

DECISION



THE COMPTROLLER GENERAL OF THE UNITED STATES

WASHINGTON, D.C. 20548

81-1CPD 484

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FILE: B-196671

DATE: June 2, 1981

MATTER OF: Leonard Brothers Trucking Co., Inc.

DIGEST:

1. While specific provision of tender is ambiguous standing alone, examination of entire tender removes ambiguity. Rule that ambiguities in tender should be resolved in favor of shipper is not for application.
2. Where purpose of tender revision is to clarify rather than change meaning of tender provision, shipper cannot point to revision as proving that tender had different meaning before being revised.
3. Order for stopping in transit service constitutes request for truckload service since such service is provided only on truckload shipment.

By letter of October 25, 1979, Leonard Brothers Trucking Company, Inc. (Leonard), requests review of the General Services Administration's (GSA) audit action on 22 shipments of Government property. At issue are shipments of various commodities, such as helicopter rotor wing blades, bomb racks, and radar antennae, that moved via Leonard between Eastern points on the one hand, and California and Arizona points on the other hand, during the period March 29 to June 27, 1974.

GSA asserted overcharges of \$10,636.91, computing the applicable charges at rates and minimum weights published in item 6210 of Leonard's Tender 30-B, ICC No. 50 without regard to the lineal foot rule in item 365 of the tender. Leonard protested, contending that all but one of the 22 shipments (most of which were under 10,000 pounds), were subject to item 365. Where the actual weight of a shipment is relatively light in relation to the lineal feet of loading space required, as in the case of these shipments, item 365 requires the

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application of rates to a constructive minimum weight of 750 pounds for each lineal foot of loading space. Application of item 365 results in higher charges.

In addition, Leonard contended that one shipment was tendered as a truckload shipment and was subject to the truckload minimum charge rule set forth in item 510 of its tender, which imposes a minimum weight of 24,000 pounds on a shipment that is tendered as a truckload, or occupies 32 lineal feet or more of trailer loading space. The overcharges were recovered by deduction.

Briefly, Leonard's Tender 30-B offers local and joint distance commodity rates and point to point commodity rates to all agencies of the Government pursuant to section 22 of the Interstate Commerce Act, made applicable to motor carriers by section 217(b), 49 U.S.C. 10721(b)(1) (Supp. III, 1979), and is composed of four sections. Section 4 sets forth rates applicable to the commodities described in section 1 of the tender. Both the carrier and GSA agree that the rates published in item 6210 of section 4 applied to the 22 shipments, but they disagree as to the applicable minimum weights. The dispute involves the application of a footnote under item 6210.

Item 6210 (original page 91), to the extent pertinent, reads as follows:

BETWEEN POINTS AND PLACES IN:	SEE NOTE 2	ARIZONA, CALIFORNIA								
		COLUMN A				COLUMN B				
		MINIMUM WEIGHTS IN 1000 POUNDS								
AND POINTS IN THE FOLLOWING STATES: (except as noted)		10	24	30	40	20	24	30	40	
RATES IN CENTS PER 100 POUNDS										
	*	*	*	*	*					
New York Groups 1, 2 & 3		820	620	600	590		720	620	530	499
North Carolina										
	*	*	*	*	*					

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This chart is accompanied by two clarifying footnotes. Note 1 provides, in pertinent part, that: "Truckload Minimum provided in this Item are not subject to Item 365." Note 2 simply indicates that the single 10,000 pound chart in the tender item applies to both Columns A and B.

GSA argues that the phrase "truckload minimum" in note 1 refers to all of the weights shown under item 6210, including the 10,000-pound minimum weight. GSA notes that subsequent to the time these disputed shipments were made Leonard revised its tender expressly subjecting 10,000-pound minimum weight shipments to item 365. In view of this and the rule that ambiguities in a tender must be resolved in favor of the shipper (55 Comp. Gen. 958 (1976)), GSA believes that its interpretation of Leonard's tender should prevail: That the 10,000-pound minimum weight is a truckload minimum; that the lineal foot rule did not apply; and that the 10,000-pound rates were properly applied to 10,000 pounds or to the actual weight (where greater than 10,000 pounds), rather than to the higher constructive minimum weight.

