

DECISION



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

FILE:

B-183090

DATE:

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JUN 1 1976

MATTER OF:

Ultra Special Express

98882

DIGEST:

1. Special weekend or holiday charges on overdimensional shipments moving under special permits are proper only when carrier has valid highway permit for the day preceding and the day following the Saturday, Sunday or holiday. See 54 Comp. Gen. 308 (1974); and B-182616, February 20, 1976.
2. 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. B-182616, February 20, 1976.

Ultra Special Express (Ultra) requests review of the actions of our former Transportation and Claims Division (TCD) in disallowing its claim for \$375.40 and in collecting by deduction an amended overcharge of \$410.20.

These actions were taken to adjust the freight charges applicable to an overdimensional shipment of a crane shovel which was transported by Ultra from Tobyhanna, Pennsylvania, to the Military Ocean Terminal at Bayonne, New Jersey, on Government bill of lading (GBL) No. H-0775332, issued March 15, 1973. As a result of TCD's actions, the amount of freight charges now in dispute is \$785.60, the difference between the total charges claimed to be applicable by Ultra (\$1,375.40), and those claimed to be applicable by TCD (\$589.80).

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. 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.

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

GBL No. H-0775332 authorized the use of a lowbed trailer or special equipment and shows that on Thursday, March 15, 1973, Ultra acknowledged at Tobyhanna the receipt of the crane shovel and that it was delivered at Bayonne on Monday, March 19, 1973. The crane shovel as loaded on the carrier's equipment had a gross weight of 87,000 pounds, and measured 10 feet in width and 14 feet, 6 inches, from ground level in height. Because the shipment was overdimensional, it required special permits which Ultra secured from the states of Pennsylvania and New Jersey for transportation over the public highways of those states.

Ultra and TCD agree that Ultra Special Express Tender ICC No. 3, issued under section 22 of the Interstate Commerce Act, 49 U.S.C. 22, made applicable to motor carriers by section 217(b) of the Act, 49 U.S.C. 317(b), applies to the shipment. Incorporated by reference into Tender ICC No. 3 is Heavy & Specialized Carriers Tariff Bureau Tariff 100-E, MF-I.C.C. 26 (Tariff 100). In addition to the line-haul distance rates named in Tender ICC No. 3, Ultra assessed on this shipment certain accessorial charges derived from Tariff 100. Those accessorial charges now in dispute relate to some of its charges for a flagman and for driver overtime.

Part of Ultra's claim on this shipment for driver overtime and for flagman pay involve charges for the weekend of March 17 and 18, 1973. 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 a flagman during those same days.

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

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Saturday, Sunday or holiday. The record shows that the New Jersey permit expired on Friday, March 16, 1973, and that Ultra did not deliver the shipment until March 19, 1973. Therefore, Ultra is not entitled to the special charge, the driver overtime or the flagman pay derived from item 1450 of Tariff 100 for Saturday, March 17, and Sunday, March 18, 1973. See, also, B-180733, August 5, 1974; and B-182616, February 20, 1976.

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 a charge for a route survey.

Ultra's claim for charges for a route survey is based on item 1670 of Tariff 100 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.]

The claim for charges for a route survey also is supported by a letter from the Pennsylvania Department of Transportation which indicates that a motor carrier must make a physical survey of all traffic routes regarding the height of the shipment.

It is apparent, however, that the applicability of item 1670 depends upon a request by the shipper or the consignee. And there is no evidence that the shipper or the consignee

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requested a route survey for this shipment. The charge assessed for such a route survey must therefore be disallowed.

It is true that effective August 20, 1973, or after this shipment moved, item 1670 was amended by adding 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.

The freight charges collected by Ultra for the transportation of an overdimensional shipment of a crane shovel from Tobyhanna, Pennsylvania, to Bayonne, New Jersey, on Government bill of lading No. H-0775332, issued March 15, 1973, should be adjusted by GSA to reflect the views set forth in this decision.

B.F. KELLER

| Deputy Comptroller General
of the United States