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Ultra Special Express

1. Special weekend or holiday charges on over-dimensional shipments moving under special permits are proper only when carrier has valid highway permit for the day preceding the Saturday, Sunday or holiday. See 54 Comp. Gen. 308 (1974).
2. In absence of specific request by shipper, and in accordance with tariff provision effective on date of shipment, hourly charges for escort vehicle services on overdimensional shipments during other than normal operating hours not allowable.
3. In absence of request by shipper, and in accordance with tariff provision effective on date of shipment, charges for a route survey on overdimensional shipments not allowable.

Ultra Special Express (Ultra) requests review of the action of our former Transportation and Claims Division (TCD) in collecting by deduction an overcharge of \$5,234.40 on an over-dimensional shipment of helicopters transported from the Naval Supply Center, Norfolk, Virginia, to Quonset Point, Rhode Island, on Government bill of lading No. F-2849121, dated December 20, 1971. Ultra contends that the overcharge is \$1,012.30, and has filed a claim for the balance collected, \$4,222.10.

The transportation audit function of the General Accounting Office's Transportation and Claims Division recently was transferred to the General Services Administration (GSA) under the provisions of the General Accounting Office Act of 1974, 88 Stat. 1959, approved January 2, 1975. We today have transferred Ultra's claim to GSA with the suggestion that its action on the claim conform to the views expressed herein.

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The record shows that on Friday, December 17, 1971, two tractor-trailers arrived at the Naval Supply Station for loading. One vehicle arrived at 9:00 a.m. and was loaded by 4:00 p.m.; the other vehicle arrived at 11:00 a.m. and loading was completed after 5:00 p.m., but the exact time is unknown. The bill of lading shows that the shipper requested and the carrier furnished two pilot cars (escort vehicles) from origin to destination. It also shows that the carrier acknowledged receipt of the loaded shipment on Monday, December 20, 1971, and that the shipment was delivered at destination on Monday, January 3, 1972. Because the shipment was overdimensional, it required special permits which Ultra secured from the states of Virginia, Maryland, Delaware, New Jersey, New York, Massachusetts and Rhode Island for transportation over the public highways of those states.

For this transportation service Ultra collected transportation charges of \$19,035.57, subject to post audit by the General Accounting Office. 49 U.S.C. 66 (1970). Upon audit TCD found and notified Ultra of an overcharge of \$7,959.40; Ultra protested the overcharge and it was reduced to \$5,234.40, the amount collected by deduction. Ultra requests review of this collection action.

Ultra and TCD agree that Heavy & Specialized Carriers Tariff Bureau Tariff 100-E, MF-I.C.C. 26 (Tariff 100) is applicable to this shipment. In addition to line-haul distance rates named in item 2120 of the tariff, Ultra assessed on this shipment many different types of accessorial charges derived from the tariff. The accessorial charges now in dispute relate to some of its charges for flagmen and driver overtime, for escort vehicles, for escort layover and for a route survey.

Part of Ultra's claims on each truckload for driver overtime and for flagmen pay involve charges for the weekend of December 18 and 19, 1971. If otherwise applicable the charges are authorized in an exception to item 1450 of Tariff 100 which on permitted shipments provides for the assessment of a special charge based on an hourly rate per day for a shipment stopped in transit on Saturday, Sunday, or on a holiday, and an hourly rate per day for the driver of the vehicle and for flagmen during those same days.

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In 54 Comp. Gen. 303 (1974) we held that the charges authorized on permitted shipments by the exception to item 1450 of Tariff 100 are proper only when the carrier has a valid highway permit for the day preceding and the day following the Saturday, Sunday or holiday. The record shows that the Virginia permits were issued December 20, 1971, and that Ultra did not take custody of the shipment until December 20, 1971. Therefore, Ultra is not entitled to driver overtime or flagman pay derived from item 1450 of Tariff 100 for Saturday, December 18 and Sunday, December 19, 1971. See, also, Matter of Ultra Special Express, B-180733, August 5, 1974.

Ultra's claim for charges for escort vehicles including drivers is based on item 1380 of Tariff 100. When this shipment was transported, item 1380 provided an hourly charge for service performed on days between the hours of 7:00 a.m. and 5:00 p.m., except on Saturdays, Sundays or holidays. According to item 1440 of Tariff 100 those hours are considered to be the carrier's normal operational hours.

Item 1380 also provides higher hourly charges for escort services performed during four premium time periods: (1) between the hours of 5:00 p.m. and 7:00 a.m.; (2) Saturdays. (3) Sundays and (4) holidays.

Based on item 1380 Ultra assessed charges for escort services performed during the normal operational hours between 7:00 a.m. and 5:00 p.m., for December 17, 20, 21, 22, 23, 27, 28, 29, 30, January 3 and one-half day on January 4; and it assessed premium charges based on premium time periods for the Saturdays, Sundays and holidays occurring during the period of transportation.

