

**DECISION**

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

**FILE:** B-221615

**DATE:** June 24, 1986

**MATTER OF:** ABF Freight System, Inc.

**DIGEST:** A motor carrier that performed all the transportation service for a government shipment billed and collected charges derived from its rate tariff. The General Services Administration (GSA) recovered overcharges from the carrier on the basis that the Government Bill of Lading (GBL) was issued to another carrier which had lower tender rates in effect at the time of shipment. The carrier to which the GBL was issued merged into the billing carrier during transit. We sustain GSA's action since it appears that the government looked to the carrier to which the GBL was issued for performance and the operational arrangements it chose to make with the other carrier had no effect on its obligation to the government.

ABF Freight System, Inc. (ABF), asks for review of deduction action taken by the General Services Administration (GSA) to recover overcharges collected by ABF, which was the billing carrier on the shipment. The GSA's audit action was based on lower rates offered to the government by East Texas Motor Freight System (ETMF), which was the carrier shown on the bill of lading as the carrier to which the shipment was tendered. We sustain GSA's action.

Facts

The record shows that on September 9, 1982, the Naval Air Station, Kingsville, Texas, issued Government Bill of Lading No. S4270096 to East Texas Motor Freight for the transportation of three pieces of "Freight All Kinds" to Cherry Point, North Carolina. The bill of lading shows that the shipment was received on that date by ETMF's agent, but that it was delivered by ABF on September 17. In addition, the GBL contains the notation "Freight All Kinds ETMF ICC 691."

During the time the shipment was in transit ETMF merged with ABF, with ABF becoming the surviving carrier.

035959

ABF billed the government and collected charges for the shipment. In its subsequent audit, GSA determined that ABF had collected \$156.04 in excess of applicable charges because lower rates that were offered to the government by ETMF in its Tender No. ICC 691 applied. When GSA had the \$156.04 deducted from monies otherwise due ABF, ABF filed a claim, which was disallowed by GSA.

In requesting our review, ABF contends that ETMF's tender is not applicable because ABF performed all the transportation services, and did not adopt the tender when ETMF merged into ABF on September 12, 1982. GSA contends that ETMF's tender was applicable even if ABF provided all the line-haul services, in effect, because the contract of carriage as shown by the GBL was between the government and ETMF; that Tender 691 was in effect at the time the shipment was tendered to ETMF and, in any event, ABF adopted all of ETMF's tariffs and tenders on September 12, 1982.

#### Discussion

Concerning GSA's argument that ABF adopted ETMF's Tender 691, the record we have does not establish that it did. The copy of ABF's Adoption Notice of record shows that it applied to tariffs or other filings involving the Rocky Mountain Motor Tariff Bureau, Inc., as agent for ETMF. Tender 691 indicates that it was issued by ETMF, itself; the Bureau apparently was not involved. Compare B-174926, December 4, 1972. We, however, sustain GSA's audit determination on other grounds.

We have considered similar cases where a bill of lading shows on its face that it was issued to a particular carrier and the rate applied by GSA had been offered by that carrier and was in effect on the date the shipment was tendered by the government. Under those circumstances we have inferred that an agreement existed on the carrier's part to transport the shipment from origin to destination at the single-line rates offered in the tender and whatever arrangements it made with other carriers concerning operational details had no legal effect on the mutual obligations of the parties to the contract of carriage. See ABF Freight System, Inc. (East Texas Motor Freight), B-221609, February 28, 1986.

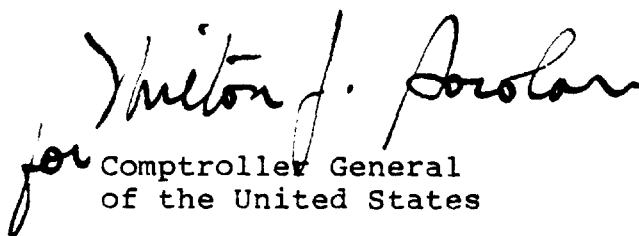
We also apply the rule that rates applicable on the date that transportation services are performed are binding

B-221615

on the parties. See Retroactive Modification of Rate Tender, B-221075, May 13, 1986, 65 Comp. Gen. \_\_\_\_.

The GBL shows that the contract of carriage was with ETMF, and it is not disputed that ETMF's Tender 691 was in effect when the shipment was tendered by the government. Thus, it seems clear that the government looked to ETMF for performance at the Tender 691 rates, the rates applied by GSA in its audit.

Accordingly, GSA's audit determination that the lower rates applied by GSA were applicable appears correct and is sustained.

*for*    
Comptroller General  
of the United States