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Bilard Price II

DECISION

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

[Request for Review of GSA Settlement Action]:

FILE: B-199927 DATE: May 12, 1981

MATTER OF: American Farm Lines

DIGEST:

Horizontal lines inadvertently placed between each destination point, rate and minimum weight in tender does not eliminate alternating rates (with higher rate applicable to lowest minimum weight and lowest rate applicable to highest minimum weight) previously reflected in tender.

American Farm Lines (AFL) requests review of settlement action taken by the General Services Administration (GSA) relating to two shipments of Freight All Kinds that were transported from Defense, Texas, to Lathrop, California, in February 1978. See 31 U.S.C. § 244(b) (Supp. III, 1979), and 4 CFR 53 (1980). AFL presented two claims to the GSA for $444 each as additional allowances for transporting one shipment on Government bill of lading (GBL) M-6121306, weighing 23,833 pounds, and another on GBL M-6120469, which weighed 19,847 pounds. The GSA disallowed these claims by issuance of Settlement Certificates on May 27, 1980 (TK-035679) and June 2, 1980 (TK-035696), on the respective GBLs.

AFL and the GSA agree that the general commodity rates in item 1257 of AFL's Tender ICC 266 apply to the shipments. The relevant part of item 1257 contains rates from Defense, Texas, to various California points. There is also apparent agreement that the Government requested exclusive use of vehicle service; that the service was furnished, and the exclusive-use rule in item 130 of the tender (original page 8 and 6th revised page 9) requires that the charges be based on a minimum weight of 40,000 pounds. The parties disagree over the applicable truckload rate. The carrier's claims are based on a rate of $5.20 per 100 pounds, while the GSA adheres to the rate on AFL's original bills of $4.09 per 100 pounds.

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The dispute results from the presence of horizontal lines in item 1257 (8th revised page 40, effective May 16, 1977) between each destination point, rate and truckload minimum weight. The lines were not present in the previous (the 7th) revised page 40. They are shown in the following reproduced part of item 1257:

FROM * *	TO *	RATE *	MIN. WT (In Pounds) *
	Ft. Ord, CA.	717	20,000
	Lathrop, (Note 60) CA.	520	30,000
Defense (Note	Oakland, (Note 75) CA.	440	36,000
40) TX	Stockton, (Note 115) CA.	409	40,000
	Travis AFB, CA.	400	42,000

AFL contends that it is entitled to the rate appearing on the same line as the destination point. GSA's position is that only the rates and minimum weights should be read together, and that all are applicable to each specified destination. We agree with GSA.

Tender 266 was governed by National Motor Freight Classification 100-D, ICC NMF 100-D. See American Farm Lines, B-198433, July 28, 1980. Item 595 of that Classification provides for computation of charges by utilizing alternating rates.

> "Alternating rates are rates contained in a freight pricing tariff which apply to two or more specified minimum weights for the same commodity moving between the same

> origin and destination during the same time period. The highest rate applies on the lowest minimum weight and the lowest rate applies on the highest minimum weight contained in the freight pricing tariff."

Penn Central Co. v. General Mills, Inc., 439 F.2d 1338, 1340 (8th Cir. 1971), at footnote 2.

The tender's exclusive-use rule (item 130) is an exception to item 595 of the Classification in that it provides for minimum charges based on 40,000 pounds at the applicable rate. Although the higher minimum weight is assigned by the exclusive-use rule, the tender provides for a maximum charge in item 190, which reads:

> "If the charges based on the higher minimum weight and subject to the lesser rate are lower than the charges accruing under the rate applicable at the actual weight, the lower charges will apply."

Under the 7th revised page 40, which did not contain the horizontal lines, the 40,000-pound minimum (prescribed by the exclusive-use rule) would result in billings at the rate for that weight.

However, AFL states that the introduction of the lines in 8th revised page 40 changes the tender and that the only rate applicable to shipments destined to Lathrop, California, is $5.20 because that is the only rate shown between the lines in which Lathrop appears. It cites numerous court and administrative decisions for the principle that the law requires the carrier to assess charges based on the rates as published.

We disagree, because it is clear that the lines were not intended to produce that result and that AFL's interpretation of the tender is unreasonable. First, AFL admits that the lines were inserted inadvertently. Secondly, if, as AFL contends, only the rate appearing on the same line as a destination point applies, it would follow that in the absence of exclusive-use services only the truckload minimum weight appearing on a line would apply. This obviously is an absurd result, as it eliminates appropriate charges for other weights.

In our view, since the minimum weight progression is identical to the one in the 7th revised page 40, which, without dispute, contemplated alternation of weights and rates and since AFL concedes the lines on the 8th revised page 40 were not meant to change the alternating rate structure provided by the prior page 40, the only reasonable interpretation is that the lines are of no legal effect and that alternating rates do apply.

We therefore conclude that item 190 applies and that the appropriate applicable rate is $4.09 rather than the $5.20 rate which appears on the same line as Lathrop, the destination point.

GSA's settlement action is sustained.

Milton J. Socolar

Acting Comptroller General
of the United States