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DECISION



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

FILE: B-213755

DATE: May 2, 1984

MATTER OF: Starflight, Inc.

DIGEST:

1. While a transportation overcharge claim by the General Services Administration generally is not reviewable by the GAO until the disputed amount has been deducted by the government, 4 C.F.R. § 53 (1983), GAO will review the validity of the carrier's allegations where the parties expect a decision after full development of record.
2. Although carrier's business document indicates a request for priority service, carrier has failed to sustain the burden of showing a request for such service since the bill of lading, which constitutes the contract of carriage, did not bear a notation requesting such service as required by the governing tariff and the contracting agency reports that no such service was requested.

Starflight, Inc. (Starflight), requests review of the audit action by the General Services Administration (GSA) on one shipment of explosives from Aberdeen Proving Ground, Maryland, to Yuma Proving Ground, Arizona, under government bill of lading (GBL) No. S-5779164, dated February 10, 1983, and on a shipment of guns from Aberdeen Proving Ground to Sharpe Army Depot, Georgia, under GBL No. S-5779165, dated February 10, 1983.

We agree with GSA's action.

For the services rendered Starflight claimed and was paid charges for priority air service set forth in Starflight tender No. 15. On audit of the payments GSA computed the applicable freight charges on the basis of Starflight tender No. 14 for regular air service and determined that Starflight had been overpaid \$1,502.54 on the first shipment and \$1,381.04 on the second shipment. GSA has issued a notice of overcharge to Starflight, but has not as of this date collected the overcharge.

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We recognize that an overcharge claim by GSA generally is not reviewable by this Office under section 322 of the Transportation Act of 1940, as amended, 31 U.S.C.A. § 3726, until the disputed amount has been deducted by the government, 4 C.F.R. § 53 (1983). Nevertheless, because the parties are awaiting our ruling after full development of the record, we will view the case as a request from GSA for an advance decision and review the matter.

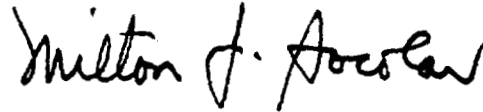
Starflight alleges that a Mr. Norman Smith ordered both shipments and furnished copies of the carrier's "Hazardous Materials Trip Information Sheet." The sheet for GBL No. S-5779164 bears the notation: "*Per Norman Smith, this is a priority 1 shipment, it must be picked up on 2-10-83," and the sheet for GBL No. S-5779165 bears the notation: "*Per Norman Smith this is a priority 1 shipment, it has to be picked up on 2-10-83."

GSA contends that the priority air service rates in tender No. 15 are not applicable to either shipment since neither GBL bears the notation required by the tender. Note 12 of Starflight tender No. 15 provides: "Government Bill of Lading must be annotated 'Priority Air Service.'" As alleged by GSA, neither GBL bears the specified notation or any notation indicating a request for either pickup or delivery of either shipment on or by a specific date or within a specific time. GSA reports that the origin transportation officer states that no specific pickup or delivery date was established for either shipment.

Although the carrier's hazardous materials information sheets indicate that the shipments had to be picked up by February 10, 1983, there is no indication on the bill of lading, which constitutes the contract of carriage, of a required pickup date or a required delivery date. Nor does the GBL bear the notation required by the tariff setting forth the transportation services and rates, and the contracting agency states that no specific pickup or delivery dates were established for either shipment.

A claimant bears the burden of furnishing evidence clearly and satisfactorily establishing its claim and all incidental matters to establish the clear legal liability of

the United States and the claimant's right to payment.
31 Comp. Gen. 340 (1952); 18 Comp. Gen. 980 (1939). The
claimant has not sustained the burden of evidence.

A handwritten signature in cursive script that reads "Milton J. Aocolan".

Acting Comptroller General
of the United States