We note first that Ultra is not entitled to any escort charges for December 17 because the carrier did not take custody of the shipment until December 20, 1971.

Furthermore, the hourly charges assessed by Ultra for the premium time periods in item 1380 are not applicable here because those charges become operative only when the shipper specifically requests the carrier to perform transportation

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services during those premium time periods. That a specific request is necessary is demonstrated by item 1450 of Tariff 100. Item 1450, entitled "HOLIDAY, SATURDAY, SUNDAY, AND OVERTIME", provides that "* * * unless specifically requested to do so by the consignor, consignee, or owner of the goods," the carrier's operations are restricted to the weekday (except holiday) hours from 7:00 a.m. to 5:00 p.m., the carrier's "normal operational hours." Since the shipper did not "specifically request" escort services during those premium time periods, charges for those periods are not allowable under item 1380 on this shipment.

Nor are those charges allowable under the exception to item 1450 of Tariff 100 which as indicated above on permitted shipments provides for the assessment of special charges for vehicles, drivers and flagmen on shipments stopped in transit on Saturday, Sunday or on a holiday. Prior to December 18, 1973, this exception in item 1450 did not include nor refer to any charges for escort vehicles.

Item 1380 also provides a charge of \$15 per man per night when it is necessary for a vehicle and driver to lay over at a point away from home base during the course of the transportation. Ultra assessed escort layover charges for the 18 nights between December 17 to January 4. However, based on the present record, escort layover charges are allowable only for the 15 nights between December 20, when Ultra took custody of the shipment, and January 3, when it was delivered at destination.

Ultra's claim for charges for a route survey is based on item 1670 which when this shipment was transported read in pertinent part:

"SURVEYING

(a) When it is necessary to survey routes for the movement of shipments of unusual size or weight, the carrier will, upon request of the shipper or the consignee, furnish a man and his transportation for this purpose and the charges for such service will be assessed at three dollars (\$3.00) per hour per vehicle and five dollars (\$5.00) per hour per man for the first eight (8) hours and seven dollars

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(\$7.00) per hour per man for each additional hour after the first eight (8) hours. [Underscoring supplied.]"

It is apparent that the applicability of the item depends upon a request by the shipper or the consignee. And there is no evidence that the shipper or the consignee requested a route survey for this shipment. The charge assessed for such a route survey must therefore be disallowed.

To justify these charges Ultra relies on an amendment to item 1670 which, effective August 20, 1973, inserted before the phrase "upon request of the shipper . . ." the words "to comply with either state regulations or state permit requirements, or." In our opinion the amendment represented a decision by the carriers, one within their managerial discretion, to shift to the shipper the cost of performing a route survey whether or not requested when one is required by pertinent state regulations. Prior to August 20, 1973, and in the absence of a request by the shipper, the carriers apparently elected to absorb the costs of route surveys.

In this review of TCD's audit action on Ultra's bill for these transportation services, we note that the carrier claimed and has been allowed an incorrect charge for the detention of its vehicles during the loading of the shipment on Friday, December 17, 1971.

It is clear that detention services are offered in item 1299 of Tariff 100 and hourly charges for these services are provided in item 1680 of the tariff. We held in B-181560, October 1, 1975, 55 Comp. Gen. _____, involving the interpretation of a tender provision covering detention, that detention contemplates appropriation of the carrier's vehicle by the Government to its use for purposes of unloading (or loading) or for delay of the carrier's vehicle after arrival at the unloading (or loading) point at the appointed time.

As indicated earlier, one of the two tractor-trailers was available for loading at 9:00 a.m. and was loaded by 4:00 p.m.; the other tractor-trailer was available for loading at 11:00 a.m., but the loading was not completed at 5:00 p.m., the end of the carrier's normal operational hours. However, the exact time that the loading was completed is unknown.

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Item 1299 allows 2 hours free time at origin before detention charges accrue; thus, the first vehicle was detained 5 hours and on the basis of the present record the second vehicle was detained 4 hours. There is no basis for Ultra's claim that on the second vehicle it is due detention charges for Saturday, December 18, and Sunday, December 19, since the record discloses that the loading of the second vehicle was completed on Friday, December 17, and that Ultra did not obtain custody of the shipment until Monday, December 20, 1971, when its driver receipted for the bill of lading.

We suggest that the freight charges collected by Ultra for the transportation of an overdimensional shipment of helicopters from the Naval Supply Center, Norfolk, Virginia, to Quonset Point, Rhode Island, on Government bill of lading No. F-2849121, dated December 20, 1971, be adjusted by GSA to reflect the views set forth in this decision.

R.P. KELLER

Deputy

Comptroller General
of the United States