DECISION

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

29945

FILE: B-215958 DATE: December 5, 1984

MATTER OF: Leonard Bros. Trucking Co., Inc.

DIGEST:

Relevant tariff provision provides that exclusive use of service charges are applicable where the shipper or the carrier, by instructions of the shipper, applies a numbered seal to vehicle and the seal number is noted on bill of lading. Since the record shows that these requirements were met, carrier is entitled to payment for exclusive use of service.

Leonard Bros. Trucking Co., Inc. (Leonard), requests review of deduction action taken by the General Services Administration (GSA) for alleged billing overcharges in connection with 55 government bills of lading (GBL). Leonard billed for exclusive use of vehicle service charges for each of these 55 shipments. GSA contends that the charges are not applicable because the conditions of the carrier's exclusive use tariff rule, which provides for such services, were not met.

GSA and Leonard agree that item 470 of the National Association of Specialized Carriers, Inc. (NAS), Rules Tariff 190-A, issued October 1, 1981, and amended February 11, 1982, was applicable to these shipments.

The relevant portions of item 470 provide as follows with respect to exclusive use:

SECTION 2
EXCLUSIVE USE OF VEHICLE

"(a) When exclusive use of carrier's equipment is requested or demanded by the shipper or consignee to meet the needs of special conditions, charges thereon will be computed at the actual weight of the shipment subject to a minimum charge based on 36M

> . . . at the applicable rate for each vehicle used . . ..
>
> "(b) Where the shipper or the carrier, by instructions of the shipper, affixes the shipment to or in the carrier's vehicle by means of a numbered seal and such seal number appears on the bill of lading or shipping instructions, such shipment will be given exclusive use of the vehicle subject to the provisions of Paragraph (a) of this item.
>
> "(c) Subject to availability of equipment, exclusive use of the vehicle shall be provided when the bill of lading or other written instructions bear the statement that exclusive use is required or requested and such service will not be provided unless the bill of lading is so annotated or other written instructions are provided."

GSA contends that exclusive use-rates do not apply to the 55 shipments because the GBL's were not so annotated as required by clause (c) of item 470.

We note that clauses (b) and (c) differ in one important respect. Clause (c) provides for exclusive use of a vehicle, subject to availability of the equipment, where the bill of lading is so annotated, without reference to the application of seals; whereas, clause (b) provides that carriers may charge for the exclusive use of vehicle service where the shipper or the carrier, by instruction of the shipper, applies a numbered seal to the carrier's vehicle and this seal number is recorded on the bill of lading or shipping instructions. The GBL standard form contains the box "Seal Numbers Applied By" with room for the seal numbers and the notation of whether the carrier or shipper applied the numbered seal. All but 2 of the 55 GBL's list the seal numbers which were applied to the vehicles at the time the shipment was loaded.

In our view, since the seal numbers were inserted on the GBL's and the vehicles or shipments were sealed, the requirements of item 470(b) were met. Accordingly, the carrier properly could charge on an exclusive-use basis. We think the application of numbered seals and the recording of the seal numbers on the GBL's show that the government

intended that the seals remain intact through to delivery, and that the sealings were for the government's benefit. The seal numbers provide the government with a means to ensure the integrity of the shipments and the performance of exclusive-use service. See American Farm Lines, Inc., B-203929.2, April 9, 1982. In view of the evidence that numbered seals were applied to these vehicles contemporaneously with preparation of the GBL's and loading, we find that statements by the shipping transportation officers submitted several years after the shipments were made that exclusive use was not requested are insufficient to overcome the written evidence. See 45 Comp. Gen. 384 (1966).

By this decision, we reverse GSA's audit action for the 53 GBL's which list seal numbers and instruct GSA to refund the amounts set off.

for Milton J. Socolar
Comptroller General
of the United States