

DECISION

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

24272

FILE: B-207472

DATE: February 14, 1983

MATTER OF: Department of Agriculture--Request for
Advance Decision**DIGEST:**

Claims for transportation services furnished under the Transportation Act of 1940 are not subject to the disputes resolution procedure of the Contract Disputes Act of 1978 (CDA) since legislative history of CDA indicates no Congressional intent to extend coverage to matters covered by other statutes.

The Acting Director, Office of Finance and Management, Department of Agriculture, has requested an advance decision concerning the applicability of the Contract Disputes Act of 1978 (CDA), 41 U.S.C. § 601-613 (Supp. IV 1980), to disputes arising from transportation services furnished under a Government bill of lading (GBL). Specifically, the question presented is whether the authority granted a contracting officer under the CDA supersedes the procedures for settling claims and disputes under existing transportation law. For the reasons discussed below, we believe that the CDA does not apply to disputes arising from transportation services covered by a GBL.

By way of background, a GBL is the basic procurement document used by the Government for acquiring freight transportation services from common carriers under Section 321 of the Transportation Act of 1940, as amended, 49 U.S.C. § 10721 (Supp. IV 1980). The Act authorizes the procurement of transportation services, at published rates, from any common carrier lawfully operating in the territory where such services are to be performed.

Under the Transportation Act of 1940, as amended, 31 U.S.C. § 3726 as adopted by Pub. L. 97-258 (formerly 31 U.S.C. § 244 (1976)), executive agencies must make payment upon presentation of bills by a carrier prior to audit, whether or not the charges are disputed. The General Services Administration (GSA) is by law the agency with authority to audit the charges, to deduct any amount deemed to be an overcharge, and otherwise to effect settlement. Id. Claims arising from the furnishing of transportation

024626

services, including services furnished by a carrier under a GBL, therefore must be presented in writing to GSA or its designee agency. Further, a claimant desiring a review of the transportation settlement action taken by GSA or by a designee agency may request review by the General Accounting Office (GAO).

Under the CDA, however, the disputes procedures are invoked by the filing of a claim with the contracting officer. CDA § 6(a). The CDA requires that all claims by a contractor or by the Government against a contractor be the subject of a decision by the contracting officer which is final and conclusive unless an appeal is timely commenced. CDA § 6(a), (b). An appeal may be filed with an agency board of contract appeals or a contractor may instead bring an action directly on the claim in the United States Claims Court (formerly the Court of Claims). CDA §§ 7, 8, 10. Thus, individual executive agencies under the CDA are authorized to administratively resolve, at least initially, disputes concerning claims relating to contracts awarded by each agency.

Obviously, the statutory provisions concerning agency resolution of claims under the CDA and the Transportation Act of 1940 are dissimilar. As stated above, under the CDA, individual executive agencies, through their contracting officers, are authorized to resolve disputes concerning claims relating to contracts awarded by each agency. Under the Transportation Act of 1940, the executive agencies have no such adjudicatory authority over claims for transportation services rendered for the account of the United States. Rather, such authority is vested exclusively in the GSA, subject to an appeal to GAO.

The language of the CDA is broad enough to literally encompass all contract claims, since the CDA applies to "any express or implied contract" entered into by an executive agency for the procurement of property or services. CDA § 3(a). In this regard, we have recognized that a GBL serves as a contract of carriage between a carrier and the Government for freight transportation acquired under the Transportation Act of 1940. 55 Comp. Gen. 174 (1975). However, the CDA itself, even though it contains a repealer section, does not repeal any provision of existing statutes relating to the disputes resolution provisions of the Transportation Act of 1940, see CDA § 14 ("Amendments and Repeals"), and repeal by implication is not favored by the

law. 1A Sutherland, Statutes and Statutory Construction 23.10 (4th Ed. C. Sands 1973). Moreover, the legislative history, which we look to because the CDA, if applied to transportation services, and the Transportation Act of 1940 contain conflicting provisions with respect to disputes arising from transportation services rendered, Kenai Peninsula Borough v. State of Alaska, 612 F.2d 1210 (9th Cir. 1980), does not mention transportation services as being subject to the Act.

The legislative history does indicate that the CDA implements the recommendations of the Commission on Government Procurement. See S. Rep. No. 95-1118, 95th Cong., 2nd Sess., reprinted in [1978] U.S. Code Cong. & Ad. News 5235. The Commission's studies and recommendations had nothing to do with transportation claims. The Commission was concerned, among other things, with the distinction which had arisen regarding resolution of contract disputes arising "under" the contract and those arising outside the contract (e.g., breach of contract claims). See Report of the Commission on Government Procurement, Volume 4, Chapter 2. All Congress did, in enacting the CDA, was to adopt a uniform system for resolution of procurement contract disputes. See S. Rep. No. 95-1118, supra.

In other words, Congress merely intended to improve the disputes resolution procedures for contracts awarded under the procurement statutes. We find nothing in the CDA or its legislative history which indicates any intent on the part of Congress to extend CDA coverage to matters covered by other statutes, such as transportation claims under the Transportation Act of 1940.

Therefore, we conclude that the CDA is not applicable to the procurement of such transportation services.

Milton J. Aorolan
for Comptroller General
of the United States