



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Tri-State Motor Transit Company
File: B-253916
Date: March 16, 1994

DIGEST

The burden is on the claimant to present evidence of receipt of a claim in the proper office within the statutory period of limitations. The government activity's time/date stamp is not dispositive of the time of a claim's receipt, but in the absence of a clear proof of earlier actual receipt, we will assume receipt at the time and date indicated on the stamp.

DECISION

Tri-State Motor Transit Company requests review of the General Services Administration's (GSA) audit actions declining to consider supplemental bills for additional charges in three Government Bill of Lading (GBL) transactions because they were not timely received by the agency involved under 31 U.S.C. § 3726(a). The statute requires that a transportation claim be received by GSA or a designee within 3 years of either (1) the claim's accrual; (2) payment by the government; (3) refund for an overpayment; or (4) government set-off for an overcharge, whichever is later.

We affirm GSA's actions on two of the claims, GBL C-1,294,120 and GBL C-0,759,216, which involve transactions originally paid at the Army Finance & Accounting Center (now Defense Finance & Accounting Service - Indianapolis Center). However, we reverse the third, GBL C-1,227,685, originally paid by the Navy Material Transportation Office (NAVMTO).

Background

The Indianapolis Center initially paid GBL C-1,294,120, in the amount of \$810.14, on November 13, 1987. By its Public Voucher for Transportation Charges (SF 1113) dated November 6, 1990, Tri-State sought an additional \$127.87. The SF 1113 was stamped by the Receipt Branch at the Indianapolis Center as received on November 15, 1990, 2 days late. Tri-State disputes the Center's finding that the claim was not received until November 15. The carrier alleges that it submitted its claim on C-1,294,120 along

with 18 other claims by certified mail; Tri-State has provided a copy of a receipt showing that a package (with a basic postage charge of \$2.40) was dispatched on November 3, 1990, and a copy of a return receipt showing delivery to the Center's Central Mail Branch on November 13. The Center states that it cannot confirm delivery prior to the date it was stamped into the Receipt Branch.

The record shows that C-0,759,216 was originally paid, in the amount \$1,592.18, on April 19, 1988. By its SF 1113 dated April 18, 1991, Tri-State sought an additional \$1,131.04. The SF 1113 was stamped as received by the Receipt Branch at the Indianapolis Center on April 22, 1991, 3 days late. Tri-State disputes the Center's finding that the claim was not received at the Center until April 22. The carrier alleges that it submitted this claim by Federal Express overnight delivery under Airbill Package Tracking No. 7748174394 on April 18. Tri-State has provided a copy of an airbill dated April 18 with that number and addressed to the Center. The carrier also has provided a copy of a "Delivery Record" showing delivery of the package with several others on what appears to be April 19. The Center states that it cannot confirm delivery prior to the date it was stamped into the Receipt Branch.

NAVMTO originally paid the third transaction, C-1,227,685, in the amount of \$1,608.05 on April 19, 1988. By its SF 1113 dated April 18, 1991, Tri-State sought an additional \$76.75 for the shipment. The SF 1113 was stamped as received by NAVMTO on April 22, 1991. Tri-State contends that the claim arrived at NAVMTO on April 19, the last day for timely submission. Tri-State says that it included this claim in a package it sent by Federal Express in overnight delivery on April 18, under Airbill Package Tracking No. 7748174405. Tri-State has provided a copy of a Federal Express delivery record showing delivery of a package with that tracking number at 11:28 a.m. on April 19. In this respect, in commenting on the claim Navy counsel accepts as fact that the claim was received in the mail room on April 19, 1991.

Analysis - The Indianapolis Center Transactions

In discussing its internal procedures, the Indianapolis Center states that it did not necessarily process certified mail on the day it was received; the priority system used and the workload in the mail room may have caused some mail to be held for 1 or 2 days before going to the Receipt Branch. This is partly consistent with the carrier's statement that it is common practice not to date stamp SF 1113s in the particular processing unit until 1 or more days after receipt in the mail room. The Indianapolis

Center also states that the date on the return receipt involving C-1,294,120 is unreadable.

