Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Tri-State Motor Transit Company - Reconsideration

File: B-255631.2

Date: July 26, 1995

DIGEST

Delivery to a warehouse at a military ocean terminal and not to a dock, pier, or wharf is not a delivery which would justify a higher charge because of additional costs or delays usually associated with delivery to such port facilities. Prior decision affirmed on reconsideration.

DECISION

Tri-State Motor Transit Company requests reconsideration of our decision of July 11, 1994, which affirmed the General Services Administration's (GSA) denial of the company's claim for $5,548.37 in additional charges for transporting electrical instruments for the Department of Defense under government bill of lading C-7,200,068. We affirm our prior decision.

In April 1990, Tri-State transported a shipment of electrical instruments in a dromedary container from Baltimore, Maryland, to Warehouse 806 at the Military Ocean Terminal, Bay Area, Oakland Army Base, Oakland, California. The shipment was billed by Tri-State under its Tariff 4000-B and Tri-State was paid $1,623.18. Tri-State argued in its appeal from the GSA denial that Tariff 4000-B did not apply because Item 20 of the tariff states that it did not apply to shipments to or from an "ocean port facility." Tri-State contended that Warehouse 806 is an "ocean port facility" and in accordance with Item 20, shipments to and from such facilities should have been rated as a truckload and charges under Tariff 4006 should have been applied resulting in total transportation charges of $7,171.55.

Our decision of July 11, 1994, found that there was no definition of "ocean port facility" that included warehouses and that we did not view the term as including a warehouse simply because the warehouse may be part of a facility with docks, piers, and wharves. The higher tariff rate for deliveries to ocean port facilities, as recognized by Tri-State, allows for added costs often associated with deliveries to crowded docks and piers with prearranged scheduling requirements, prelodging

(delivering export papers 24 hours in advance of delivery), congestion, and other problems which can result in costly delays. Since there was no showing that the delivery to Warehouse 806 was any different from a delivery to a general warehouse, we found the carrier was not entitled to the higher rate.

Tri-State, in its request for reconsideration, contends that the term "ocean port facility" includes warehouses, citing various definitions of similar terms. Tri-State further contends that our Office, in finding that delivery to the warehouse was not the type of delivery contemplated by Tariff 4006, in effect found that the rates in the tariff were unreasonable and such a finding is not within the jurisdiction of our Office but for the Interstate Commerce Commission to decide.

Our July 11, 1994, decision does not address, either directly or by implication, the question of the reasonableness of the tariffs at issue. The issue before us is which tariff applies, not whether the rates in the tariffs are appropriate. In our decision, we determined that the rates set forth in Tariff 4000-B apply here, and not the rates contained in Tariff 4006. We found that the destination for the shipment, a warehouse, invokes Tariff 4000-B, and does not constitute an ocean port facility as contemplated in Tariff 4006, even though the warehouse was located in a larger facility that included docks and other port facilities. We based this finding on an absence in the record of an assertion by Tri-State that the delivery involved any of the complications and delays underlying the higher rates of Tariff 4006.

Tri-State's request for reconsideration does not address the question of complications and delays in the delivery in question, and provides no information on this point. We must continue to assume an uncomplicated "4000-B" delivery in this case, unless the record before us contains factual support indicating a more costly "4006" delivery, so as to justify the application of the higher rates contained in Tariff 4006. The record remains devoid of such support.

In 1989, our Office ruled on a similar tariff (TSMT Rules Tariff No. 100, Item 750-10) filed by Tri-State which tariff stated "[s]hipments having point of origin, or destination . . . at ocean-going vessel port facilities such as docks, piers or wharves . . . ." Tri-State claimed higher rate charges based on deliveries to U.S. Navy installations. We found that since these deliveries were made to warehouses at the installations and not to a pier or dock, the higher rates were not justified. B-230394; B-230425, April 18, 1989. In that case, Tri-State itself, in filing the tariff,

recognized that port facilities are properly limited to wharves, docks, and piers. We continue to believe the same result is required here.

Accordingly, we affirm our prior decision.

/s/ Seymour Efros
for Robert P. Murphy
General Counsel