DECISION

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

61428

FILE: B-184942

DATE: September 1, 1976

MATTER OF: Reiter-Compton Trucks

98094

DIGEST:

Claim for excess transportation costs allegedly arising from improper Government actions in connection with contractor's attempt to remove purchased surplus sale property from Government premises is of doubtful validity in view of unresolved factual dispute as to liability of Government and proper amount of damages.

The Defense Supply Agency (DSA) has forwarded the claim of Reiter-Compton Trucks for excessive transportation costs incurred by the claimant in attempting to remove certain items of surplus property located at the Yermo Annex, Marine Corps Supply Center, Barstow, California, sold to it under contract No. 41-5504-006. These items consisted of four cargo trailers, identified as Items 201, 202, 203 and 212, and a generator set identified as Item 230.

The claim is based on a freight bill presented to the claimant by the Robert West Trucking Company (West) in the amount of $430.00 for each of two round trips of a truck and trailer, on June 9 and June 16, 1975. The sum of $430.00 for the June 9 trip was levied with the notation of an empty return because of "government employee's refusal to load," while another $430.00 was billed for the June 16 trip in which only a partial load (Items 201, 202, 203 and 212) was picked up due to the "government employee's refusal to load a full load." A third trip was required for pick-up of the remaining item.

The documents of record reveal that on June 9 the claimant's trucker arrived at the Supply Center in the vicinity of noon but was advised by the cashier that her records indicated that a $200.00 non-guaranteed check had been received as a deposit, and of her impression that the deposit had not run the necessary 10 days. On this basis, the cashier initially advised the driver that the property could not be loaded.

At approximately 2:00 p.m., one of the claimant's employees telephoned the cashier to advise her that the full contract price had been paid to DSA's regional office in Ogden, Utah. After verifying the matter with cognizant personnel in Ogden, the cashier advised the driver that he could make the pick-up and provided directions to the appropriate location at the Yermo Annex.

The Sales Contracting Officer reports that the driver had not yet arrived at the designated site at Yermo prior to 3:00 p.m., at which time the annex personnel leave for the day. In this regard, the truck driver advises that he hurried to the Yermo Annex and arrived at 2:30 but was misdirected by Yermo personnel so that he did not arrive at the proper location until 2:45 p.m., at which time he found the office both locked and unoccupied. (DSA advises that personnel leave the Yermo yard shortly prior to 3:00 p.m. since it is a five mile drive to the location at which they are to punch out at 3:00 p.m.). As a result, the claimant's property was not picked up that day.

The next pick-up attempt was made on June 16. According to West's driver, after items 201, 202, 203 and 212 had been loaded in the truck, he requested the forklift operator at Yermo to remove the trailer sideracks with his forklift, so that there would be room on the truck for item 230. The forklift operator allegedly refused, contending he would be liable for any breakage, and then returned to his office. The West driver then removed the racks by hand, planning to load item 230 upon the return of the forklift operator. When the latter returned at 2:55 p.m., he allegedly refused to load item 230, stating it was time to leave. The West driver contends that the fifth item could have been loaded had the forklift operator cooperated.

DSA's warehouseman at Yermo does not agree with the driver's version of events. According to the warehouseman, it was impossible to lift item 230 high enough to get it over the other items on the truck and the West driver concurred that item 230 could not be loaded. He further states that when he returned from his office, he had no knowledge that the West driver had removed the racks by hand and was not requested to load. He does admit that if the racks had been removed, he could have loaded the final item.

DSA recommends disallowance of the claim. It points out that its records show that West's truck did not return empty on June 9, but rather had picked up approximately 10,000 pounds of

equipment for another contractor. DSA also states that the trucker could have remained overnight and returned with a full load on the following day. It further states that there is no evidence that the truck didn't carry additional cargo as well on the return trip. With regard to the June 16 trip, DSA states that since a substantial portion of the claimant's property was loaded only a small portion (approximately 9.5 percent) of the cost incurred for that trip could be related to the failure to load item 230. Furthermore, DSA asserts that it has no evidence that an additional trip for the sole purpose of removing item 230 was required. In this regard, DSA points out that the claimant "is a regular participant in the Sale of DOD surplus * * * property * * * and * * * routinely effects removals from a number of property locations." DSA states that in view of these circumstances, it requested Reiter-Compton to submit additional documentation to support its claim, particularly copies of the driver's daily logs and trip manifests. The claimant refused to provide those documents, asserting that it was DSA's responsibility to obtain them from West.

This Office examines and settles claims solely on the basis of the written record. On the basis of this record, we cannot settle the claim. There are factual disputes concerning both whether the Government improperly caused the claimant to incur costs for additional truck trips and, if so, what the proper amounts of such costs should be. Our established policy is to disallow a doubtful claim and leave the claimant to pursue whatever remedy may be available in the courts, where sworn testimony, cross-examination and other formal fact-finding procedures are available. See Remco, Inc., B-179243, July 22, 1975, 75-2 CPD 57; Afghan Carpet Cleaners, B-175895, April 30, 1974, 74-1 CPD 220; James J. Longwill v. United States, 17 Ct. Cl. 288 (1881); John H. Charles v. United States, 19 Ct. Cl. 316 (1884).

In view thereof, we are unable to authorize payment of the instant claim.

R. F. Keller

Acting Comptroller General
of the United States