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

B-177326

August 29, 1973 31308

Trans Country Van Lines, Inc.
3300 Veterans Highway
Bohemia, Long Island, New York 11716

Attention: Larry Binenfeld
Audit Control

Gentlemen:

Reference is made to your letter of June 23, 1973, concerning our decision of May 22, 1973, B-177326, in which we sustained the settlement dated October 2, 1972, by our Transportation and Claims Division which disallowed your claim of $2,366.75 for an additional allowance for freight transportation.

In your letter you request a review of our decision and ask questions and raise contentions pertaining to our interpretation of the Government bill of lading No. D-1153421. Many of the issues involved in your questions were discussed in our decision of B-177326, and need not be repeated; however, your major contentions are discussed hereinafter.

Your first contention is that the administrative report of February 12, 1972, which stated "the shipper erred in showing a release value of $1.50 per pound on page 2" is a post documentation which cannot be accepted in support of the disallowance of your claim. You cite 41 Comp. Gen. 464 to support this contention. In that decision we held that where there was an absence of a notation on a shipping document concerning a reservation of space required by tariff, such defect could not be cured by later statements of shipper's intentions. It is distinguishable from the instant case in that in the referred to decision the post documentation was attempted to be used to add a provision to the document which did not appear on its face and was required by the rules of the tariff which could not be waived. In the instant case what you refer to as "post documentation" is used to interpret language appearing on the face of the shipping document itself. This distinction is analogous to that of the parol evidence rule which says that written or parol evidence of antecedent understandings and negotiations will not be admitted for the purpose of varying or contradicting the writing, but may be used for purposes of interpretation. See Corbin on Contracts, The Parol Evidence Rule, Vol. 3, ch. 26., 1960. Since the administrative report is used

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for purposes of interpreting or explaining the GBL and not for varying or expanding its contents, we find that the "post documentation" report is admissible as evidence.

You also contend that since the shipper prepared the document, the document ought to be interpreted in favor of the carrier, that is the party who did not prepare it. There are two reasons why this legal reasoning is not applicable in this case. First, by statute, the duty of issuing an appropriate bill of lading rests upon the carrier, not the shipper. 49 U.S.C. 20(11) and 319. The fact that the shipper prepares a bill of lading for execution by the carriers' agents does not relieve the carrier of its duty of ensuring that the bill of lading prior to issuance, although it is prepared by the shipper, is correct in all respects. See United States v. Southern Pacific Co., 325 I.C.C. 203, 209. Because of this statutory obligation the carrier cannot be characterized as an innocent party who did not prepare the contract in that he has a legal obligation to make sure that the bill of lading as issued, regardless of who prepared it, is proper.

Secondly, the rule that the interpretation should be construed against the party choosing the contract words is not applicable in this case, since there are other means of interpreting the intent of the parties. Only after all of the ordinary processes of interpretation have been admitted and duly weighed and where doubt still exists as to the meaning of the contract will the court apply the rule of interpretation you refer to. See Corbin on Contracts, Vol. 3, § 559, p. 262.

On the basis of the evidence presented in the record on the contractual intent and obligations of the parties, we believe that there is ample support for the Government's position that the shipment was released at a valuation not to exceed 60 cents per pound, and thus that the application of the rule of construction you refer to is not appropriate.

Finally you again contend that under Rule 16 of your published tariffs, the pickup and delivery by the second of two trucks used to carry the shipment constitutes an extra pickup and delivery which entitles you to an additional freight charge. We believe this contention is without merit. This issue was fully considered in our decision of May 22, 1973, and we adhere to the view there expressed. It seems to us to be particularly significant that if the two vehicles were covered by separate bills of lading, no extra pickup or delivery charges would be involved and you would have had no valid basis to bill for such a charge.

Accordingly, upon reconsideration, we find no reason to modify our decision of May 22, 1973, B-177326 and that decision therefore is sustained.

Sincerely yours,

Paul G. Dembling

For the Comptroller General
of the United States