12387 TRANS

DECISION

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

FILE: B-195219 DATE: December 27, 1979

MATTER OF: AA Sunshine Movers, Inc. D3531

[Request for Review of GSA Audit Action]

DIGEST:

1. Where tender and intrastate tariff covered "same services" and same extra services, rates and changes in intrastate tariff are "otherwise applicable" within meaning of alternation provision in tender.

2. Different length of time permitted for storage in transit under tender as opposed to under intrastate tariffs does not constitute different service.

AA Sunshine Movers, Inc. (Sunshine) requests review of the audit action taken by the Office of Transportation Audits of the General Services Administration (GSA) on Government bills of lading Nos. K-1024641, K-1025317, K-1025432, and K-1025795. After auditing the four bills, GSA notified Sunshine of overcharges totaling $1,351.31. Further action on these overcharges is being held in abeyance pending this review. Comptroller General review of GSA's audit action is authorized by 49 U.S.C. 66(b) (1976), and 4 C.F.R. 53.3 (1978).

Sunshine transported four shipments of household goods, property of military personnel, from Key West, Florida, to various Florida intrastate destinations between August 1975, and September 1976, when weight restrictions were in effect on the overseas highway, U.S. Route 1. This restriction is a bridge charge of $4 per 100 pounds found in item 150 of Government and Military Rate Tender No. 1-H, I.C.C. No. 35 (Tender 1-H), upon which Sunshine based its charges.

GSA's audit basis is derived from lower charges published in Florida Household Goods Carriers' Bureau Tariff 13, HG-FPSC 13 (one shipment moved under Tariff No. 12, the predecessor of Tariff 13). GSA contends that the Florida tariffs are applicable to the four intrastate shipments. The Florida tariffs do not contain a bridge charge.

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In its request for review of GSA's action, Sunshine presents issues similar to those considered and resolved in our decisions in 58 Comp. Gen. 375 (1979), to Hilldrup Transfer and Storage Co. (Hilldrup), affirmed, B-192411, November 30, 1979, and of May 9, 1979, B-192951, to American Van and Storage, Inc. (American). We are furnishing Sunshine copies of these decisions.

First, Sunshine argues that the shipments were accepted under the rate terms in Tender 1-H, which included the bridge charge. It submits that the Government issued the bills of lading and referred to Tender 1-H on each of them and that by doing so the carrier and the United States, through their representatives, entered into a written contract which was verbally [orally] reaffirmed prior to the services being rendered.

Second, Sunshine contends that had the shipments been tendered under the Florida tariffs, Sunshine would not have accepted them since it does not offer the same service to the public as it does to the Government. As Sunshine states in its letter requesting review: "All civilian shipments to or from Key West are sold either on [an] exclusive use of the van, [or] expedited service [basis], and are not accepted on a required pickup date as the case is with GBL's."

Third, the carrier states in its letter that "AA Sunshine Movers does not make available to the public as is required by the above captioned GBL's, 90 days Storage in Transit at destination."

Sunshine's first argument has no merit. In American, in response to a similar argument, we said:

> "Tender 1-X was intended to apply but it included item 23. By this provision, American agreed that Tender 1-X would not apply if the total charges thereunder exceeded the total charges otherwise applicable for the same service. Thus, if the services and privileges offered to the United States under Tender 1-X are substantially similar to those available to the general public, the intrastate tariff must be applied."

Item 23 in Tender 1-H contains the same provision, and as we noted in Hilldrup item 23 recognizes the fact that the existence of the tender does not preclude the applicability of intrastate rates for similar services. In that decision we determined that the tender and the intrastate tariff covered the "same services" and hence the tariff was "otherwise applicable" within the meaning of item 23 of the tender. In this case, since both shipper and carrier agreed to item 23 of Tender 1-H, application of that provision requires use of the Florida tariffs.

Sunshine's second contention that it does not offer the same services to the public as it does to the Government does not provide a legal basis for overturning GSA's action. While the Florida tariffs do provide for expedited service (Rule 5(a)), for exclusive use service (Rule 5(c)), and for required pickup dates (as discussed in Rules 6, 7 and 8), all of these are considered extra services for which the commercial shippers pay a higher rate. They are not mandatory services because commercial shippers have the option of contracting for them at the higher rate. These same additional services are available to the Government under Tender 1-H at rates higher than those otherwise applicable. Sunshine did not, then, offer to the United States services and privileges which differed substantially from those available to the general public under the intrastate tariffs. See Hilldrup and cases cited therein.

The record shows that Sunshine's contention regarding the difference between the 90 days storage in transit (SIT) authorized on the GBLs and the 60-day limit in the Florida tariffs for SIT is not relevant in this case. There is no evidence that any of the four shipments remained in storage for a period in excess of 60 days. Therefore, no question arises as to storage time under those tariffs.

Further, the suggestion that the different lengths of time permitted for SIT under the tender as opposed to the tariffs constitutes a different service was rejected in both the Hilldrup and the American decisions. As we stated in Hilldrup, "the fact that Hilldrup's potential liability for loss and damage may be made more extensive under the tender than under the tariff is irrelevant because a common carrier's liability for loss and damage is distinct from the shipper's liability for freight charges . . . and is not an additional benefit or privilege relating to freight charges."

We agree with GSA that under item 23 of Tender 1-H and under the terms of the GBL's, the Florida tariffs provide the lowest applicable charges on the shipments transported by Sunshine.

Based on the foregoing, GSA's overcharge action is correct and is sustained.

Milton J. Socolar

For the Comptroller General
of the United States