



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Coast Counties Express, Inc.- Statute of
Limitations; Incorporation of Charges by
Reference

File: B-227179.2

Date: January 5, 1990

DIGESTS

1. A carrier's request for review of a General Services Administration (GSA) transportation settlement under 31 U.S.C. § 3726 must be received in this Office not later than 6 months (excluding time of war) after GSA takes action or within the period specified in 31 U.S.C. § 3726(a), whichever is later. Although the carrier submitted copies of letters that it asserts it sent to this Office requesting review, and which are dated within the period, there is no record in this Office that the letters were received. The copies alone, without other substantiating evidence, are not enough to establish that the claims for transportation charges were received within the statute of limitations, and therefore, such claims are barred.
2. Although 31 U.S.C. § 3726(a) generally requires that claims for transportation charges be received at GSA within 3 years, this Office will review a claim filed directly with this Office if it is filed prior to the expiration of the statute of limitations.
3. Carrier's claims for additional transportation charges, based on a terminal service charge contained in a participating tariff bureau's government rate tender, are valid even though the bureau tender is not specifically listed as a governing publication in the carrier's applicable individual rate tender. So long as the applicable individual tender contains no provision contrary to the intent to include such a charge, and a specifically listed governing publication (e.g., a bureau tender) in turn is specifically governed by another publication (e.g., another bureau tender) containing the charge, a terminal service charge contained in the indirectly referenced governing publication is incorporated by reference into the tender.

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DECISION

Coast Counties Express, Inc. (Coast Counties), has requested the Comptroller General to review General Services Administration (GSA) settlements on 12 Government Bill of Lading (GBL) transactions in which it is claiming transportation charges that were not billed by the carrier on its initial Public Vouchers for Transportation Charges (SF 1113). These transactions can be divided into two groups. The first nine involve claims for signature security service on shipments picked up, delivered and initially paid between December 1984 and June 1985.^{1/} The second three involve claims for terminal service charges on shipments that were picked up, delivered and initially paid between March and August 1986.^{2/} The first group cannot be considered by this Office because they are barred by the period of limitations contained in 31 U.S.C. § 3726, but as explained below GSA should settle the second group.

BACKGROUND

On February 13, 1989, this Office received a letter from Coast Counties, dated February 3, 1989, which sought information on the status of three letters, all dated October 26, 1987, which requested review of the 12 transportation settlements listed in footnotes 1 and 2. Copies of the three letters were provided. The carrier's February 3rd letter stated that it usually sends such requests via certified mail, but that it was unable to locate the return receipt certification card. The carrier also acknowledged that it never received notification of the assignment of a case number by this Office. The records of this Office do not contain any previous correspondence from

^{1/}S-8,013,850, Carrier Bill 10275-X; S-8,013,864, Carrier Bill 10314-X; S-8,014,012, Carrier Bill 10478-X; S-6,904,836, Carrier Bill 9938-X; S-8,687,906, Carrier Bill 10441-X; S-8,687,777, Carrier Bill 10397-X; S-6,899,008, Carrier Bill 10251-X; S-6,898,827, Carrier Bill 10181-X; S-8,687,892, Carrier Bill 10448-X.

^{2/}S-6,331,160, Carrier Bill 11264-X; S-6,330,665, Carrier Bill 11183-X; and S-6,301,800, Carrier Bill 11482-X.

Coast Counties involving 10 of the GBL's, and also do not contain any correspondence dated October 26, 1987.^{3/}

DISCUSSION

Under 31 U.S.C. § 3726(d)(1) (Supp. II and III, 1985 and 1986), now codified at 31 U.S.C. § 3726(g)(1), Coast Counties' requests for review of these transportation settlements had to have been received in this Office not later than 6 months (excluding time of war) after GSA's settlement, or not more than 3 years after the time limit set out in 31 U.S.C. § 3726(a) for filing a claim with GSA, whichever is later. In this case, the date of payment is the date on which the 3-year period for filing a claim with GSA under 31 U.S.C. § 3726(a) began. The latest payment date in the first group of claims was in June 1985, so that the 3-year period for receipt in this Office expired in June 1988. Further, the latest GSA settlement on the first nine bills was made more than 6 months from the time the claims were received in this Office. Accordingly, the latest date available to file a claim with GSA or request review from this Office with respect to the latest payment in the first nine transactions was in June 1988. No correspondence involving these transactions was received in this Office until February 13, 1989.

