shipper to present clear and convincing contrary evidence applies only where the shipper alleges that the GBL erroneously described the article in terms of a specific classification description and the GBL failed to give notice to the carrier of the error. Thus, the rule was applied in B-192872, supra, because the article on the GBL was specifically described (SU) in terms of Sub 1 and the shipper contended that the article should have been described under Sub 2 (KD).

Under the circumstances of this case, particularly the element of notice, we believe the following principles apply.

Regardless of which party prepares the GBL, it is the duty of the carrier's agent to ensure that it is correct in all material respects. See 52 Comp. Gen. 211 (1972). Application of the rule in this context, i.e., the absence of a specific classification description on the GBL, is consistent with the carrier's duty to charge no other rates on the article than the one embraced in the classification description. See Fedders-Quigan Corp. v. Long Transportation Co., 64 M.C.C. 581, 586 (1955). In the absence of a specific description on the original GBL or evidence of the

pertinent classification characteristics (length or capacity), there were, in effect, two descriptions in item 41060 that were possibly applicable and where there are two equally applicable descriptions the shipper is entitled to the lower rates. See United States v. Gulf Refining Co., 268 U.S. 542, 546 (1925), and Buch Express, Inc. v. United States, 132 F. Supp. 473 (Ct. Cl. 1955), cert. denied 351 U.S. 940 (1956). The rule that the carrier must prove the correctness of its charges was the basis of our decision to Yellow in B-192856, March 15, 1979, and the rationale for the rule was explained in B-192872, supra, the decision referred to by Yellow here (both cases involved GBL descriptions).

We do not see the unfairness or the impracticality in requiring the carrier at the time of audit to establish the true description of the article even though over two years may have elapsed, because the carrier had knowledge at the time of shipment that the GBL contained no specific classification description of the article and without it the carrier could not perform its duty to assess only the applicable rate, yet, Yellow failed to take advantage of the opportunity to inspect the shipment or to inquire of the shipper.

Yellow has failed to present any evidence of the physical characteristics of the containers. We accept the description contained in the GBL's amended continuation sheet since it was prepared by Government officers on the basis of pertinent records available at the time.

GSA's settlement action was not shown to be incorrect and it is sustained.

Milton J. Socolar

For the Comptroller General
of the United States