DECISION

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

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FILE: B-180142 DATE: MAY 29 1975

MATTER OF: Miss Alison Palmer - Automobile Storage Expenses

DIGEST: Foreign Service Officer whose travel orders provided for up to 3 months storage of her automobile upon return to United States, may not be reimbursed for additional storage expenses she incurred when she removed her car from premises of drive-away firm, because there was an existing contract between Government and drive-away firm in the form of Government Bill of Lading, and 6 FAM 172(i) provides that there may be no additional reimbursement when services are already covered by an existing contract.

This matter is before us based upon a request for reconsideration of our decision B-180142, May 17, 1974, which sustained the disallowance of Miss Alison Palmer's claim for reimbursement in the amount of $45 for expenses incurred in storing her automobile from about March 25, 1970, to about May 18, 1970, in the Washington, D.C., area.

The facts and applicable law are stated in detail in B-180142, May 17, 1974, and will not be repeated here except as necessary for clarity. In her request for reconsideration Miss Palmer challenges several points in our decision, in light of apparently conflicting information that she subsequently obtained from the Department of State. Our decision stated that there "apparently" was a contract between the Department of State and the drive-away firm involved, Howard Sober, Inc. for the delivery and/or storage of all cars being shipped under Department of State travel authorization through the port of Baltimore. Miss Palmer stated that she was orally advised by an employee of the Department of State that no such contract existed. Our opinion stated, based on information furnished by the Department of State, that Sober accepted "full liability" for damages to automobiles in its custody whether in transit between Washington and Baltimore, or in storage at its facility at Baltimore. Miss Palmer obtained a copy of Tariff No. 144-F filed by the Automobile Transporters Tariff Bureau, Inc., Agent for "drive-away" services. That tariff shows that the carrier's (Sober's) liability to be limited to "that of warehouseman only" (Item 210). Finally our opinion stated, again based on Department of State supplied information,

that storage of Miss Palmer's vehicle at Sober's premises would have been at no further cost to the Government. Miss Palmer pointed out that the above tariff, again Item 210, calls for a storage charge of $1 per day per vehicle.

In an effort to resolve the apparent inconsistencies, we requested a supplemental report from the Department of State. It advised us that Sober's services were procured when needed, by issuing a standard U.S. Government Bill of Lading for each shipment. With regard to Sober's charges for storage of a vehicle by Sober on its premises, it stated that no charges were imposed when Sober would hold a vehicle until the owner was available and ready to accept delivery. The Department of State said that Sober's liability was at all times governed by the Government Bill of Lading issued for that shipment. It had no record of any claim ever having been filed to recover for damages suffered by vehicles while in storage on Sober's premises.

While it may be true, as alleged by Miss Palmer, that there was no continuing or "blanket" contract between the Department of State and Sober, each car that came into Sober's possession to be transported to or from the port of Baltimore, was covered by a Government Bill of Lading, which among other things, was the contract of carriage for that shipment. 13 C.J.S. Carriers §123 (1939); United Van Lines, Inc. v. United States, 448 F.2d 1190 (D.C. Cir. 1971). In B-180142, May 17, 1974, we considered 6 Foreign Affairs Manual 172i, which provides, in pertinent part, that:

> "i. Where the Department, Agency, or post has contracts or approved prices or arrangements with designated storage firms, payment for the services of such firms is allowable. If other firms are used at the request of the employee, the employee must pay for any excess cost involved." (Emphasis added.)

The bill of lading governing the shipment of Miss Palmer's car was a contract within the meaning of this section. Additionally, the continuing course of conduct between the Department of State and Sober was tantamount to a contract, and was at least a system of "approved prices or arrangements with designated storage firms." Therefore, Miss Palmer's election to store her automobile elsewhere must be at her own expense.

The existence of a contract between the Department of State and Sober governing the shipment and storage of Miss Palmer's vehicle is sufficient in and of itself to preclude reimbursement of the additional storage expense incurred by Miss Palmer. Therefore, her additional contentions will be considered only briefly to show that neither can overcome the existence of the contract.

With regard to Tariff No. 144-F, portions of which we received from Miss Palmer, we note that it was not effective until December 23, 1970, approximately 6 months after the events in question occurred. We have attempted to obtain a copy of Tariff No. 144-E which was apparently in effect during the period in question, but we have ascertained that no copies of Tariff No. 144-E are readily available because of the passage of time. We have examined Tariff No. 144-F, which, along with 12 supplements thereto, remained in effect until May 5, 1972; Tariff No. 144-G, which, with supplements, was in effect from May 5, 1972, to May 18, 1973; Tariff No. 144-H, which, with supplements, was in effect from May 18, 1973, to November 26, 1973; and Tariff No. 144-I which is currently in force. All of these tariffs governed the transportation services involved here. Under each of these tariffs, the liability of the driveaway firm, while storing a vehicle, was limited to that of a warehouseman. Therefore, we believe that it is not unreasonable to assume that the same provision was in effect in Tariff No. 144-E. We also examined the storage charge per day per vehicle found in each of the above tariffs, and found that the following rates applied during the life of each tariff:

Tariff No. 144-F	$1.00
Tariff No. 144-G	$1.00
Tariff No. 144-H	$1.50
Tariff No. 144-I	$1.60

In light of this progression of changes in the amount of the charge, we believe that it is not unreasonable to assume that the storage charge contained in Tariff No. 144-E was no more than $1 per day per vehicle.

Miss Palmer alleges a defect in that Sober apparently did not comply with its filed tariff, in that no charge was made for storage in transit of the vehicle it was to deliver. In this regard, it should be noted that 49 U.S.C. § 22 (1970), provides, in pertinent part, that:

> "(1) Nothing in this chapter shall prevent the carriage, storage, or handling of property free or at reduced rates for the United States * * *."

It has been held that a carrier need not abide by its published rates when dealing with the Government, that a deviation from a published tariff may be retroactively confirmed in writing without violating the above section. Chicago, Burlington & Quincy Railroad Co. v. United States, 439 F.2d 1224 (Ct. Cl. 1971). The submission by Sober of a bill for services rendered with no charge stated for storage, would act as a retoractive confirmation of its deviation from its published tariff, and would be permissible under the above section.

With regard to the conflicting information relating to the measure of Sober's liability, we have not had an opportunity to review the actual bill of lading that governed the shipment of Miss Palmer's automobile. Therefore, we do not know if, in fact, Sober agreed to be bound by a higher standard of liability than that of a warehouseman. In any case, under the applicable regulations, there would be no authority for the reimbursement of additional storage expenses incurred to obtain what is, in effect, increased insurance coverage for Miss Palmer's car while it was in storage. We have consistently held in a variety of situations that there can be no reimbursement for the purchase by a Government employee of increased insurance coverage above the inherent minimum coverage provided. An example is the purchase of the collision damage waiver or increased liability insurance by an employee renting an automobile while on Government business. B-181193, June 25, 1974.

Accordingly, our disallowance of Miss Palmer's claim is sustained.

R.F. KELLER

Deputy Comptroller General
of the United States