However, we agree with Leonard's interpretation. As Leonard points out, before the rule concerning ambiguities in a tender may be applied to a specific provision it is necessary to look at the entire tender to determine if they can be resolved without recourse to the rule. National Van Lines, Inc. v. United States, 355 F.2d 326 (7th Cir. 1966).

Examination of Leonard's entire tender reveals that the term truckload minimum is defined in item 510. Specifically, item 510 provides that a 24,000-pound truckload minimum weight applies when a shipment is tendered as a truckload on the Government Bill of Lading (GBL) or the shipment occupies 32 feet or more of trailer loading space. We note this dimension because of a connection between 32 feet and the 750 pounds per lineal foot, minimum weight rule of item 365, in that the 750 pounds per foot rule produces 24,000 pounds of constructive weight when 32 feet of trailer space is used (32 x 750 pounds). We also note that in Section 1 of Leonard's tender 7,000- and 14,000-pound minimum weight shipments are classified as less than truckload minimums, and the lowest truckload minimum, leaving item 6210 aside, is 20,000 pounds. Although GSA argues that the minimums specified elsewhere

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in Leonard's tender are not relevant to the application of item 6210 rates, since that item contains its own minimum weights, we are persuaded that they are relevant in classifying the minimums in item 6210. Indeed, as we stated in Yellow Freight System, Inc., B-197183, June 26, 1980, a 10,000-pound minimum weight is not generally or commercially understood to be a truckload minimum.

Nor does the fact that Leonard eventually revised item 6210, to state expressly that rates subject to the 10,000-pound minimum weight are subject to item 365, convince us that these shipments were not subject to item 365. Rather, we view the amendment as a clarification of existing intention and not as a change in the tender. See National Dairy Products Corp. v. Missouri-Kansas-Texas R.R. Co., 385 F.2d 173, 177 (5th Cir. 1967).

As previously indicated, on one shipment Leonard claims truckload minimum charges on the basis of item 510 of its tender.

On April 26, 1974, Leonard received a shipment of tractors, weighing 14,400 pounds, for transportation from Payne, Ohio, to Travis Air Force Base, California, under GBL F-7870862. The face of the GBL is noted as follows: "STOP OFF AT MATHER AFB, CALIFORNIA TO UNLOAD 2 TRACTORS." For this service Leonard billed and was paid \$1,497.97 on a truckload minimum weight of 24,000 pounds. Upon audit of the payment voucher GSA determined that the charges should be \$1,185.06 on the actual weight of 14,400 pounds, and assessed an overcharge of \$312.91. On the failure of Leonard to refund, the overcharge was recovered by deduction.

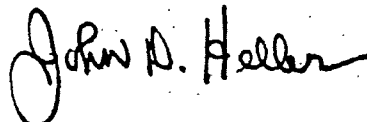
Leonard argues that the shipment was tendered as a truckload within the meaning of the truckload minimum charge rule of item 510, because the shipment was ordered stopped in transit for partial unloading, and item 600 of Leonard's Tender 30-B provides: "* * * truckload shipments may be stopped in transit at a point or points enroute for the purpose of either partial loading or unloading * * *." An order for a stop in transit for partial loading or unloading is a characteristic of truckload service. See Watkins Motor Lines, Inc., Ext-North and South Carolina, 103 MCC 227, 246 et seq. (1966). Therefore, since a stop-off in transit was authorized by the applicable tender only for truckload shipments and such an order is a characteristic of truckload

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service the subject shipment was tendered as a truckload and is subject to the minimum truckload charge rule. Accordingly, Leonard is entitled to the truckload charges billed, if otherwise correct.

GSA should issue settlements consistent with this decision.



Acting Comptroller General
of the United States