DOCUMENT RESUME

02597 - [A1872900]

[Employee Responsibility for Expedited Shipment Charges]. B-188455. June 28, 1977. 5 pp.

Decision re: Louie R. Geiser; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation (305).
Contact: Office of the General Counsel: Transportation Law.
Budget Function: General Government: Central Personnel Management (805).
Organization Concerned: Internal Revenue Service; Tom Mundy, Inc.
Authority: Interstate Commerce Act, as amended (49 U.S.C. 316-317). 49 U.S.C. 66(a)(Supp. V). F.T.R. (FPMR 101-7), para. 2-8.3-(4)(d). F.T.R. (FPMR 101-7), para. 2-8.(3)b.(1). 47 Oklahoma Statutes 163(A), (E). 46 Oklahoma Statutes 163, sec. 163. Davis v. Cornwell, 264 U.S. 560 (1924). Gus Blass v. Powell Bros. Truck Lines, 53 M.C.C. 603 (1951). Davis v. Henderson 266 U.S. 92.

An Authorized Certifying Officer, Internal Revenue Service, requested a decision on a transferred employee's expenses for shipment of household goods. Employee was not liable for expedited service charges on shipment moved under actual expense method where bill of lading contract between Government and carrier did not conform to rules governing tariff. Rules in common carrier tariff filed with regulatory commission are part of tariff and not waivable. (Author/DJM)

02597

DECISION

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

FILE: B-188455 DATE: JUN 28 1977

MATTER OF: Internal Revenue Service

DIGEST:

1. Employee not liable for expedited service charges on shipment of household goods moved under actual expense method where bill of lading contract between Government and carrier did not conform to rules in governing tariff.
2. Rules in a regulated common carrier tariff on file with regulatory commission are part of the tariff and cannot be waived.

An authorized certifying officer of the Internal Revenue Service, Department of the Treasury, requests an advance decision whether Louis R. Geiser, an employee of the Service, is responsible for an expense of $84.63 allegedly incurred by the Government for expedited service furnished by Tom Munday, Inc., a common carrier by motor vehicle, to a shipment of Mr. Geiser's household goods transported incident to a change of permanent station. An original travel voucher was sent with the request.

Mr. Geiser's orders authorized a transfer from Oklahoma City, Oklahoma, to Lawton, Oklahoma. When intrastate transfers are authorized and because intrastate transportation rates often are higher than interstate rates, the Federal Travel Regulations authorize the use of the actual expense method of transporting household goods if it is administratively determined that the employee would experience unusual hardship through use of the commuted rate system. FPMR 101-7, 2-8.3-(4)(4). Under the actual expense method the Government ships the employee's property on a Government bill of lading and pays the transportation charges to the carrier. FPMR 101-7, 2-3.(3)b.(1). IRS states that the employee remains liable for any special services, like charges for expedited service, assessed by carriers and not normally included in a household goods moving service.

To assist in preparing the "Estimated Reimbursable Expenses" section of IRS Form 4233, "Authorization for Moving Expenses," Mr. Geiser obtained from Munday an estimated cost of the contemplated transportation service. As stated by Mr. Geiser:

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"Mr. Grimmett [of Munday] came to my apartment * * * to view my household goods and prepare the estimate.

"In my discussion with Mr. Grimmett, I asked him what the timing would be on my move since I wanted to arrange for temporary quarters if necessary. He told me that since it was only a two-hour trip to Lawton and since my amount of household goods was relatively small, that my goods would be loaded, transported, and unloaded all in one day.

"When he completed the estimate, he handed me a copy. I noted an unusual entry ('2415/5000') for estimated weight and asked him what it meant. He said that, although he estimated the weight of my goods at 2415 pounds, the billing for the move would be at the rate for 5000 pounds. He said this was because the tariff was an intrastate rate not subject to ICC Regulation and that there was a 'minimum' of 5000 pounds. There was no mention of any additional charge for extraordinary services other than those noted on the form (stair carry and packing).

"* * * I made no statement to Mr. Grimmett or anybody else that could possibly have been construed as a request for expedited service." (Emphasis in original.)

This estimate apparently demonstrated the unusual hardship which would result from using the commuted rate system. However, under IRS regulations, the administrative determination to use the actual expense method must be justified by a GSA Form 2485, "Cost Comparison for Shipping Household Goods." IRM 1763, Section 345.24. The transportation expenses shown on GSA Form 2485 are normal transportation expenses based on an estimated weight of 2,415 pounds, and apparently supported the administrative determination to use the actual expense method.

The IRS' Facilities Management Branch prepared Government bill of lading No. K-0782603 authorizing Munday to transport Mr. Guiser's household goods to Lawton. Expedited service is not mentioned on the GBL.

The GBL and supporting documents show that Mr. Guiser's household goods actually weighed 1,960 pounds and were received at destination in apparent good order and condition. Munday later collected from IRS transportation charges of $381.05, based among other things on a rate of $4.61 per 100 pounds and a minimum weight

of 5,000 pounds. This rate and minimum weight represent the charge for expedited service set forth in Item 130 of Midwest Motor Carriers Bureau Tariff 3-H, a tariff filed with the Corporation Commission of Oklahoma.

IRS, using information shown on the SSA Form 2665, determined that the cost of using expedited service was $84.65 in excess of what would have been the normal transportation charges and asked Mr. Gaiser to refund that amount. He refused, claiming that he never authorized that service.

