

**DECISION**



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

60714

FILE: **B-185038**  
MATTER OF:

DATE: **APR 5 1976**

**Eastern Airlines, Inc.**

99108

**DIGEST:**

1. Provisions of tariffs filed with Civil Aeronautics Board are valid unless and until rejected by the Board.
2. Terms of contract of carriage under which carrier transports goods include both bill of lading and the published applicable tariff.
3. Claim against air carrier for damage to a shipment moved on Government bill of lading is not subject to notica requirements of governing air tariff because use of Government bill of lading--which in Condition 7 contains waiver of usual notice requirements--is required by air tariff and creates ambiguity over applicability of notice requirements which is resolved in favor of shipper.

The Department of the Air Force sent here for collection a disputed claim for \$601.58 against Eastern Airlines, Inc. (Eastern).

The claim arose from a shipment of five containers of electrical instruments, weighing a total of 1,122 pounds, which was transported under Government bill of lading No. H-1476322, dated July 31, 1972, from the Bendix Corporation, Davenport, Iowa, to the Naval Air Station, Pensacola, Florida, by United Airlines, Inc., and Eastern.

The shipment was delivered to a building at the Naval Air Station on Friday, August 4, 1972, when it was offloaded and received in apparent good order. When the containers were opened on Monday, August 7, damage was discovered and Eastern was notified of the damage. On August 9, representatives of the Naval Air Station and of Eastern inspected the damage; among other things, the inspection report indicates that the property would be repaired.

The claim for \$601.56 represents the maximum limit on Eastern's liability for costs of \$6,059.78 incurred by the Govern-ment to repair the damage. Under the tariff governing the ship-ment and unless a higher value is declared, Eastern's maximum

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Resolving the tariff ambiguity against the carrier and in favor of the shipper means that claims for loss or damage on shipments governed by Tariff 1-B which are transported for the United States Government on Government bills of lading are not subject to the notice requirements of Rule No. 50(B)(1).

We today have instructed our Claims Division to collect the claim for \$601.58 against Eastern by setoff from amounts otherwise due Eastern.

**R.F. KELLER**

**Acting Comptroller General  
of the United States**

Paragraph (E) of the rule reads:

"Any shipment transported for the United States Government must be accompanied, in addition to the Airbill, by a Government Bill of Lading with the proper number of copies properly executed."

It is established in transportation law that the terms of the contract of carriage under which the carrier transports goods include both the bill of lading and the published applicable tariffs. Union Pacific R.R. v. Higgins, 223 F. Supp. 396 (D. N.D. 1963); see, also, Eastern Motor Express v. A. Maschmeijer, Jr., Inc., 247 F.2d 826 (2nd Cir. 1957); Pacific S.S. Co. v. Cackette, 8 F.2d 259 (9th Cir. 1925); Railway Exp. Agency v. Ferguson, 242 S.W. 2d 462 (Civ. App. Tex. 1951). And here Tariff 1-B, the published applicable tariff, requires the use of a Government bill of lading.

The back of Government bill of lading No. H-1476322 under the heading "CONDITIONS" provides:

"It is mutually agreed and understood between the United States and the carriers who are parties to this bill of lading that—

\* \* \* \* \*

"7. In case of loss, damage, or shrinkage in transit, the rules and conditions governing commercial shipments shall not apply as to period within which notice thereof shall be given the carriers or to period within which claim therefor shall be made or suit instituted."

The conflict between Rule No. 60(B)(1) and Rule No. 26 is apparent and its source is the ambiguity created by the terms of the tariff. It is settled that ambiguities and uncertainties in the terms of a tariff are to be resolved against the carrier, as the author of the document, and in favor of the shipper. C & H Transportation Co. v. United States, 436 F.2d 480 (Ct. Cl. 1971); United States v. Strickland Transportation Co., 204 F.2d 325 (5th Cir. 1953) cert. denied 346 U.S. 836 (1953); Great Northern Ry. v. United States, 178 Ct. Cl. 226 (1967).

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liability on the shipment is based on 50 cents per pound, or \$561; to this was added \$40.58, the cost of transportation to the repair facility.

On July 23, 1974, a claim for \$601.58 was filed with Eastern. The carrier denied the claim because it was not submitted to it in writing within the time limit specified in the governing tariff. After an exchange of correspondence, the claim was submitted here.

Eastern's denial is based on Rule No. 60(B)(1) of Official Air Freight Rules Tariff No. 1-B, C.A.B. No. 96 (Tariff 1-B); the rule provides in part that "All claims \* \* \* must be made in writing to the originating or delivering carrier within a period of nine months and nine days after the date of acceptance of the shipment by the originating carrier." The Air Force's claim accrued July 31, 1972, but was not filed within the time period specified in Rule No. 60(B)(1).

It seems to be true, as contended by Eastern, that provisions of tariffs filed with the Civil Aeronautics Board are valid unless and until they are rejected by the Board. Vogelsang v. Delta Air Lines, Inc., 302 F.2d 709 (2nd Cir. 1962), cert. den. 371 U.S. 826 (1962); Herman v. Northwest Airlines, 222 F.2d 326 (2nd Cir. 1955), cert. den. 350 U.S. 843 (1955); Lichten v. Eastern Airlines, 189 F.2d 939 (2nd Cir. 1951).

The Air Force relies on Rule No. 26 of Tariff 1-B. Paragraph (A)(2) of the rule reads:

"The shipper shall prepare and present a non-negotiable Airbill \* \* \* or other non-negotiable shipping document with each shipment tendered for transportation subject to this tariff and tariffs governed hereby, and such Airbill or other shipping document shall contain all particulars necessary for transport of the shipment. If the shipper fails to present such Airbill, the carrier will prepare a non-negotiable Airbill for transportation, subject to tariffs in effect on the date of acceptance of such shipment by the carrier, and the shipper shall be bound by such Airbill and shall be deemed to have received such notice(s) as is contained therein."  
(Emphasis supplied.)