

DECISION

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

FILE: B-221608

DATE: June 2, 1986

MATTER OF: ABF Freight System, Inc.

DIGEST: Where the delivering/billing carrier had the appropriate authority to serve the origin and destination points, offered the government direct service between the points at single-line rates, and the Government Bills of Lading were issued to that carrier, the General Services Administration's determination that the higher joint-line rates charged and collected by the carrier were inapplicable is sustained, even though other carriers provided the pick-up service. The billing carrier's mere denial of an agency relationship and the absence of a written agency agreement do not rebut the presumption that the government followed its usual practice, called the carrier shown on the bills of lading, and looked to that carrier for performance of through single-line service.

ABF Freight System, Inc. (ABF), asks the Comptroller General to review deduction actions taken by the General Services Administration (GSA) against the carrier to recover overcharges collected for the transportation of various government shipments.^{1/} The GSA's overcharge claims were based on lower single-line rates which it deemed applicable

^{1/} The requests for review covered by this decision were contained in several letters dated December 17 and 18, 1985, and January 7, 1986, involving the following 41 Government Bills of lading:

S7008451	EP0844195	BP0767415	BP0766251	BP0767275
S4314960	S7008455	BP0767765	BP0765924	BP0766460
R0575005	S7008844	BP0768042	BP0765317	BP0767526
S8400137	BP0766255	BP0766242	BP0767359	BP0767409
S8400167	BP0766961	FP0018269	BP0767235	BP0766509
S2640465	BP0766968	BP0838767	BP0767324	BP0767732
S5894900	BP0767237	S5510715	BP0766893	BP0768479
S5626626	BP0766839	EP0844182	BP0767073	S6815374
BP0765961				

035571

to the shipments rather than the higher joint-line rates charged by ABF. We agree with GSA that the single-line rates are applicable.

Facts

There is no dispute over the material facts. ABF held operating authority to provide direct service between all the points involved and offered the government direct service to these points at single-line rates. Each Government Bill of Lading was issued to ABF. ABF (or its agents) delivered the shipments at destination and was the billing carrier. ABF, however, billed for and collected freight charges based on higher joint-line rates (rather than single-line rates) on the basis that the shipments were not picked up by its employees.

The GSA recovered overcharges from ABF based on the single-line rates on the basis that the bills showed ABF as both the origin and destination carrier. Thus, GSA concluded that the pick-up services, if not actually performed by ABF, were performed by mere agents of ABF rather than interline carriers. The GSA cites ABF Freight System, Inc. (East Texas Motor Freight), B-218695, October 30, 1985, 65 Comp. Gen. ___, as support for its position.

ABF denies that the pick-up carriers were its agents and argues that since the bills were not signed by its employees, the shipments were picked up by interline carriers; therefore, the joint-line rates were applicable.

Discussion

The record in the October 30, 1985 ABF Freight System decision, supra, which sustained GSA's action, contained bills showing that they were not only issued to the billing carrier (ABF), but also that the shipments were received by the pick-up carriers on behalf of the billing carrier. The record in a related decision, ABF Freight System, Inc. (East Texas Motor Freight), B-218696/B-218697, October 30, 1985, which also sustained GSA's action, contained a letter from the billing carrier to the shipping officer designating the other carriers as its pick-up agents. See also ABF Freight System, Inc., B-221609, February 28, 1986, sustaining GSA's action on other similar shipments. In these cases the

agency relationship between the pick-up carriers and the delivering/billing carrier was shown by either a letter of agency designation or bills showing that the initial carriers received the shipments in an agency capacity. A similar clear showing of an agency relationship is not present in the current case. The issue here is whether GSA's determination of overcharges can be sustained in the absence of such affirmative evidence establishing an agency relationship between ABF and the pick-up carrier.

Our consideration of the issue leads to the conclusion that in the absence of contrary evidence, GSA establishes the prima facie validity of its audit determination by presenting three facts: (1) that ABF had the appropriate operating authority to serve the points involved, (2) ABF offered the government direct service from the origin to the destination points, and (3) the bills of lading show that they were issued to ABF as the transportation company to which the shipments were tendered, which was also the delivering/billing carrier. We also understand that it is the general government practice to offer the shipment to the carrier shown on the bill of lading.^{2/} Thus, there is a reasonable presumption that the government tendered the shipments to ABF, and did so with the understanding that it would provide through service at the lower single-line rates.

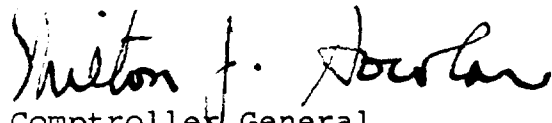
In these circumstances, as to the rates to be charged the government, it is irrelevant whether the relationship between ABF and the pick-up carrier was that of agency or interline carrier, for the operational details and the financial arrangements between ABF and the pick-up carriers have no legal effect on the agreement between the government and ABF. The pick-up carriers are not in privity with that agreement. The rationale for this rule rests on the inference from the facts that the government looked to ABF for

^{2/} To verify our understanding of the usual practice we contacted the Joint Personal Property Shipping Office, Cameron Station, Alexandria, Virginia, where over 60 percent of the bills involved in this case were issued. The government official there unequivocally stated that it was the practice to instruct the warehouseman (the shipper) to contact ABF for service, and they looked to ABF for through service.

the performance of through service, and on the recognition of the usual practice that government shipping officers call the carrier listed on the bill of lading for service, or call the pick-up carrier at the instruction of the carrier listed on the bill of lading. See Navajo Freight Lines, Inc., B-189382, January 6, 1978.

While we would consider competent contrary evidence showing that the usual practice was not followed by the government, the mere denial by ABF of an agency relationship and the absence of a written agency agreement are not sufficient to rebut GSA's determination here.

Accordingly, in the absence of any relevant contrary evidence from the carrier here, GSA's audit actions are sustained.

for 
Comptroller General
of the United States