



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

D-177440

JUN 15 1972

30081

Trans Country Van Lines, Inc.
3300 Veterans Highway
Bohemia, L. I., New York 11716

Attention: Larry Binenfeld
Audit Control

Gentlemen:

By your letter of October 27, 1972, you request review of the disallowance of certain amounts included in your supplemental bill No. 35060, dated March 21, 1972, for \$684.15 for the transportation of electrical instruments from College Point, New York, to White Sands, New Mexico, under Government bill of lading D-5546937, dated August 7, 1969. By certificate of settlement dated October 16, 1972, TK-948455, you were allowed \$97 of the \$684.15 claimed on your March 21, 1972, supplemental bill, the balance of the amount \$587.15 being disallowed. Despite the fact that only \$587.15 of your supplemental bill was disallowed, you claim a balance of \$671.15 is due you. A supplemental bill for \$671.15 was enclosed with your letter of October 27, 1972.

For the transportation service rendered you originally claimed and were paid \$2,221.36, representing the line-haul charges of \$1,487.36, computed on the basis of 8,810 pounds as 22,400 pounds at \$5.64 per hundred pounds, which charge is not in controversy, plus a per shipment charge of \$30 and extra driver charges of \$704. On audit of the payment voucher in our Office lower charges were considered applicable and a "Notice of Overcharge" (GAO Form 1003) dated October 12, 1970, was issued for \$425. However, in response to your protest dated October 26, 1970, an amended Form 1003 was issued reducing the overcharge to \$400.15, which amount was recovered by deduction on or about November 23, 1971. At that time you had thus received a net payment of \$1,821.21 (\$2,221.36 less \$400.15 deducted).

Thereafter, in response to your claims for additional charges, you were allowed on your supplemental bill of March 24, 1971, an additional transportation charge of \$112 by settlement of January 21, 1972, TK-928713, which amount was credited against

091477

720778

PUBLISHED DECISION
52 Comp. Gen. _____

B-177400

an overcharge on bill number 36137. Also, as indicated, you were allowed \$97 by the settlement of October 16, 1971, mentioned above. The computations made on the settlement allowing the \$97 overlooked and failed to consider that \$112 was allowed as a credit by the settlement of January 21, 1972.

In your request for review you agree that the line-haul rate includes a factor to cover one regular driver's services, but you contend that only the normal hours of the one regular driver, as defined in Rule 10 of your commercial tariff, are included and covered by the line-haul rate and that overtime service in excess of the usual 8 a.m. to 5 p.m. on weekdays and all hours worked on Saturdays, Sundays, and holidays must be paid for at the applicable overtime rates.

By section 217(a) of the Interstate Commerce Act, 49 U.S.C. 317(a), every common carrier by motor vehicle is required to publish and file with the Interstate Commerce Commission tariffs setting forth its charges for all service in interstate or foreign commerce. By section 217(b), 49 U.S.C. 317(b), such a common carrier is prohibited from charging, demanding, collecting or receiving a greater or less or different compensation than the rates, fares or charges published in the tariffs filed with the Interstate Commerce Commission, with a proviso incorporating the provisions of section 22 of the Interstate Commerce Act, 49 U.S.C. 22, which permits free or reduced rate transportation for the United States.

There is no provision in Trans Country Van Lines Government tender I.C.C. 50 that provides for the assessment of additional service charges or for the application of the provisions of your regular commercial tariff. However, the provisions of Military Rate Tender (MRT) 1-series are incorporated by reference in Item 16. Item 170 of MRT 1-7 provides for labor charges. The first paragraph of item 170 as to labor charges provides:

Covers all services for which no charges are otherwise provided in tender when such services are requested by shipper (except in areas described below)

and assess a rate of \$5.75 per manhour for regular time and \$7.75 per manhour for overtime.

Subsequent paragraphs contain exceptions for certain areas. Pertinent here among such exceptions is the provision that a rate of \$8 per manhour regular time and \$12 per manhour overtime will be payable "WHEN SERVICE IS PERFORMED IN: * * * NEW YORK: New York City and Counties of Nassau, Suffolk and Westchester." (Explanatory supplied) Note 1 to Item 170 provides:

2-377400

REGULAR time labor charge applies when service is performed in accordance with Rule 10 of carriers' tariff. OVERTIME labor charge applies when service is performed:

Between 5:00 P.M. and 8:00 A.M., except Saturdays, Sundays and holidays,
During any hour on all official, National holidays
* * *

Rule 10 of your commercial tariff, to which you refer, applies only as provided in Item 170, which, by the terms of the first paragraph, applies only for services "for which no charges are otherwise provided." You agree that the driver's services during the hours 8 a.m. to 5 p.m. on weekdays are included in the line-haul rate. We find no provision in either Government tender I.C.C. 50 or in MTR 1-7 which expressly excludes the regular driver's overtime service from being included in the line-haul rate, or which expressly provides charges for the regular driver's overtime in addition to the line-haul charges, and we have been cited to no such provision. In the absence of such provision, there is no basis for the payment of overtime for the regular driver in addition to the line-haul charges. Also, since the line-haul charges provided and paid were based on a minimum weight of 22,400 pounds, while only 8,810 pounds moved, we assume such higher charges are intended to cover any extra expenses involved incident to exclusive use of the vehicle for which no specific extra charge is provided. In addition, there is no indication on the covering bill of lading and there is no evidence in our file that either continuous service or delivery by a given date was requested as alleged by you.

