

DECISION

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

FILE: B-218696/B-218697

DATE: October 30, 1985

MATTER OF: ABF Freight System, Inc. (East Texas
Motor Freight)

DIGEST: The destination/billing carrier on several Government shipments contends that single-line rates used by the General Services Administration as the basis for recovering overcharges were not applicable where another carrier picked up the shipments at origin and transferred them to the billing carrier after providing some line-haul transportation. The General Services Administration's deduction actions are sustained where the record contains evidence that the Government tendered the shipments to the origin carrier based on a prior communication from the billing carrier that it would provide "direct" or single-line service from origin to destination through named pick-up agents on days its own vehicles were not scheduled to provide the pick-up service.

ABF Freight System, Inc. (ABF) asks us to review deduction actions directed by the General Services Administration against ABF to recover overcharges collected by East Texas Motor Freight Lines^{1/} for transporting 14 Government shipments in 1982.^{2/} The General Services Administration's overcharge claims were based on lower single-line rates which it deemed applicable to the shipments rather than the higher interline rates charged by the carrier. We sustain the General Services Administration's actions.

^{1/} ABF apparently has assumed responsibility for the settlement of claims against East Texas Motor Freight.

^{2/} The following Government Bills of Lading are covered under B-218696: AP-497,661, AP-497,713, AP-498,082, AP-498,122, AP-498-135, K-4,507,973, K-4,508,418, and K-4,508,692. The following are covered by B-218697: K-4,508,095, K-4,508,328, K-4,508,339, K-4,508,353, K-4,508,374, and K-4,508,433.

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Facts

The record contains a copy of Standard Form 1203, "U.S. Government Bill of Lading - Privately Owned Personal Property." Identified as No. AP-497,661, it was issued on March 31, 1982. In block 1, "Transportation Company (or Agent) Tendered To," is the notation:

"EAST TEXAS MOTOR FREIGHT
VIA PENINSULA TRUCK LINES"

The same notation appears in block 33a under "Name of Transportation Company," receiving the shipment. Block 33c contains the signature of agent or driver and under the heading, "PER" in block 33d, is the notation "PTL," which the General Services Administration and ABF apparently agree refers to Peninsula Truck Lines. The General Services Administration advises that the other 13 bills of lading were similarly issued. East Texas Motor Freight Lines' waybills show that the shipments of unaccompanied baggage and other articles were transferred to East Texas by Peninsula, which received them from the Naval Supply Center, Bremerton, Washington, for transportation to destination points in California, Texas, South Carolina, and Pennsylvania.

The General Services Administration's report shows that the Government Bills of Lading were issued from March 25, 1982 (K-4507973), through June 29, 1982 (K-4508692). The report contains a copy of a letter, dated January 11, 1982, from an East Texas representative to the Naval Supply Center, Bremerton, Washington, stating that the carrier was serving the supply center on a direct basis two or three times a week, and advised that:

"In the event that ETMF is not in the yard, on any particular day, or has departed prior to a shipment being ready for movement; please use, at your discretion, the below listed carriers as our pickup agent:

"Peninsula Truck Lines

"Tacoma-Port Angeles Auto Freight"

The report also contains a copy of a letter, dated April 3, 1984, from the General Services Administration's audit contractor, to the Transportation Officer, Naval Supply Center, Bremerton, inquiring about the relationship between East Texas and Peninsula. Handwritten at the bottom, by a Naval Supply Center supervisor, is the following:

"GBL's are exactly as they read
Peninsula Truck Lines was authorized
agent for East Texas Motor Freight."

The General Services Administration also reported that East Texas had the necessary operating authority to transport the shipments in single-line service from origin to destination.

The record is reasonably clear that Peninsula picked up the shipments at Bremerton, transported them to Seattle or Tacoma, where they were transferred to East Texas; and that East Texas transported them to destination, billed the Government and collected charges for the transportation from origin to destination at rates applicable to the performance of joint-line service. The General Services Administration's determination that lower single-line rates were applicable was based on the theory that since East Texas had the necessary operating authority to provide single-line service, and East Texas notified the shipper that Peninsula would act as its agent, Peninsula was acting merely as East Texas' agent when it picked up the 14 shipments involved here.

ABF contends that the overcharge deductions were improper because the rates being applied by the General Services Administration apply only to single-line traffic and East Texas' files contain no written evidence that it had any agency relationship with Peninsula. ABF contends that the General Services Administration has the burden of proving Peninsula was acting as East Texas' agent, and in the absence of such proof, the higher interline rates are applicable.

Discussion

Under these circumstances it is our view that the relevant inquiry is whether the billing carrier agreed to

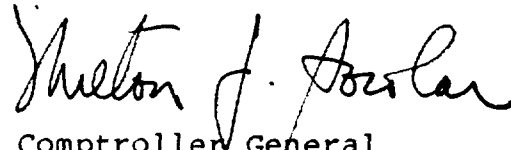
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transport a shipment from origin to destination in single-line service at single-line rates.

The bill of lading constitutes the contract of carriage. See Navajo Freight Lines, Inc., B-189382, January 6, 1978. Here, the notations on the Government Bills of Lading tend to indicate that the shipments were tendered to Peninsula as agent for East Texas. East Texas' January 11, 1982 letter to the Naval Supply Center, dated only 2 months before the earliest-dated shipment, removes any doubt that, whatever the arrangement agreed upon between East Texas and Peninsula, the Government tendered the shipments to Peninsula with the understanding that East Texas was merely using Peninsula for its operating convenience in providing "direct" or single-line service. That appears to have been the agreement between the Government and East Texas, and East Texas would be bound to that agreement regardless of its ancillary obligations to Peninsula. B-144154, April 2, 1962.

Accordingly, the General Services Administration's audit actions are sustained.

for 
Comptroller General
of the United States