

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

FILE:

B-182925

DATE:

JUN 14 1976

MATTER OF:

Ultra Special Express

## DIGEST:

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. Charges for highway use restrictions not charges for detention apply when carrier operations are restricted by public authority.
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 are not allowable. See B-182616, February 20, 1976.

Ultra Special Express (Ultra) requests review of the action of our former Transportation and Claims Division (TCD) in collecting by deduction overcharges totalling \$1,642, and in disallowing a claim for \$207, arising from two over-dimensional shipments of cranes transported from Rome, New York, to the Military Ocean Terminal at Bayonne, New Jersey, on Government bills of lading (GML) Nos. P-8822456 and P-8822457 issued respectively March 3 and March 4, 1972.

The transportation audit function of the General Accounting Office's Transportation and Claims Division was fully 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. The Act provides that nothing shall be deemed to prevent any carrier or forwarder from requesting the Comptroller General to review the action on its claim by the General Services Administration.

The actions taken by TCD were likewise subject to review by the Comptroller General; we are therefore today transferring Ultra's claim to GSA for settlement action consistent with the views expressed herein.

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The record underlying the shipment transported on GBL No. F-8822456 shows that on Friday, March 3, 1972, a heavy duty extendible low bed trailer arrived at the shipping point at 11:00 a.m. for loading and that the loading was completed by 6:00 p.m.

The record underlying the shipment moved under GBL No. F-8822457 shows that the shipment was loaded on Tuesday, March 6, 1972, on a similar heavy duty extendible low bed trailer.

Both bills of lading show that use of low bed trailers or special equipment were authorized and that the shipments were delivered at destination on Friday, March 10, 1972. Because both shipments were overdimensional, they required special permits which Ultra secured from the states through which the shipments were transported. However, the permits issued by the State of New York were valid beginning 9:00 a.m., Tuesday, March 7, 1972.

For these transportation services Ultra collected transportation charges of \$1,779.36 on GBL No. F-8822456 and of \$820.21 on GBL No. F-8822457, subject to post audit by the General Accounting Office. The effect of the audit and the disallowance of Ultra's claim for \$207 was TCD's determination that Ultra had been overpaid \$1,302 on the shipment moving under GBL No. F-8822456 and \$340 on the shipment moving under GBL No. F-8822457. Both amounts have been collected by deduction from freight charges otherwise due Ultra. See 49 U.S.C. 66 (Supp. III 1973).

Ultra and TCD agree that Ultra Special Express Tender ICC No. 3, a quotation issued under section 22 of the Interstate Commerce Act, 49 U.S.C. 22, offering to the Government line-haul distance rates on material and equipment, applies to these shipments. Ultra, however, disputes the line-haul rates applied by TCD in its disallowance of Ultra's claim.

Incorporated by reference into Tender No. 3 is Heavy & Specialized Carriers Tariff Bureau Tariff 100-E, MF-I.C.C. 26 (Tariff 100), which contains charges for many different types of accessorial charges allegedly applying to these

two shipments. The accessorial charges collected by Ultra on these two shipments include charges for permits and tolls (item 1580 of Tariff 100); detention of equipment (item 1299); highway use restriction (item 1440); holiday, Saturday, Sunday and overtime (item 1450); and route survey (item 1670). Ultra contests TCD's disallowance of all but the item 1580 charges for tolls and permits.

#### Line-haul Distance Rates

Ultra's Tender No. 3 contains a rate table naming progressively higher truckload line-haul distance rates varying with the dimensions of the shipment, the weight of the shipment and the type of vehicle used by the carrier, with a progressively higher minimum charge shown in the table for the type of vehicle used by the carrier.

TCD now agrees that Ultra is due the \$207 for additional line-haul charges which it previously disallowed. The record shows that the dimensions of both shipments required the use of extendible low bed trailers which carry a higher line-haul distance rate than the one originally paid to the carrier.

#### Detention of Equipment - Item 1299

Ultra collected charges of \$85 for detention of the equipment used on the shipment moving under GBL No. F-8822456. This charge was disallowed by TCD. However, the record shows that the vehicle arrived for loading on March 3, 1972, at 11:00 a.m. and that the loading was completed at 6:00 p.m. Item 1299 allows 2 hours free time at origin before detention charges accrue; thus, Ultra is due charges of \$85 (determined from item 1680 of Tariff 100) for 5 hours detention at origin for the shipment transported under GBL No. F-8822456. See B-182616, February 20, 1976.

#### Highway Use Restriction - Item 1440

This item reads in pertinent part:

"(a) When, because of unusual nature of a shipment (size, weight, inherent nature, etc.)

a carrier is restricted in his operation over the public highways by request of the shipper, or by operation of public authority or by the terms or limitations of any special permit required for such operation, to less than normal operational hours (7 A.M. to 5 P.M.) in any one day, or to specific days, or to specific hours, acceptance by the carrier of such shipments will be conditioned upon payment to the carrier for such delays to equipment and to personnel as are encountered because of such restrictions on the following basis:

Freight carrying vehicles as shown in Item 1680; extra help as shown in Item 1350; passenger vehicles three (3) dollars per hour."

Under this item Ultra collected charges of \$340 on each of the two shipments, computed at a rate from item 1680 of \$17 per hour for 10 hours on Monday, March 6, and 10 hours on Tuesday, March 7. Ultra argues that either charges for highway use restriction under item 1440 or charges for detention under item 1299 apply.

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 55 Comp. Gen. 301 (1975), 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.

Here, however, charges for highway use restriction apply. The delay was caused because the carrier's operations over the public highways during the normal operational hours specified in item 1440 were restricted by public authority; that is, the permits from the State of New York for the over-dimensional shipments did not allow Ultra to operate until 9:00 a.m. on Tuesday, March 7, 1972. Thus, on each of the

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two shipments Ultra is entitled to \$204, computed at a rate from item 1680 of \$17 per hour for 10 hours on Monday, March 6, and for 2 hours on Tuesday, March 7, 1972.

Holiday, Saturday, Sunday, And Overtime - Item 1450

Ultra collected charges of \$545 on the shipment transported under GBL No. F-8822456 based on an exception in item 1450 which on shipments moving under permits allows the carrier to collect extra charges when the holiday, Saturday or Sunday occurs while the permitted shipment is en route from origin to destination.

In 54 Comp. Gen. 308 (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 New York permit was issued to be effective at 9:00 a.m., Tuesday, March 7, 1972. Although Ultra took custody of the shipment on Friday, March 3, 1972, it is not entitled to the extra charges derived from item 1450 of Tariff 100 for Saturday, March 4, and Sunday, March 5, 1972. See, also, B-180733, August 5, 1974.

Route Survey - Item 1670

Ultra's claim for charges of \$432 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

(\$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 was properly disallowed.

To justify these charges Ultra alleges that the route survey was required by the states through which the shipments were transported. It is true that an amendment to item 1670, 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." But, 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. B-182616, February 20, 1976.

The freight charges collected by Ultra for the transportation of two overdimensional shipments of cranes from Rome, New York, to the Military Ocean Terminal at Bayonne, New Jersey, on GBLs No. F-8822456 and F-8822457 should be adjusted by GSA to reflect the views set forth in this decision.

R.F.KELLER

[Acting]

Comptroller General  
of the United States