

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

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FILES-211473, B-212279,
B-212408
MATTER OF: Starflight, Inc.

DATE: August 15, 1983

DIGEST:

Carrier's claim that higher transportation charges for priority service, which involves the carrier meeting priority pickup and delivery times, were justified is denied where the carrier cannot establish that the service was requested or performed.

Starflight, Inc. (Starflight), requests that we review the General Services Administration's (GSA) determination that Starflight improperly billed and collected transportation charges for "priority service" under Starflight tender No. 2. Under priority service, the carrier offers to meet specific shipper designated pickup times and makes immediate delivery direct to destinations after such pickups. GSA found that priority services were not applicable to these Department of Army (Army) shipments transported by air under Government bills of lading (GBL) Nos. S-2,975,180, S-2,976,734, M-3,437,989 and M-3,437,928 and seeks to recover \$4,167.58, \$987.18, \$5,175.60 and \$6,441.92 under the respective GBL's. Our decision also applies to GSA's settlement action under GBL M-3,761,938, although the amount of the overcharge is not stated in the record.

We affirm GSA's determination in these cases.

Starflight states that it was entitled to the higher priority service charges because the Army requested this service and the service was performed. Specifically, Starflight refers to carrier pilot logs which show, in one case, overnight delivery and, in the other cases, that Starflight provided pickup on a Friday and accomplished delivery on a Monday which allegedly involved transportation over a weekend, which is not available under the deferred service which GSA claims applies here. Starflight also asserts that the Army routing clerk requested by telephone a specific pickup time and expeditious delivery.

GSA audit action was based on the GBL which shows the Army requested deferred service, not priority service.

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Under deferred service, the shipper is not guaranteed specific pickup and delivery times and, thus, this service costs less than priority service.

The carrier has the burden of proof to establish the lawfulness of its transportation charges, United States v. New York, New Haven & Hartford Railroad, 355 U.S. 253 (1957). Thus, the carrier must show a service offered by the carrier under its tender was requested and performed. See A.B. James Freight Lines, B-192834, April 4, 1979; Tri-State Motor Transit Company, B-192689, January 24, 1979. Here, the GBL's were annotated "deferred service," which supports the Army's position that it did not request priority service. Also, other than Starflight's assertion, which is refuted by the Army's written evidence, Starflight has not presented any evidence to show that priority service was requested. In each of these cases, Starflight indicates that the dispute over which service was requested arises because the shipper's routing representative orally requested the more costly service and Starflight relied on these oral requests. The Army specifically denies in each instance that priority service was requested by the routing representative. It is well settled that the carrier has the burden of proving its case; where conflicting statements by the carrier and administrative office concerned are made, the carrier has not met its burden of proof concerning that issue. See 51 Comp. Gen. 541 (1972); 45 Comp. Gen. 99 (1965).

As GSA points out, since all carrier-shipper communications were by telephone, Starflight has no written documentation to support its contention that priority service was requested and all official documentation shows that deferred service was requested. Also, Starflight accepted the GBL which requested deferred service without seeking correction of the GBL, thus acknowledging the deferred service request in each case, after these alleged priority service request conversations took place. Under these circumstances, the carrier has not shown that the service was requested.

Moreover, although the pilot logs indicate the shipments were handled expeditiously by the carrier, this does not establish priority service was requested. As GSA points out, the expeditious handling may have been performed by Starflight for its convenience due to availability of a plane at or near the pickup locations. We further note

that the priority service tender refers to scheduled pickup and delivery times, but that there is no indication in Starflight's records that the pickup and delivery times were determined by the Government.

We note that under GBL S-2,976,734, the shipment moved on a pallet. Starflight tender No. 1, offering deferred service, by its terms, does not apply to palletized shipments. Thus, GSA applied Starflight's tender No. 2 regular service rate rather than the deferred service rate, which resulted in a \$987.18 overcharge, since, for that shipment, Starflight had billed its priority service. The carrier has not disputed the application of the regular service rates where priority service was not found applicable.

We affirm GSA's audit action.

for Milton J. Aoulan
Comptroller General
of the United States