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Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Intertrans Corporation

File: B-244601

Date: March 30, 1992

DIGESTS

1. Rates and charges issued under a particular tender of service cannot be applied to a Government Bill of Lading (GBL) transaction where the tender of service required the participating agency requesting service under the tender to issue a GBL containing a statement that the services are to be performed in accordance with the rates, rules and provisions of the tender, and where the participating agency failed to prepare a GBL accordingly or failed to substantially comply with the requirement.

2. Higher charges for special services must be supported with an annotation of the Government Bill of Lading involved, or by a separate statement, containing the name of the carrier requested to perform the special service; the kind and scope of services ordered; and the signature of the person ordering such services.

DECISION

Intertrans Corporation, an air freight forwarder, requests review of the General Services Administration's (GSA) assessment of overcharges on 354 Government Bill of Lading (GBL) transactions involving shipments transported between 1985 and 1988. GSA applied Intertrans's rates and charges offered under the Department of State's Tender of Service No. 5-A (DOS 5-A), but Intertrans contends that the shipments did not fall within the tender's terms of service. We overrule GSA's actions except as specified below.

In our view, Intertrans's primary argument is that GSA was in error by applying rates and charges Intertrans offered under DOS 5-A in lieu of higher rates/charges published in "tariffs" filed with the individual agency shippers.[1] GSA, however, describes transactions in this category as examples

[1]Shippers involved here included State, the U.S. Information Agency, the Army, and other government entities.

of a carrier having more than one applicable charge between the same points for the same service at the time of shipment, so that the lowest rate authority applied. We agree with Intertrans on this issue.

Rule 9 of DOS 5-A specifically required that an agency requesting service under it issue a GBL containing a statement that the services are to be performed in accordance with the rates, rules and provisions of DOS 5-A. Our review of a sample of GBL transactions where documentation was made available does not indicate that the GBLs contained such statements, nor do they indicate that the agencies requesting service substantially complied with Rule 9. Substantial compliance might have been achieved by simply referencing DOS 5-A in some manner that would have apprised Intertrans that DOS 5-A service was requested. Compare Coast Counties Express, B-227179, Mar. 23, 1988; see also Baggett Transportation Co. v. U.S. 23 Cl. Ct. 263 (1991), and Campbell "66" Express, Inc. v. U.S. 302 F.2d 270 (Ct. Cl. 1962). GSA cannot rely simply on the fact that DOS 5-A offered lower charges.

Intertrans raises the following additional issues, which would be relevant in those transactions where GSA can demonstrate substantial compliance with Rule 9.

Intertrans complains that GSA applied DOS 5-A rates to shipments picked up outside the Washington, D.C., area, even though the tender applies only to shipments that originated within that area. GSA responds that the freight waybills indicated that the shipments were picked up in the Washington, D.C., area, but that it will request documentation from the shippers regarding the exact origins and then re-audit accordingly. We therefore need not consider this issue.

Intertrans also contends that GSA applied DOS 5-A rates to traffic from ineligible military agencies. GSA agrees and is refunding the deductions involved.

Intertrans argues that GSA improperly applied rates under DOS 5-A to shipments of restricted or dangerous goods. GSA states that there were no exceptions in the tender precluding application of rates to such shipments. We disagree with GSA. The last sentence of Rule 2 in DOS 5-A specifically stated: "There will be no restricted materials." Although there is no definition of "restricted materials" in DOS 5-A, the term has been considered to include "hazardous materials" described in 49 C.F.R. Parts 171-177. See Air France et al., 83 C.A.B. 1396 n.2 (1979).

Thus, where the GBL and associated documentation indicate that the article shipped was a hazardous material and GSA does not rebut that description, transportation was outside the scope of DOS 5-A.

The final issue area identified by Intertrans involves two sub-issues. First, Intertrans contends that DOS 5-A service applies only to unaccompanied baggage, but GSA contends that this service also applies to Air Freight All Kinds. Neither party refers to the specific version of DOS 5-A that governed any particular transaction, but our analysis shows that the DOS 5-A Tender of Service was amended on July 13, 1987, to, inter alia, restrict its coverage to unaccompanied baggage. This amendment to DOS 5-A would have become effective on November 1, 1987[2], so that DOS 5-A may have applied only with respect to shipments before that date.

Next, Intertrans contends that shippers imposed shorter delivery schedules than the 10 or 15 days required for DOS 5-A service, or requested special services not within the scope of the program, so that DOS 5-A rates do not apply. To obtain these services, the carrier alleges that various government entities otherwise participating in the DOS 5-A program requested that their shipments be rated on a day-to-day basis and instituted a procedure whereby their personnel daily would telephone freight forwarders requesting rate quotations to certain destinations. These quotations were generally oral but, occasionally, fax quotations were requested. Intertrans directs our attention to quotation or "job" numbers noted on various GBLs and to specialized packing instructions in documentation attached to some GBL transactions.

GSA disputes claims in this category because they fail to comply with 41 C.F.R. § 101-41.302-6. The regulation requires that higher charges for special services generally must be supported with an annotation on the GBL, or on a

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[2]We understand that carriers competed twice a year for traffic under the DOS 5-A program. New tender rates/charges offered during a particular filing cycle, along with any revision to the Tender of Service under which such rates/charges were offered, were effective on November 1 and May 1 of each year. Accordingly, a July 13, 1987, revision to the DOS 5-A would appear to be effective on November 1, 1987. See Embassy Air Express, Inc., B-241633, June 6, 1991.

separate statement, containing the name of the carrier requested to perform the special service; the kind and scope of service ordered; and the signature of the person ordering such service. See Embassy Air Express Inc., B-241633, June 6, 1991.

We find little evidence in the record that the cited requirements were met, even in three examples where Intertrans suggests they were. The firm refers to copies of U.S. Information Agency Form 241 (IA-241) containing particularized packing instructions directed to Intertrans. But, each IA-241 bears the signature of an unidentified individual and none of the signatures is contained in the block provided for the signature of the agency official. It thus is not clear that the request for special packing was made by a proper agency official. Also, there is no indication on the face of any IA-241 that it is related to a specific GBL transaction. Additionally, Intertrans provided no evidence of specific GBL transactions in which agency officials requested and received expedited delivery.

GSA's audit actions are overruled except as discussed in the final issue area.

for Seymour Efros
James F. Hinchman
General Counsel