



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

August 26, 2008

CBCA 780-RATE, 783-RATE, 794-RATE

In the Matter of MATSON NAVIGATION COMPANY

Craig A. Daniels, Government Accounts, Matson Navigation Company, Phoenix, AZ,
appearing for Claimant.

James F. Fitzgerald, Director, Audit Division, Office of Transportation and Property
Management, Federal Supply Service, General Services Administration, Arlington, VA,
appearing for General Services Administration.

Col. Scott Kilgore, Staff Judge Advocate, Headquarters, Surface Deployment and
Distribution Command, Department of the Army, Alexandria, VA, appearing for Department
of Defense.

DRUMMOND, Board Judge.

Matson Navigation Company (claimant or Matson), a transportation service provider (TSP), has requested the Board's review of the General Services Administration's (GSA's) audit actions on approximately ninety-eight Government bill of lading (GBL) transactions. We docketed these requests as 780-RATE, 783-RATE, and 794-RATE.¹

The transactions in dispute involved shipments of freight of all kinds on GBLs issued to Matson by the Department of Defense's Surface Deployment and Distribution Command prior to July 2007. As to the disputed GBLs, subsequent to payment, GSA's Audit Division determined that Matson had billed the Government for excess transportation costs and issued numerous notices of overcharge (NOCs). Following unsuccessful rebuttals by Matson on the NOCs, GSA incorporated its initial determination of overcharges into corresponding settlement certificates, and apparently collected some of the differences as overcharges from money otherwise due Matson.

¹ The above-listed actions are consolidated for purposes of this decision.

GSA responded in each action, relying on factual matters, statutory authority, contract provisions, and applicable tariff rates. Claimant alleged that GSA had no factual or legal reason to issue the NOCs or settlement certificates. To date, all NOCs and offsets have been resolved by the parties. Matson alleges that it is entitled to interest pursuant to the Prompt Payment Act (Act), 31 U.S.C. § 3901, *et seq.* (2000),² on the money offset by GSA because the offsets were improper in the first place. The Board is unaware of any evidence that conclusively proves the offsets were improper.

GSA has moved to dismiss these actions, asserting that interest payments are not owed Matson because a claim involving collection actions resulting from a transportation audit is considered a dispute, and therefore not subject to interest under the Act.³ Matson alleges that equity and fairness require the payment of interest on the money improperly offset by GSA.

The Board's efforts to ascertain the legal and factual basis for Matson's claim for entitlement to interest payments were unsuccessful. On May 5, 2008, the Board issued an order directing Matson to submit a brief including legal citations supporting its entitlement to interest payments. The Board received no response from Matson.

On May 30, 2008, the Board ordered Matson to show cause why these actions should not be dismissed with prejudice, there appearing to be no factual or legal basis for Matson's entitlement to interest payments. Claimant failed to file a response as ordered or otherwise to show cause why these actions should not be dismissed. Claimant's failure to respond to the Board's order to show cause constitutes a basis for dismissing these actions with prejudice.

² The Act directs the Government to pay proper invoices on time, or to pay interest when payments are made late. The Act, however, does not allow for the payment of interest on disputed amounts. If a dispute exists, a contractor is not entitled to payment or late payment interest penalties until the dispute is resolved.

³ Pursuant to 41 CFR 102-118.645 (2007), any claim involving collection actions resulting from a transportation audit is considered disputed and not subject to interest under the Act.

Decision

These actions are hereby dismissed with prejudice for failure to prosecute.

JEROME M. DRUMMOND
Board Judge