Accordingly, we find no basis for the payment of charges in addition to the line-haul charges for overtime of the regular driver.

It appears to be your contention, also, that the shipper is obligated to pay extra driver charges of \$8 per manhour for regular time and of \$12 per manhour for overtime because the services "were engaged in New York City." However, a shipper is obligated to and may be required to pay only such charges as are published in duly filed tariffs or in special reduced rate tenders under section 22 and 217(b) of the Interstate Commerce Act, 49 U.S.C. 22 and 317(b). In the audit and settlement of your supplemental bills for the subject movement, charges for the extra driver of \$5.75 per manhour regular time and \$7.75 per manhour overtime were allowed as set forth in paragraph 1 of section 170, MTR I.C.C. 1-7. The only exceptions are as set forth in the succeeding paragraphs of item 170. The charges of \$8 per manhour regular time and of \$12 per manhour overtime, claimed by you, apply only "WHEN SERVICE IS PERFORMED IN"

* * * New York City and Counties * * * specified. No provision is made for the higher \$8 and \$10 rates because the service originates in New York City or the specified counties of New York State. While the services were engaged in New York City (College Point), the services were to be performed between New York to New Mexico, and (except for the loading time) not in New York City or the specified counties. Therefore, the labor rates for services performed in New York City and counties specified (except as indicated in the prior sentence) are not applicable.

You also state, on page 2 of your request for review, that you are unable to locate any provision in which it is written that a copy of the driver's logs, suggested by our Transportation and Claims Division in disallowance of your claim for additional labor charges, must accompany billing.

Section 54.5 of Title 4 of the Code of Federal Regulations, 4 CFR 54.5, provides:

EVIDENTIARY DATA REQUIRED. Each claim should set forth all of the pertinent facts and details and be supported by such evidentiary data as will clearly establish the liability of the United States. Bare assertions or conclusions as to amounts due from the United States usually are not accorded formal consideration. (Emphasis added).

The tariff provides a basis for charges for each manhour of regular and overtime additional labor performed, and the notation on the Government bill of lading, as follows: "Two Drivers Authorized" establishes that extra driver service was requested, but the amount of the service rendered is not shown. The driver's logs are the best evidence of the extent of the extra driver's service, and is the best support of a claim for such charges.

You also claim a shipment charge of \$30 based on the minimum weight applicable in the computation of the line-haul charges. The shipment charge is provided by Item 15 of MRT I.C.C. 1-V, which provides graduated shipment charges for different weight groups. Of importance here are the last two groups providing a charge of \$24.85 when shipment weighs 8,000 pounds to 11,999 pounds inclusive, and \$30 when shipment weighs 12,000 pounds and over. Note 1 to Item 15 provides:

The shipment charge will be applied to net weight of the shipment, as defined in Paragraph (1) of Application of Tender.

B-177400

Net weight is defined in paragraph (1) as the actual weight, including the weight of the goods plus cartons, barrels, fiber drums, wardrobes, crates (mirror, marble, etc.), wooden boxes (when approved by the shipping officer) used to pack linens, books, bedding mattresses, lamp shades, draperies, glassware, chinaware, bric-a-brac, table lamp bases, kitchenware and other fragile articles, and the necessary packing and filler material incident thereto, and nothing else will be included in the net weight. The net weight of the subject shipment was 8,810 pounds. Since the shipment falls within the weight group 8,000 pounds to 11,999 pounds, the applicable shipment charge is \$24.85. There is nothing in Item 15 which makes the shipment charge subject to the minimum weight applicable in the computation of the line-haul charge. See our decision to you of March 27, 1973, B-177127, 52 Comp. Gen. _____.

The total applicable charges, therefore, are:

Line Haul 8,810 as 22,400 lbs. @ \$6.54 cwt.	\$1,487.36
Shipment Charge	24.85
Additional Transportation Charge	112.00
Labor 2 hours @ \$8 per hour loading in NYU	16.00
Extra Driver	
8/7/69 1 man - 8 hrs. @ \$5.75	\$46.00
1 man - 2 hrs. @ 7.75	15.50
8/8/69 1 man - 8 hrs. @ 5.75	46.00
1 man - 2 hrs. @ 7.75	15.50
8/9/69 1 man - 10 hrs. @ 7.75	77.50
8/10/69 1 man - 10 hrs. @ 7.75	77.50
	<u>278.00</u>
	\$1,928.21

Also, insofar as your current computation claims round the clock (24 hours per day) labor charges for both the regular and extra driver, we find no provision in the tenders which requires such charges except as indicated in the above computation to be paid by the consignor or consignee. Your company's obligations to its drivers under contracts with them or labor laws affecting them are not matters in which the United States as shipper or person responsible for freight on the shipment is involved.

The net charges paid or credited

Paid Originally	\$2,221.36
Setoff	(400.15)
Allowed 1/21/72	112.00
Allowed 10/16/72	97.00
Balance	<u>\$2,030.21</u>
	\$ (112.00)

3-177400

You have, therefore, received an overcharge of \$112. Accordingly, the disallowance of your claim for additional charges is sustained, and the overcharge of \$112 should be refunded promptly in order to avoid the necessity for collection by other available means.

Sincerely yours,

Paul G. Dambling

For the Comptroller General
of the United States