DECISION

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

60403

FILE: DATE: JAN 21 1976 ~~099325~~ 099219

MATTER OF: ~~A-34222~~

DIGEST: **Payment of claims under MSC Shipping and Container Agreements**

The 3-year statute of limitations in Section 322 of the Transportation Act of 1940, 49 U.S.C. 66 (Supp. III, 1973), applies to MSC shipping and container agreements because an amendment to Section 322 expanded it to include all carriers and all contracts and agreements.

This action responds to a contention by the Military Sealift Command (MSC) that the 3-year statute of limitations in Section 322 of the Transportation Act of 1940, as amended, 49 U.S.C. 66 (Supp. III, 1973), does not apply to the payment of claims under MSC shipping and container agreements, specifically under Container Agreement and Rate Guide RG 8 (Container Agreement), dated January 1, 1974.

The Container Agreement sets forth rates, rules and regulations applicable to the loading or "stuffing" of freight into containers and to the transportation of the containers between interior points in the continental United States and interior points in foreign countries. Many American ocean carriers participate in the Container Agreement which actually is a contract between them and MSC.

In addition to freight rates, the Container Agreement has three basic parts: Conditions of Service; Standard Maritime Clauses; and Government Clauses. Incorporated by reference into the Government Clauses part of the Container Agreement are pertinent sections of the Armed Services Procurement Regulations including the disputes clause.

We presume that the Container Agreement is filed with the Federal Maritime Commission as required by 46 C.F.R. 536.14 (1974).

Prior to its amendment by the Transportation Payment Act of 1972, Pub. L. No. 92-550, 86 Stat. 1163, approved October 25, 1972, Section 322 of the Transportation Act of 1940, as amended, 49 U.S.C. 66 (1970), among other things, imposed a 3-year time limitation on claims by and overcharges against common carriers subject to the Interstate Commerce Act or to the Civil Aeronautics Act of 1938.

Overcharges were defined as charges in excess of those in tariffs on file with the Interstate Commerce Commission or the Civil Aeronautics Board or in excess of those established under 49 U.S.C. 22 (1970).

The Transportation Payment Act, among other things, expanded Section 322 to include "any carrier or forwarder," and enlarged the definition of overcharges "to mean charges for transportation services in excess of those applicable * * * under tariffs lawfully on file with the Interstate Commerce Commission, the Civil Aeronautics Board, the Federal Maritime Commission, and any State transportation regulatory agency, and charges in excess of those applicable * * * under rates, fares, and charges established pursuant to section 22 of /the Interstate Commerce Act/ * * * or other equivalent contract, arrangement, or exemption from regulations."

MSC contends (1) that the Transportation Payment Act did not change the existing law as to the applicable statute of limitations; (2) that this Office has clearly adopted the position that judicially time-barred claims arising under MSC contracts may continue to be administratively processed; and (3) that the contractor may always invoke the Wunderlich Act, 41 U.S.C. 321, 322 (1970), and appeal from an adverse administrative decision.

It is true, as MSC contends, that the 3-year limitation period per se was not changed by the Transportation Payment Act. However, prior to that Act, ocean carriers and their charges were not subject to the 3-year limitation provision at all. The purpose of the Transportation Payment Act is to bring all carriers and all contractual arrangements under the purview of Section 322. It therefore is clear that the Container Agreement is subject to the limitations in Section 322 of the Transportation Act of 1940, as amended, 49 U.S.C. 66 (Supp. III, 1973).

MSC refers to a meeting held here on January 25, 1961, to a letter dated March 28, 1961, to the Comptroller General, from the Assistant Secretary of the Navy (I&L), and the Comptroller General's reply dated June 27, 1961, B-114365, B-139598, B-139994, as authority for the proposition that this Office had adopted the position that judicially time-barred claims arising under MSC contracts may continue to be administratively processed.

In order to insure that suits were filed, where appropriate, within the one-year time bar contained in the Carriage of Goods by Sea

Act, 46 U.S.C. 1300, 1303(6), (1970), and because of the two-year limitation on court actions against the United States on maritime claims, 46 U.S.C. 745 (1970), this Office issued a circular letter dated August 4, 1960, B-139598, B-139994, B-114365, which, among other things, required that all unadjusted loss and damage claims in favor of the Government be reported to this Office within six months after delivery of the goods or the date when the goods should have been delivered. MSC (then the Military Sea Transportation Service) requested and in a letter dated June 27, 1961, B-114365, B-139598, B-139994, was granted a waiver from this provision of the circular letter. However, when that waiver was granted ocean carriers were not subject to the provisions of Section 322, and this Office, as well as MSC, could consider judicially time-barred claims administratively for a period of ten years under 31 U.S.C. 71a (1970). See 29 Comp. Gen. 54 (1949). The period has since been reduced by Section 322 to three years on claims by ocean carriers for transportation services.

It is generally true that on claims under a contract that become subject to the contract's disputes clause the running of any statute of limitation, including those governing so-called "Wunderlich Act" appeals, is stayed pending the exhaustion of the administrative remedy provided by that clause. Crown Coat Front Co. v. United States, 386 U.S. 503 (1967); 44 Comp. Gen. 1 (1964); Matter of Matson Navigation Company, B-173425, August 8, 1974. However, in Nager Electric Co. v. United States, 368 F.2d 847 (Ct. Cl. 1966), the court observed that if the disputes procedure is not duly invoked, the claim accrues and the statutory period commences to run at the time of completion of the contract or acceptance of the service.

Both of the cited cases, Nager Electric and Crown Coat, were decided prior to the enactment of the Transportation Payment Act. In Crown Coat, p. 517, the court stated:

> "The Court has pointed out before, however, the hazards inherent in attempting to define for all purposes when a 'cause of action' first 'accrues'. Such words are to be 'interpreted in the light of the general purposes of the statute and of its other provisions, and with due regard to those practical ends which are to be served by any limitation of the time within which an action must be brought.'"

The statute now applying to transportation claims by ocean carriers, Section 322, specifically provides that a claim is barred unless it is "* * * received in the General Services Administration, or by his designee * * *" within three years from the date of (1) accrual of the cause of action, or (2) payment of the charges for the transportation, or (3) subsequent refund for overpayment of such charges, or (4) deduction made pursuant to that section, whichever is later. Thus, the statement in Crown Coat would seem to apply here as one of the purposes of the amendment to Section 322 was to provide a uniform period for the recovery of overcharges and undercharges and to expand the law to cover all carriers and all types of contracts. And Section 322 specifically lists the circumstances from which the 3-year period is to be computed.

Since MSC's method for payment of transportation claims under MSC shipping agreements is now subject to Section 322 of the Transportation Act of 1940, as amended, 49 U.S.C. 66 (Supp. III, 1973), its existing procedures should be changed to correspond with the statute.

R.F. KELLER

Deputy Comptroller General
of the United States