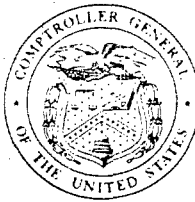


DECISION

11526 *Transp*
**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-192002

DATE: September 26, 1979

MATTER OF: Delta Steamship Lines, Inc. *CNG00080***DIGEST:**

Since there is no indication in legislative history that Congress in amending Shipping Act, 1916, intended to repeal statutory and regulatory scheme which on shipments moving under Government bills of lading requires delivery to destination to earn freight charges, contrary provisions in carrier's LASH bill of lading are ineffective to support payment of additional freight charges.

Charges Delta Steamship Lines, Inc. (Delta), requests review by the Comptroller General of the General Services Administration's (GSA) *AGC00017* settlement action which disallowed Delta's claim for additional freight, 4 C.F.R. 53.3 (1978). GSA's action was taken on eight shipments of Department of Defense cargo transported from New Orleans, Louisiana, to various points in South America under Government bills of lading (GBL).

While en route to Salvador, Brazil, the vessel performing the initial carriage, the SS Delta Norte, sustained machinery damage and had to be towed to Oranjestad, Aruba. Because parts necessary for repair would be unavailable for several months, the voyage was abandoned and the cargo was transshipped from Oranjestad, Aruba, to destination on the SS Delta Brasil. Delta claims that, pursuant to provisions 10 and 16 of its LASH bill of lading, transshipment of the cargo from Aruba to destination entitles it to receipt of a second freight. The shipper, Military Sealift Command Gulf Subarea, denied Delta's *DLG02876* claim contending that under a Government bill of lading freight is at the risk of the vessel which means that cargo must be delivered to destination before freight is earned. It contends that Delta must bear the cost of transshipment in order to earn the original freight. GSA concurs in the denial of Delta's claim for the cost of transshipment. Delta collected ocean freight charges of \$4,242.98 under the original Government bills of lading and was denied additional ocean freight charges of \$3,815.76 for the voyage from Aruba to destination.

The reverse of the covering GBL's Standard Form 1103, January 1974, provides that "[e]xcept as provided in 4 C.F.R.

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52 or as otherwise stated hereon, this bill of lading is also subject to the same rules and conditions as govern commercial shipments made on the usual forms provided therefor by the carrier." Therefore the terms of the carrier's usual contract of carriage--here Delta's LASH bill of lading--are incorporated by reference and shipments of Government property are made subject to such terms except as provided by regulation or otherwise specifically provided on the GBL.

Conditions 10 and 16 of Delta's LASH bill of lading in effect provide that in any situation which threatens the ship or its cargo the goods may be unloaded at an alternate destination, which shall constitute full and satisfactory performance of the contract. Forwarding, or transshipment, of the goods to the designated destination is at the additional expense of the shipper and may be performed either by the shipper or by the carrier.

Delta contends that in 1961 Congress passed legislation converting tariffs and bills of lading of ocean carriers in foreign commerce into statutory tariffs binding on all parties thus making its LASH bill of lading contract paramount to the GBL contract.

Section 4 of Pub. L. 87-346, October 3, 1961, amended Section 18 of the Shipping Act, 1916, 46 U.S.C. 817, by adding a provision requiring carriers by sea in foreign commerce to file with the *AGC00070* Federal Maritime Commission (FMC) and keep open to public inspection tariffs showing the rates, fares, charges, origins, and destinations, classifications, rules and regulations. The tariffs are required to include "specimens of any bill of lading contract of affreightment, or other document evidencing the transportation agreement." Subparagraph 3 prohibits any carrier from charging, demanding, collecting or receiving a greater or less or different compensation for transportation or any transportation service than is set forth in the published and filed tariff except as authorized by the FMC under specified circumstances. The rates, rules and other tariff provisions filed pursuant to this provision have the force and effect of law binding on both the carrier and the shipper. Gilbert Imported Hardwoods, Inc. v. 245 Packages of Guatambu Squares, More or Less, 508 F.2d 1116 (5th Cir. 1975); Koninklijke Nedlloyd BV v. Uniroyal, Inc., 433 F. Supp. 121, 127 (S.D.N.Y. 1977).

However, Section 529 of Title 31 of the United States Code prohibits any advance of public money or any payment in excess of the value of the service rendered. This prohibition has been a part of statutory law since January 31, 1823. 3 Stat. 723. In recognition of the prohibition, Government regulations dealing with GBLs since 1907 have provided that in no case shall prepayment

of charges be demanded by the carrier, and that the GBL properly certified or accomplished and attached to the voucher for transportation charges should be presented to the paying office. 14 Comp. Dec. 967 (1907). Until 1974 these provisions were set forth in full on the reverse of the GBL. 4 C.F.R. 8, 9 (1949); 4 C.F.R. 52 (1974). They now are published in 41 C.F.R. 101-41.302-3(a) (1978). They are statutory and, therefore, have the force and effect of law. Farmer v. Philadelphia Electric Co., 329 F.2d.3 (3rd Cir. 1964).

The Attorney General has stated that the plain meaning of 31 U.S.C. § 529 is that, "no money shall be advanced to contractors; that is that no money shall be paid to them on account of their contracts before the actual performance of the service or the delivery of the articles stipulated for." 10 Ops. Atty. Gen. 288, 301 (1862). See also 32 Comp. Gen. 563 (1953); 43 Comp. Gen. 788 (1964), 50 Comp. Gen. 164 (1970).


Although the amendments to the Shipping Act give to a carrier's bill of lading the force and effect of law, there is no indication either in the amendments or in their legislative history that Congress intended to amend or repeal the statutory and regulatory scheme which on shipments moving under GBLs requires actual delivery to the specified destination on the GBL in order to earn freight charges. And to assume that the mere passage of a specific statute governing an area of conduct also regulated by a more general statute limits enforcement of the general statute by carving out an exception to it is, in effect, to accomplish by implication a partial repeal of the general statute, a type of repeal which is not favored. United States v. Burnett, 505 F.2d 815 (9th Cir. 1974); certiorari denied Lyon v. United States, 420 U.S. 966.

There is no indication in the legislative history that Congress intended to bar application of the general statute against advance payments when in 1961 it amended the Shipping Act, 1916, to require carriers to file tariffs containing "specimens of any bill of lading" Therefore, the regulatory scheme to implement 31 U.S.C. § 529 which requires actual delivery to the destination specified on the GBL in order to earn freight charges makes the LASH bill of lading provisions 10 and 16 contrary to that statute and implementing regulations and ineffective to support payment of the additional freight charges. Cf. Alcoa Steamship Co., Inc. v. United States, 338 U.S. 421 (1949).

Since under the GBL freight is at the risk of the vessel there is no entitlement to a second freight or transshipment cost, which is dependent upon the freight having been earned at the alternate delivery. See Item 16 of the LASH bill of lading. In this connection in Marine Insurance and General Average in the United States, Leslie J. Buglass, 1973, page 172 it is stated: ✓

"In such circumstances (justifiable abandonment of the voyage), the shipowner can either deliver the cargo at the port of refuge or (at cargo owners' request) arrange to forward it to destination at the expense of the cargo (assuming the original freight to have been guaranteed). Of course, if the freight was not guaranteed, the shipowner will no doubt pay the cost of forwarding to earn his original freight."

GSA's disallowance of the claim for additional freight charges is sustained.


Deputy Comptroller General
of the United States