28604

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

FILE: B-195482 **DATE:** June 26, 1984

MATTER OF: Baggett Transportation Company--
Request for Reconsideration

DIGEST:

Prior decision on transportation claim is affirmed where request for reconsideration fails to demonstrate that errors of law or of fact exist in that decision which warrant its reversal or modification.

Baggett Transportation Company requests reconsideration of our decision, Baggett Transportation Company, B-195482, May 21, 1984, sustaining a General Services Administration (GSA) audit action in connection with the shipment of surplus powder under 18 government bills of lading (GBLs), that had resulted in the deduction of approximately $21,000 from payments due the carrier. We agreed with GSA that the government was entitled to the benefit of a specific point-to-point rate of $3.97 per hundred pounds of powder, instead of the higher mileage rate of $6.33 originally applied by the carrier.

Baggett requests reconsideration on the essential ground that our decision fails as a matter of law and of fact to conclude properly that the GBLs in issue were unambiguous expressions of the government's intent to apply the higher mileage rate. Baggett also alleges that we have misapplied prior decisions of this Office in reaching our conclusion and that we have failed to give the proper evidentiary weight to the affidavit of an independent rate expert filed in support of the carrier's claim. We affirm our May 21 decision.

In this matter, Baggett has provided transportation services involving the shipment of certain explosives under 18 GBLs from Badger Army Ammunition Plant, Wisconsin, to the Olin Corporation, Saint Marks, Florida, during the period March 23 through July 8, 1981. Baggett billed the government at the mileage rate of $6.33 per hundred pounds of shipment as provided in Rocky Mountain Shipment Tarriff Bureau Quotation 16-E (effective March 2, 1981). However, a subsequent GSA

audit action determined that the government was entitled to the benefit of a lower, specific point-to-point rate of $3.97 per hundred pounds of this type of commodity provided by Quotation 16-F (effective March 16, 1981) for shipments from "Badger AAP, Baraboo, WI" to "Saint Marks, FL." Since the government had already reimbursed Baggett according to the higher mileage rate, GSA deducted overcharges in the amount of approximately $21,000 from other payments due the carrier.

Baggett has consistently maintained that the government's intent regarding which rate should be applied is clearly expressed in all 18 GBLs, which do not use the exact point of origin designation set forth in the point-to-point rate. In Baggett's view, because each GBL used the origin designation "Badger Army Ammunition Plant, WI," and not "Badger AAP, Baraboo, WI," the point-to-point rate was not originally intended and cannot now be used by the government to the carrier's detriment. Baggett implies that the government would have used the word "Baraboo" in the GBL origin designations if it had in fact meant the lower rate to apply.

In our view, however, the omission of the word "Baraboo" is of no significance; as we pointed out in our May 21 decision, there is no doubt but that all shipments originated from the ammunition plant (it being common knowledge that such plants are not located in municipalities). Since the shipments were of the type of explosive specified in the point-to-point rate--the commodity designation on all GBLs showed that the explosives being shipped were surplus powder, thus coinciding with the commodity designation set forth in the point-to-point rate--and because the destination point was exactly the same, we believe it is specious for Baggett to continue to argue that "Badger Army Ammunition Plant, WI", as used here, is a different point of origin than that designated in the point-to-point rate as "Badger AAP, Baraboo, WI." Therefore, we still see no merit in Baggett's assertion that the GBLs were unambiguous expressions of the government's intent to apply the higher rate--to the contrary, the totality of the evidence clearly supports the opposite conclusion.

In this regard, Baggett alleges that we improperly relied on our decision in 51 Comp. Gen 724 (1972) in reaching our conclusion. We cited our 1972 decision for the principle that it is common knowledge that ammunition plants are not located within municipalities. We noted our holding in that case that a lower, special rate designating the municipality as the point of origin could be applied, even though the GBL specified the ammunition plant as the shipment's origin, which it in fact was.

Baggett urges that whereas the specific reference to the lower rate on that GBL indicates the parties' intent that the lower rate would apply, the GBLs in the present case, by not precisely repeating the lower rate's specified point of origin, similarily establish that the lower rate does not apply.

We reject Baggett's argument. In the 1972 case, the point of origin designation on the GBL was "Twin Cities Army Ammunition Plant, Minneapolis, Minnesota," as opposed to the designation "New Brighton, Minnesota" set forth in the lower rate. Since the shipment in fact originated from the plant, and in view of the fact that the lower rate was referenced in the GBL, it was clear that the parties expected the lower rate to apply. Here, there is only a slight difference in the designations--"Badger Army Ammunition Plant, WI" versus "Badger AAP, Baraboo, WI"--so that the use of the word "Baraboo" in the point-to-point rate seemingly was only a geographic reference to the ammunition plant's general location (the plant being some 8 miles south of the town), and there is no specific rate referenced in the GBLs. Apart from the omission of the word "Baraboo," all 18 GBLs used the point of origin, commodity and destination designations set forth in the point-to-point rate. Such usage in effect constitutes a clear reference to the lower rate. See also Sedalia-Marshall-Boonville Stage Line, Inc., B-206567, Sept. 23, 1983.

Lastly, Baggett complains that we have failed to give the proper evidentiary weight to an affidavit from an independent rate expert filed in support of the carrier's position that the lower rate was inapplicable. Baggett is mistaken. It is part of our review process to consider closely all relevant material filed, but we weigh particular evidence in relation to settled law and prior decisions of this Office. Here, we simply did not agree with the rate expert's opinion that the GBLs did not support the application of the point-to-point rate, since our legal analysis, based upon all evidence, led us to the opposite conclusion.

Our prior decision is affirmed.

for Milton J. Socolar
Comptroller General
of the United States