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DECISION



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

FILE: E-203753

DATE: July 27, 1982

MATTER OF: United Airlines

DIGEST:

1. Terms of contract of carriage under which carrier transports goods include both bill of lading and published applicable tariff.
2. Claims against air carrier for damage to shipments moved under Government bills of lading are not subject to notice requirements of governing air tariff because use of Government bill of lading--governed by terms and conditions which waive usual notice requirements--is required by air tariff and creates ambiguity over applicability of notice requirements which is resolved in favor of shipper.

United Airlines (United) appeals a settlement of our Claims Group disallowing its claim for \$1,697.69, an amount set off from monies otherwise due United, after United was found liable by the Army for seven loss and damage claims under seven different shipments. All of the claims were initially filed with the carrier more than 9 months and 9 days after the date of acceptance of the shipments.

We affirm the settlement.

United argued to the Claims Group that all of the claims were barred because they were filed beyond the time period required under its Rule No. 60(B)(1) of Official Air Freight Rules Tariffs Nos. 1-B and CR-1, which provide in relevant part that "All claims * * * must be made in writing to the originating or delivering carrier within 9 months and 9 days after the date of acceptance of a shipment by the originating carrier." The Claims Group, relying on our decision 55 Comp. Gen. 958 (1976), held that this rule was inapplicable to a shipment made under a Government bill of lading (GBL). This result was based on the fact that there was an ambiguity between Rule No. 60(B)(1) and Rule No. 26(A)(2) of the tariffs. Such an ambiguity is construed against

the carrier and in favor of the shipper, with the result that claims for loss and damage on shipments governed by the tariffs in question which are transported for the United States Government under GBL's are not subject to the notice requirement.

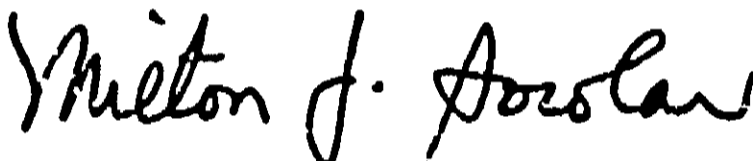
United appealed, contending that its tariff does not contain a rule such as Rule No. 26. However, we have requested copies of the applicable United tariffs from the General Services Administration, which they have supplied, and which we find contain the identical provision at Rule No. 26(A)(5), which provides that: "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." United concedes that the shipments in question were, in fact, accompanied by GBL's in addition to Airbills.

In 55 Comp. Gen. 958 (1976), we noted that it is established in transportation law that the terms and conditions of carriage under which the carrier transports goods include both the bill of lading and the applicable tariffs. We indicated that the back of the GBL contained a condition stating that "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." We held that the conflict between this condition and the Rule No. 60(B)(1) notice requirement created an ambiguity under the terms of the tariff which must be resolved against the carrier, as the author of the documents, and in favor of the shipper. Accordingly, we found that such claims for loss or damage were not subject to the notice requirements of Rule No. 60(B)(1).

In the present case, the identical considerations obtain. The relevant current GBL condition provides that "In case of loss, damage, or shrinkage in transit, the rules and conditions governing commercial shipments, as

they relate to the period within which notice thereof shall be given the carrier or to the period within which claim therefor shall be made or suit instituted, shall not apply. Deletion of this item will be considered valid only with the written concurrence of the Government official responsible for making the shipment." While this condition was not set forth in full on the back of the GBL's in this instance, as it was prior to 1974, it was and is published in 41 C.F.R. § 101-41.302-3 (1981), entitled "Terms and conditions governing acceptance and use of GBL's," which have the force and effect of law. Farmer v. Philadelphia Electric Co., 329 F.2d 3 (3d Cir. 1964); 58 Comp. Gen. 799 (1979). Accordingly, the rationale of 55 Comp. Gen. 958 (1976) obtains, and the seven claims in question are not subject to the filing limitation in United's tariffs.

We are advising our Claims Group that its settlement is affirmed.

for 
Comptroller General
of the United States