It is obvious that Mr. Gaiser is a victim of circumstances and of incomplete and misleading advice from Hunsley's agent; Mr. Gaiser never intended to use expedited service and it is not mentioned on the BOL, the contract between IRS and Hunsley, an indication that the Government never intended to use that service. Thus, we do not believe that Mr. Gaiser is responsible for the $84.65 expense. Furthermore, we believe that the Government has been overcharged for the transportation services furnished to Mr. Gaiser.

IRS asked Hunsley to refund $84.65 because the Government did not order the service. In response, Hunsley states:

> "We have today re-checked the Bill of Lading on which Mr. Gaiser moved, and find it to be correct in the computations under the Oklahoma Intrastate Joint and Local Motor Freight Commodity Tariff 3-H which we operate under. As you probably are already aware, we are under the Oklahoma Corporation Commission. This body grants us authority to operate as an Intra Carrier in the state of Oklahoma, subject to the provisions of said tariff.
>
> "We are required by the Tariff and the Oklahoma Corporation Commission to charge in full for any service which we perform. Any deviation from this Tariff placed the carrier in violation. The deviation in this case, would be providing Expedited Service and charging at Carrier Convenience rates. The Tariff is the law under which we work. We believe that the Federal Government itself is an exponent of this law." (Emphasis in original.)

We agree with Hunsley that under Oklahoma law it is required to file tariffs with the Corporation Commission of Oklahoma and is forbidden to deviate from those tariffs. Title 47, Sections 163(A) and 163(E), Oklahoma Statutes, 1971. Item 130, titled "EXPEDITED SERVICE," is one of the rules and regulations in Tariff 3-H.

It sets out in paragraph (a) the charge basis applicable to expedited service; paragraph (b) reads:

> "(b) The following form shall be completed on the bill of lading and freight bill:
>
> EXPEDITED SERVICE ORDERED BY SHIPPER
>
> SHIPMENT MOVING AT WEIGHT OF_____POUNDS.
> ACTUAL WEIGHT. . . . . .____POUNDS.
> RATE AND HOUR OF LOADING_____.
> DELIVER (OR TENDER) ON OR BEFORE_____."

This form is not reproduced on GBL No. K-0782603 nor on Hamby's freight bill nor elsewhere in the record.

Section 163 of Title 66 of the Oklahoma Statutes, 1971, reads substantially the same as Sections 216 and 217 of the Interstate Commerce Act, as amended, 49 U.S.C. 316 and 317 (1970). Among other things, these sections prohibit a common carrier by motor vehicle from engaging in transportation unless its charges are published in tariffs filed with the respective Commissions, require carriers to publish and file tariffs with the Commissions and prohibit any deviations whatsoever from the rates, fares and charges specified in the tariffs.

Under the Interstate Commerce Act rigid adherence to the tariff is required for a carrier to recover under its provisions. Maxwell v. Cornwall, 264 U.S. 360 (1924); Illinois Central R.R. v. Hoffman Commodity, Inc., 323 F. Supp. 609, 611 (E.D. La. 1971); Baker v. Pittsburgh Chicago Corporation, 335 F. Supp. 183, 185 (E.D. Ill. 1971). And under that Act the rules in a tariff are part of the tariff and cannot be waived. Maxwell v. Henderson, 266 U.S. 92 (1924); cf. Farmer Corporation v. Panama Canal Company, 473 F.2d 292, 298 (5th Cir. 1973).

In Gas Rings Co. v. Pennsylvania Truck Lines, 53 M.C.C. 603 (1951), the Interstate Commerce Commission held that the omission of a required bill of lading endorsement was a defect fatal to the application of transportation charges based on an exclusive use of vehicle rule--a type of special service--even though the special service actually was requested and furnished. Among other things, the Commission stated:

> "It appears that defendant's [Powell's] position is that its failure properly to endorse the bill of lading and

freight bill does not render inapplicable the provisions of the rule governing the charges to be assessed, and that the requirement for such endorsement is simply a matter of form, the absence of which does not affect the remaining provisions of the rule. We think not. It is well settled that a rule contained in a tariff is a part of the tariff, and cannot be waived. See Mingville Manufacturing Corp., Inc., v. Illinois Central R. Co., 288 I.C.C. 383 and National Products Refining Co. v. Central R. Co. of N.J., 216 I.C.C. 105, both citing Davis v. Henderson 266 U.S. 92. In the latter proceeding the Supreme Court said:

"There is no claim that the rule requiring written notice was void. The contention is that the rule was waived. It could not be. The transportation service to be performed was that of common carrier under published tariff. The rule was a part of the tariff." (Emphasis in original.)

In our opinion the substantially similar language of Section 163 of Title 46 of the Oklahoma Statutes, 1971 [compare Section 163(E) with 49 U.S.C. 317(b)] requires the same result here. Thus, Murday's charges for expedited service are not applicable to the shipment transported under GBL No. K-0782403.

In these circumstances, Mr. Geiser is not responsible for paying the $84.63 and we are returning the original travel voucher to IRS for such action as it deems appropriate.

We have furnished the Transportation Audit Branch, Federal Supply Service, General Services Administration, a copy of this decision for its use in connection with the audit of Murday's paid transportation bill. 49 U.S.C. 66(a) (Supp. V 1975).

R.F.KELLER

Deputy Comptroller General
of the United States