Comptroller General
of the United States

Washington, D.C. 20548

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Decision

Matter of: Tri-State Motor Transit Company

File: B-255631

Date: July 11, 1994

DIGEST

Carrier tariff that imposes significantly higher charges for deliveries to an "ocean port facility" does not apply to a delivery to a warehouse at a military ocean terminal where the record is not clear that an "ocean port facility" as contemplated by the tariff is involved, and the carrier has not shown that delivery to the warehouse imposed additional costs/delay usually associated with deliveries to docks, piers, and wharves, which is the basis for the higher charges.

DECISION

Tri-State Motor Transit Company, a motor carrier, requests that we review 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 (DOD) under government bill of lading C-7,200,068. We affirm GSA's settlement.

In April 1990, Tri-State transported a 700-pound shipment of electrical instruments, for purposes of a foreign military sale, in a dromedary container from Baltimore, Maryland, to Warehouse 806 at the Military Ocean Terminal, Bay Area, Oakland Army Base, in Oakland, California. Although Tri-State initially billed and was paid $1,623.18, applying its Tariff 4000-B, the carrier now contends that Tariff 4000-B did not apply to this transaction because Item 20 of the tariff states that it does not apply to shipments to or from an "ocean port facility."[1] In Tri-State's view, Warehouse 806 is an "ocean port facility." Item 20 provides that shipments to or from such facilities will be rated as truckload shipments and that charges under Tariff 4006 will

[1]Item 20 also precludes application of Tariff 4000-B rates on shipments from or to Philadelphia, and the New York counties of Bronx, Kings, Queens, New York, Richmond, Nassau, and Suffolk.

apply. Applying Tariff 4006, Tri-State claims total corrected freight charges of $7,171.55.

To support its argument that Warehouse 806 is an "ocean port facility," Tri-State has provided a written statement from the Chief of the Traffic Management Division of the 1302d Major Port Command, the field activity of the Military Traffic Management Command (MTMC) that operates Warehouse 806. The official states that the 1302d is "by definition a military ocean terminal" and that Warehouse 806 is one of three warehouses "used as staging area for processing Import and Export ocean cargo for onward movement."

We do not agree with Tri-State that Tariff 4000-B does not apply to these shipments. Tri-State does not cite any authority defining the term "ocean port facility," and it is not apparent that it is equivalent to a "military ocean terminal," the phrase used by the MTMC official. In fact, in contrast to the inference Tri-State would have us draw from the official's statement, MTMC headquarters maintains that Warehouse 806 is simply a warehouse, and not an "ocean port facility."[2]

As GSA points out, the reason carriers might charge a premium for deliveries to docks, piers, and wharves is because of delays and added costs often associated with such deliveries. GSA, however, does not believe that delivery to Warehouse 806 imposed such burdens or was different than a delivery to any other general warehouse.

In our opinion, the term cannot reasonably be viewed as including a warehouse simply because the warehouse may be part of a facility with docks, piers, and wharves. Rather, the warehouse location must be expected to contribute to additional costs or delay for motor carriers when they pick up at or deliver to such facilities. In fact, Tri-State itself confirms that view. The carrier explains the purpose of Item 20 as:

> "to specifically restrict the application of dromedary container . . . service . . . in those limited areas where great difficulty exists in both pick-up and delivery . . . ocean port facilities generally result in considerable delays because of prearranged scheduling requirements, prelodging (delivering export papers 24 hours in advance of delivery), congestion,

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[2]The definition of "port terminal facilities" in Federal Maritime Commission regulations does include warehouses that are part of a "terminal unit," 46 C.F.R. § 514.2; Tri-State, however, did not use that phrase (or even refer to a "terminal") in Item 20.

> and other problems inherent to port export/import operations. Such problems result in unmanageable and unacceptable delays in routing schedules. . . ."

Tri-State has not demonstrated how delivery to Warehouse 806 differed from delivery to a general warehouse. There is no indication in the record that the carrier reasonably should have anticipated, or actually encountered, the delay, congestion, scheduling and other problems and expenses typically associated with delivery to the type of facility meant to be included in Item 20's designation of an "ocean port facility."

It is well-established that the carrier/claimant has the burden of establishing the liability of the United States and its right to payment. See 41 C.F.R. § 101-41.603-3(b). For the reasons stated above, we do not think that Tri-State has demonstrated that Tariff 4006 applies.

GSA's settlement is affirmed.

Robert P. Murphy
Acting General Counsel