Although the carrier submitted copies of two letters involving the first nine transactions dated October 26, 1987, that it asserts were forwarded to this Office at that time, copies alone, without other substantiating evidence, are not sufficient to verify receipt for the purpose of tolling of a statute of limitations. See Continental Air Lines, Inc., B-182614, Dec. 16, 1974, involving a predecessor to 31 U.S.C. § 3726. See also Carmine A. Barone, B-230396, June 15, 1988. The burden is on the claimant to present evidence of receipt of a claim in the proper office within the statutory period of limitations. Peralta Shipping Corporation, B-197661, May 22, 1980. The assertion by the carrier that it forwarded the October 26th letters, coupled with copies of such letters, is clearly insufficient, especially considering the carrier's departure from its usual practice of accounting for receipt through certified mail procedures, and considering the absence of any record in this Office. Accordingly, the first group of claims is barred.

^{3/} Two of the GBL's in the second group (S-6,331,160 and S-6,330,665), had been referred to this Office in carrier correspondence on unrelated claims, considered in our decision in B-227179, dated March 23, 1988.

The second group of claims involves GBLs with payment dates between April and August 1986. Although 31 U.S.C. § 3726(a) requires that claims for transportation charges must be received in GSA within 3 years, which apparently did not occur in the case of these charges, we have previously considered claims where the carrier has filed a claim directly with this Office prior to the expiration of the statute of limitations, as Coast Counties has done with respect to the second group of GBLs. American Farm Lines, Inc., B-204204 and B-204204.2, Apr. 5, 1982.

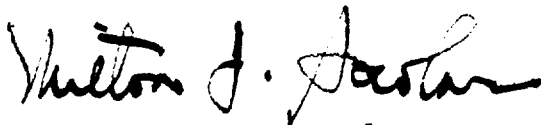
In the present case, we requested the views of GSA on Coast Counties' claims, and GSA and Coast Counties agree that Coast Counties Tender 316, Supplements 2 and 5, apply to these three shipments. Tender 316 is the carrier's individual government rate quotation. Item 16 of the tender specifically provides that the "rates, charges or services" therein "are subject" to Rocky Mountain Motor Tariff Bureau (RMB) U.S. Government Quotation 16 (Q16), a bureau tender. RMB Q16 in turn provides that it is governed by RMB U.S. Government Quotation 20 (Q20). RMB Q20 is the tender which contains the terminal service charges in dispute in this case.

A government rate quotation or tender, such as Tender 316, is made to the United States pursuant to 49 U.S.C. § 10721. It is a continuing offer to perform transportation services at the quoted rates and is subject to the terms and conditions therein. Also, it is subject to interpretation in accordance with established principles of contract law, and therefore, a carrier may incorporate by reference any and all provisions contained in other documents if the provisions incorporated do not conflict with the terms of the tender or quotation. In order to combine a tender with another tender, or with a regular tariff provision, the intention of the parties to accomplish this purpose must be apparent either by express provision or by necessary inference. See Mercury Motor Express, Inc., B-193029, Dec. 7, 1978, and the decisions and cases cited therein, and Trans Country Van Lines, Inc., B-190624, Aug. 29, 1978.

Tender 316 and its supplements contain specific provisions for charges involving armed guard service, constant surveillance service, protective security service, signature and tally record service, dual driver protective service, released valuation and stop off. None of these provisions conflict with the terminal service charge set out in RMB Q20 since none mention it. Moreover, the terminal service charge provision was included in RMB Q20 at the time that

Tender 316 was promulgated. Accordingly, there exists a necessary inference that the parties intended to incorporate it by reference.

Settlement should be made by GSA consistent with the above.

for 
Comptroller General
of the United States