



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

30818

B-176060
B-177845

April 17, 1973

Illinois Central Railroad Company
6327 Dorchester Avenue
Chicago, Illinois 60637

Gentlemen:

Reference is made to your claims under freight bills AR-85059, AR-85060, and AR-85062 for additional freight charges of \$176 on each of three shipments of army tractor tanks which were tendered to the rail carriers on February 9, 1967, at the Letterkenny Army Depot, Culbertson, Pennsylvania, and from there transported to Fort Knox, Kentucky, where they were delivered during February 1967. The additional amounts claimed represent the differences between the freight charges of \$352 originally billed and paid during May 1967 to your company for the transportation services rendered on each shipment, computed at the balance of the through rate published from Patterson, New Jersey, to Fort Knox, Kentucky, which applies on certain shipments accorded transit privileges at Culbertson, and the higher charges now claimed based on the local rate applying from the transit point to destination because the transit privilege did not apply via the routing designated on the bills of lading.

Since the transit basis of charges does not apply on any of the three outbound shipments, payment of the additional amounts claimed turns on the question of whether such claims were timely filed with the General Accounting Office. Your claims for the additional charges of \$176 on each of the shipments were first received in our Office on February 9 and July 27, 1971 (two were received on the latter date).

The claim papers were returned to your company by our Transportation and Claims Division with the explanation that Section 322 of the Transportation Act of 1940, as amended, 49 U.S.C. 66, prevented their consideration because the claims were not received in our Office within the 3-year period of limitations specified in such provision of law and thereunder are forever barred. In view of the action taken by our Transportation and Claims Division, your reclaims for the \$176 on each of the shipments are being considered as requests for review of the final actions of the Transportation and Claims Division which in effect refused payment of such claims.

BEST DOCUMENT AVAILABLE

[Claim for Additional Freight Charges] PUBLISHED DECISION
52 Comp. Gen. _____
715-837-092231

B-176060
B-177845

The shipping records here show that the three shipments were tendered to the Western Maryland Railroad Company for transportation under bills of lading AT-058735, AT-058736, and AT-058731. The payment records show that after delivery of the shipments at Fort Knox, Kentucky, your company as the final destination carrier, billed the Government \$352 on each of shipments for the transportation services and the freight charges were paid in the amounts billed on May 24, 16, and 18, 1967, under disbursing officer vouchers 107734, 097389, and 097390.

In the computation of the freight charges initially billed on each of these shipments, your company computed the charges by use of the through carload rate of \$1.56 per hundred pounds which is published from Patterson, New Jersey, to Fort Knox, Kentucky, less a credit for the inbound charges paid at 78 cents per hundred pounds on the freight movement to Culbertson, Pennsylvania, plus a transit charge of 10 cents per hundred pounds.

The through rate on shipments accorded transit privileges at Culbertson, Pennsylvania, was authorized at the time the shipments moved by item 6 of Traffic Executive Association--Eastern Railroads Section 22 Quotation A-757-F, but item 23 requires adherence to the other provisions of the quotation. Item 21 provides that the application of the transit privilege cannot affect the integrity of the through rate insofar as the applicable routes are concerned. Since the through rate did not apply via the routing of the inbound and outbound shipments, as shown on the outbound bills of lading, the transit privilege never had application, and the proper charges on the outbound shipments were those computed at the local rate published from Culbertson, Pennsylvania, to Fort Knox, Kentucky. Also the freight charges on the movements into the transit point at Culbertson, Pennsylvania, were assessed and paid at the carload rate applying from Patterson, New Jersey, and no adjustment in the inbound charges was necessitated by the fact that the transit privilege was not applicable on the involved shipments.

Under Section 322 of the Transportation Act of 1940, as amended by Pub. L. 85-762, 49 U.S.C. 66, every claim for the payment of transportation charges cognizable by the General Accounting Office is barred unless such claim is received in the General Accounting Office within 3 years (not including time of war) 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.

B-176060
B-177845

The general rule is that a statute of limitation begins to run when a judicially enforceable cause of action accrues, Missouri Pac. R. Co. v. Austin, 292 F. 2d 415 (1961); Sweetser v. Fox, 113 F. 599, 602 (1913), wherein it is stated:

It is a rule of universal application that a cause or right of action arises the moment an action may be maintained to enforce it and the statute of limitations is then set in motion. The test, therefore, is can an action be maintained upon the particular cause of action in question? If it can, the statute begins to run.

The cause of action for freight charges accrues upon acceptance of the shipment by the consignee or upon the carriers' tender of delivery of the shipment at destination, Chesapeake & O. Ry. Co. v. Wiener, 50 N.W. 2d 918 (1953). See also 49 U.S.C. 16(3)(e). On the shipments here involved the carrier's cause of action for the freight charges from Culbertson, Pennsylvania, to Fort Knox, Kentucky, accrued upon delivery of the shipments at destination in February 1967. However, on interstate shipments transported for the United States Government, the period of limitations is extended to include 3 years from the date of payment, refund, or deduction, whichever is later. Since there were no refunds or deductions on these shipments, the extended period of limitations commenced to run on the dates of payment in May 1967 and expired during May 1970.

The case of Chicago, and N.W. v. Connor Lumber and Land Co., 212 F. 2d 712 (1954), referred to in your letter of May 9, 1972, file 5-G-MRA 85062-B, is not in our view controlling here. In that case, as well as in Arkansas Oak Flooring Co. v. Louisiana & Arkansas Ry. Co., 166 F. 2d 93 (1948), referred to in that decision, the charges on the shipments into the transit points were assessed and paid at lesser rates than those applicable on a local bases. The application of such lower charges, however, was conditioned upon the subsequent reshipment of the transit equivalents certified by the shippers. The courts found in the cited cases that a cause of action could not accrue for any additional amounts that might be due until such time as the shipper certified the transit equivalents moving outbound or the transit time period expired.

Here the cause of action is for the freight charges from Culbertson, Pennsylvania, to Fort Knox, Kentucky, and the cause of action accrued upon delivery of the outbound shipments at destination. Your company had 3 years from the date of delivery or the date of payment to file a claim with our Office for those freight charges.

B-176060
B-177845

The fact that the Western Maryland Railroad Company later detected the misrouting and brought it to the attention of the shipping agency is not material. Nor is the fact that the Government shipping agency agreed to cancel the transit application relevant. Under the terms and conditions of Quotation A-757-F, the application of the through transit rates was void from the inception of the outbound shipments because of the misrouting.

A cause of action for the proper charges on these outbound shipments thus accrued upon delivery at the destination and upon payment of the charges initially billed. See, Seaboard Air Line Railroad Co. v. Red Diamond Mills, 128 F. Supp. 606, 608.

Since your claims for the additional amounts of \$176 on each of the three shipments were not received in the General Accounting Office within the 3 year time period allowed for filing your claims here, the action taken by our Transportation and Claims Division in advising you that such claims were forever barred and that they were not payable by our Office appears correct and is sustained.

Sincerely yours,

PAUL G. DEMBLING

For the Comptroller General
of the United States

BEST DOCUMENT AVAILABLE