The burden is on the claimant to present evidence of receipt of a claim in the proper office within the statutory period of limitations; the claimant must establish the clear legal liability of the United States and his right to payment. See Peralta Shipping Corp., B-197661, May 22, 1980. Moreover, the date of claim filing is a question of fact. Since the administrative office is in a better position to consider and evaluate facts, on disputed questions of fact our Office will accept the agency's statement in the absence of clear and convincing contrary evidence. See McNamara-Lunz Vans and Warehouses, Inc., 57 Comp. Gen. 415, 419 (1978).

Tri-State has not proven by clear and convincing evidence that the Indianapolis Center received its claims prior to the date on the date/time stamp. There is no independent corroboration that each claim in fact was included in the package alleged to contain it. Compare Chelsea Clock Co., Inc., B-251348.2, May 24, 1993, 93-1 CPD ¶ 401. Also, Tri-State's own processing of these three claims depicts some confusion concerning the supporting documentation; for example, in a letter to a GSA official dated April 8, 1993, Tri-State associated the claim allegedly delivered by Federal Express to Indianapolis (the second GBL, C-0,759,216) with the Federal Express Airbill Package Tracking Number and recipient it now associates with the NAVMTO claim.

Moreover, with regard to GBL C-1,294,120, allegedly sent certified mail, we question how Tri-State could have mailed 19 claims, with all required supporting documentation, for only \$2.40 in basic postage, as noted above. (Our own calculations suggest that the basic postage for 19 supported claims would have been more than \$2.40.)

Tri-State suggests that payment offices have an obligation to date stamp incoming claims upon arrival to accurately reflect when they were received. We agree that a government agency should record the date that a claim was received into its control, but if it fails to do so, this does not mean that the burden of showing timely filing for statute-of-limitations purposes shifts from the carrier to the government. The burden still is on the carrier to demonstrate that an agency timely received its claim. If a carrier delays the filing of its claim to the last day before the time bar, it runs a high risk of not being able to prove timely agency receipt.

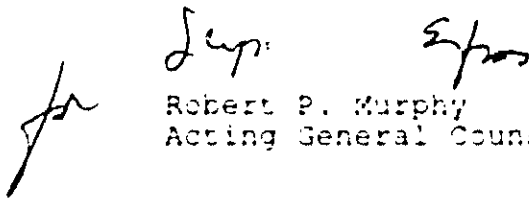
In sum, although a Tri-State package may have reached the Indianapolis Center on time in each case, the record does

not establish that each package included the respective claim in issue.

Analysis - The NAVMTO Transaction

We view the NAVMTO claim differently. The Navy's administrative report corroborates the delivery of the claim to NAVMTO's mail room, as well as agency receipt and control over it, prior to the deadline. In this respect, it is not relevant that the claim did not reach a location for date stamping until after the deadline under the statute of limitations. Claims under 31 U.S.C. § 3726 must be received by the Administrator or his designee (the agency generating the contractual activity) within 3 years of the controlling event,¹ but receipt by a specific individual and in an exact place and time of day is not mentioned either by the statute or the implementing regulations.² As long as the evidence establishes that the proper government agent received a claim within the 3-year period, the claim is timely under 31 U.S.C. § 3726.

GSA should dispose of the NAVMTO claim in accordance with this decision; GSA's audit actions otherwise are affirmed.


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¹The Navy suggests that since the claim relates back to the service provided, and does not involve a dispute or reduction of the initial carrier billing, the 31 U.S.C. § 3726(a) limitation period should have started running on February 20, 1988, the date of delivery. Under the statute, however, the 3-year period for filing a supplemental claim like Tri-State's starts at the date of original payment. See American Farm Lines, Inc., B-203045, Aug. 11, 1981; 41 C.F.R. § 101-41.602(b).

²In contrast, for government acquisitions the procurement regulations require that bids be received on time in the office specifically designated in the solicitation. 48 C.F.R. § 14.302; see George W. Kane, Inc., B-245382.2, Feb. 4, 1992, 92-1 C.P.D. ¶ 143.