



Comptroller General
of the United States

1145168

Washington, D.C. 20548

Decision

Matter of: Tri-State Motor Transit Company

File: B-256085

Date: August 5, 1994

DIGEST

A carrier claiming additional charges based on the actual identity of an article transported years earlier has the burden of establishing the true description of the article where, at the time of shipment, the carrier knew from the contents of the bill of lading description prepared by the shipping agency that there were two possibly applicable classification ratings and the carrier failed to inspect the article or inquire concerning its pertinent classification characteristics.

DECISION

Tri-State Motor Transit Company requests that we review the General Services Administration's (GSA) denial of its claims for additional charges on two Department of Defense (DOD) shipments in the early part of 1990 under Government Bills of Lading (GBL) C-8,775,081 and C-5,794,600.

GBL C-8,775,081 was a dromedary shipment weighing 244 pounds. The GBL described the shipment as "ROCKET AMMUNITION WITH EXPLOSIVE PROJECTILE CLASS A EXPLOSIVE (EXPLOSIVES, NOI)" having the dimensions 48"x40"x32"; it specifically cited Code 064300 Sub 01 as the proper classification. GBL C-5,794,600 referred to the shipment as an AGM-65D Missile and as Class A Explosives, and referred to two different weights (25 lbs. "NEW" and 850 lbs. "TOTAL WEIGHT"); its package dimensions were 30"x30"x96"; and, while Code 064300 was cited, no "Sub" number was provided.²

¹The AGM-65D is a Maverick air-to-surface missile, 2.49 meters long, 305mm in body diameter, weighing 220kg at launch with a warhead weighing 57kg. See JANE'S AIR-LAUNCHED WEAPONS, Issue 16 (D. Lennox & A. Rees ed. 1993).

²Tri-State mistakenly attached a copy of a Government Freight Waybill Continuation Sheet from an unrelated GBL transaction to support its claim on C-5,794,600. We do not
(continued...)

GSA contends that the rates in Tri-State's Tender 200 applied on both shipments because both GBLs indicated that they involved the shipment of Class A explosives under DOD Unique Code (classification) 064300 Sub 01. Tri-State disagrees, arguing that its higher tariff rates applied to both GBLs because each involved the shipment of guided missiles with warheads, classified by DOD under its Unique Code 064300 Sub 04. In early 1990, Tender 200's lower rates applied to 064300 Sub 01, but not to shipments of commodities properly classified under 064300 Sub 04. Applying Tri-State's Tariff 4000B results in additional payments to Tri-State of \$2,371.61 on the first shipment and \$220.75 on the second.

Page 10 of DOD's revised instructions for use of the Standard Tender of Freight Services (MT Form 364-R), effective June 1, 1989, described commodities under 064300 Sub 01 as "Ammunition, explosives, fireworks, or chemical munitions, NOIBN, Class A, released value not exceeding \$2.50 per pound." These instructions also described commodities under 064300 Sub 04 as "Missiles or Rockets, guided with warheads, released value not exceeding \$2.50 per pound."

Tri-State, as the claimant, must furnish evidence to clearly and satisfactorily establish its claim and all incidental matters, and to establish the clear legal liability of the United States and its right to receive payment. See J & V Audit Co., B-211465, Nov. 18, 1983. Generally, the presumption that the bill of lading correctly described the article tendered for transportation is not conclusive; the important fact is what moved, not what was billed. See Yellow Freight System, Inc., B-192872, May 7, 1979. However, the carrier has the burden of establishing the true description of the article shipped during an audit years after the shipment where, at the time of receipt of the shipment, the carrier knew from the contents of the GBL description prepared by the shipper that there were two possibly applicable classification ratings and the carrier failed to inspect the article or inquire concerning its pertinent classification characteristics. See Yellow Freight System, Inc., B-197298, Sept. 12, 1980, 80-2 C.F.D. ¶ 193.

With regard to GBL C-8,775,081, we see nothing that suggests that the article shipped was a guided missile with a warhead, rather than Class A explosives as the GBL

²(...continued)

have a copy of the proper continuation sheet, which may have contained additional clarifying information.

specifically states. While GBL C-5,794,600 suggests that the article shipped may have been a guided missile, it also suggests that the article shipped was Class A Explosives. The ambiguities on the face of the GBL were so clear that Tri-State should have ascertained the contents of the shipment prior to issuing the GBL.

In the absence of clear evidence to prove that the commodities transported were properly classified under DOD Unique 064300 Sub 4, we affirm GSA's settlements.

/s/ Seymour Efros
for Robert P. Murphy
Acting General Counsel

³Our review of the GBL indicates that only 1 container was involved, so that it is unlikely that the shipment included both a missile and Class A explosives.