Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Tri-State Motor Transit Company - Reconsideration

File: B-254378.2; B-254820.2; B-255820.2

Date: July 5, 1995

DIGESTS

1. When request for reconsideration of a prior decision essentially restates arguments made previously and presents no evidence demonstrating error in fact or law, this Office will affirm the decision.

2. When a request for reconsideration involves a de minimis charge without raising substantial issues, and the request was not timely filed, this Office will not reconsider the matter.

DECISION

The General Services Administration (GSA) requests that we reconsider our decisions Tri-State Motor Transit Company, B-254378 and B-254820, Feb. 16, 1994, and Tri-State Motor Transit Company, B-255820, June 20, 1994. The common issue in these cases is whether the government should pay additional charges to the carrier for the carrier's acceptance of the potential for more than the standard released liability in transporting motor vehicles for the Department of Defense. The resolution of this issue depends on a correct determination of the level of liability that applied to the shipments in question. In B-255820, GSA also questions the applicability of Tri-State's $54 minimum charge for Class C Explosives in one of the shipments. Relevant facts are set forth below.[1] We affirm our prior decisions.

LEVEL OF LIABILITY APPLYING TO THE SHIPMENTS IN QUESTION

In our February 16, 1994, decision, we acknowledged that item 190 of the Military Traffic Management Command's Freight Traffic Rules Publication No. 1A (MFTRP 1A) limited carrier liability to $20,000 per vehicle for each vehicle it

[1]GSA advised us that our decision here is dispositive of Tri-State's claim under Government Bill of Lading C-7,751,399 in our file B-260317; accordingly, we overrule GSA's settlement of that claim and close that file without a separate decision.

transported for the Department of Defense (DOD) unless "a value exceeding the released value is stated on the bill of lading." See Item 190, paragraph 6 of MFTRP 1A. We held that values exceeding the released value were stated because DOD officials prepared each Government Bill of Lading (GBL) with the typical notation "RELEASED VALUE NTE $2.50 [or $1.75] PER POUND PER ARTICLE." The value of $2.50 per pound per article (vehicle) exceeded the default $20,000 per vehicle released value in the instances involved, and Tri-State claimed excess valuation.

GSA contends that we incorrectly found that the carrier's maximum liability for each shipped vehicle exceeded $20,000 per vehicle, and therefore, that we incorrectly held that excess valuation charges applied. It suggests that we have held that the actual value of an article does not limit the application of excess valuation charges. GSA believes that the released value notations found on these GBLs are insufficient to release a shipment of vehicles to an amount any higher than $20,000 per vehicle because the actual value of each vehicle was not specifically stated. GSA also argues that based on the similarity between the GBL released value notations and the released value in Tri-State's applicable Freight All Kinds (FAK) tenders, DOD officials intended no more released valuation than that available by default in the contract.

In our prior decision, we recognized that Item 190 paragraph 4 of the MFTRP 1A provided that the $20,000 released valuation applied in lieu of the released value in the carrier's FAK tender. But, Item 190, paragraph 4 was subject to Item 190, paragraph 6. The clear meaning of paragraph 6 (quoted above in relevant part) is that the $20,000 released value applied unless a higher value was stated on the GBL. DOD transportation officials did state a higher value. As we indicated in our original decision, we cannot consider the released value notations to be meaningless without disregarding the rule that contracts must be interpreted to give reasonable meaning to all parts and to avoid interpretations that leave portions meaningless. The concept of unilateral mistake does not apply because there is simply no evidence that the effect of the mistake is unconscionable or that Tri-State had reason to know of the mistake. See RESTATEMENT (SECOND) OF CONTRACTS § 153 (1981).

We recognize that the actual value of the vehicle limits the amount of excess valuation. See American Farm Lines, B-203933, June 17, 1982. See also our letter decision Tri-State Motor Transit Company, B-254831, June 1, 1994. GSA places emphasis on the fact that the actual value of each vehicle was not specifically stated on each GBL. We, however, are not aware of any requirement that the shipper must state the actual value along with the desired higher released value when he seeks released or declared valuation exceeding the released valuation specified in the tariff, classification or contract. The applicable regulation merely provided that each GBL "otherwise indicate[d]" that the shipment was released to a

value in excess of the default valuation in the contract (specifically MFTRP 1A). See 41 C.F.R. § 101-41.302-3(e).

Accordingly, we affirm our prior decisions. This request for reconsideration presents no evidence demonstrating error in fact or law. See Starflight, Inc., B-210740.2, June 14, 1984; and American Farm Lines, Inc., B-203639, Apr. 22, 1982.

VALIDITY OF A MINIMUM CHARGE

The principal issue in the separate case of Tri-State Motor Transit Company, B-255820, June 20, 1994, is similar to that of the two cases discussed above. In addition, that case involved an issue of a $54 minimum charge. To assist in resolving this issue, we had previously, on December 23, 1993, requested GSA to provide us an administrative report. We had not received the report by May 1994, and on May 23, 1994, we advised GSA by letter of our view that our decision Tri-State Motor Transit Company, B-254378 and B-254820, Feb. 16, 1994, was dispositive of the major issue in the B-255820, and that we intended to resolve the issue on that basis, and that we assumed that there was no objection to the payment of the minimum charge, since GSA did not comment on that issue.

We received no response from GSA by June 3, 1994, and on June 20, 1994, we sent GSA a letter noting that because we had not received their report, we were closing our file. GSA eventually provided us an administrative report dated April 14, 1995. We have reviewed this report and do not find the evidence presented sufficient to warrant reopening our consideration of the matter of the minimum charge. In reaching this conclusion, we considered the de minimis amount of the charge in question; the lack of any indication that substantial issues are presented, and the lack of timeliness of GSA's response.

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