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**DECISION**



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

FILE: B-204204, B-204204.2

DATE: April 5, 1982

MATTER OF: American Farm Lines, Inc.

**DIGEST:**

1. Carrier's claim to recover monies deducted by agencies on the basis of a tender's prompt-payment discount provision constitutes a claim for transportation charges under 31 U.S.C. § 244(a) (Supp. III, 1979), since the claim involves a discount taken by the agencies based on application of a tender, and the 3-year statute of limitation for the filing of claims is applicable.
2. Under carrier's tender which allows Government a discount from charges billed by carrier when bill is paid within 15 days of date of voucher, the Government is not entitled to a discount when payment is made more than 15 days after the date of the voucher. For billing purposes, the date placed on the voucher by the carrier is the voucher date.
3. Where statute permits filing of transportation claims within a 3-year statute of limitation period, carrier cannot be estopped from filing such claims within this period by its acceptance of initial payment of bill submitted.

American Farm Lines, Inc. (AFL), asks that we review prompt-payment discounts taken by the United States Finance and Accounting Center and the Navy Finance Center on 24 bills submitted for payment by AFL. AFL alleges that the Government improperly took a prompt-payment discount offered under AFL Tender 389 on these vouchers.

AFL has filed these claims directly with GAO, rather than with either the paying agency or the General Services Administration (GSA). AFL alleges that these are claims against the United States for consideration by GAO under

31 U.S.C. § 71 (1976) and, therefore, are subject to the 6-year statute of limitations for claims filed with GAO under 31 U.S.C. § 71a (1976).

Since it appeared to us that AFL's claims concerned payments for transportation services, we asked GSA to review AFL's claims.

GSA asserts that these claims are governed by 31 U.S.C. § 244(a). The relevant portion of this act provides,

"Payment for transportation of persons or property for or on behalf of the United States by a carrier \* \* \* shall be made upon presentation of bills therefor prior to audit by the General Services Administration, or his designee.

\* \* \* \* \*

"That every claim for charges for transportation within the purview of this section shall be forever barred unless such claim shall be received in the General Services Administration, or by his designee within three years \* \* \* from the date of (1) accrual of the cause of action thereon, or (2) payment of charges for the transportation involved, or (3) subsequent refund for overpayment of such charges, or (4) deduction made pursuant to this section, whichever is later."

GSA has reviewed microfilm copies of the bills underlying AFL's claims. GSA reports that AFL never filed the claims with either GSA or the paying agency for the allegedly improper discount deduction. GSA asserts that the 3-year statute of limitation is applicable to these claims, and that at least one of the claims is time-barred since it was not filed within 3 years from the accrual of the cause of action which coincides, in this case, with the date of payment. For those 23 claims which were filed with GAO prior to the expiration of the statute of limitations, GSA states that AFL's claim is without merit. GSA reasons as follows: Tender 389 states that a cash discount is applicable on payment of vouchers for transportation charges when "paid within 15 days of date of voucher."

GSA contends that the date of receipt of the bill by the Finance agency is the applicable date, rather than the voucher date. Using the date of receipt, GSA reports all discounts were properly taken within 15 days.

Furthermore, GSA asserts that the Government awarded AFL contracts and expedited payment of AFL's bills because of this discount, and after having received these benefits, AFL now contends the Government did not meet the terms of AFL's offer. GSA views AFL's acceptance of the discounted payments, over an extended period of time, as a pattern of conduct which creates an estoppel, preventing AFL from reclaiming these discounts.

We first conclude, as indicated above, that AFL's claims to recover the money taken constitute claims for charges under a tariff for transportation services which are within the purview of the act, and are therefore subject to the 3-year statute of limitation. The discount concerns the interpretation of a tender provision and we can find no reason to distinguish the discount tender provision from any other tender provision.

Thus, under the act, claims for transportation charges generally should be received by GSA within the 3-year statutory period. Since GSA has had an opportunity to review these claims, and advised us of its position and the record is before us, we view it as appropriate for our review.

We agree with GSA that one claim under one carrier bill, 2-664-P, is time-barred. The bill was paid by the Department of the Navy on March 6, 1978, and, therefore, the 3-year statute of limitation expired 3 years from the date of payment, or on March 6, 1981. The claim was not filed with GAO until July 21, 1981, and GSA received notice of the claim after this date. American Farm Lines, Inc., B-203045, August 11, 1981. Therefore, this claim cannot be considered.

However, concerning the 23 other claims, these were filed with GAO on September 17, 1981, and we sent them to GSA in a letter dated September 20, 1981. Since the statute of limitations did not expire on the first of these claims until October 1981, we consider these claims timely filed. To rule otherwise, would unfairly penalize AFL for the time involved in GAO developing the record

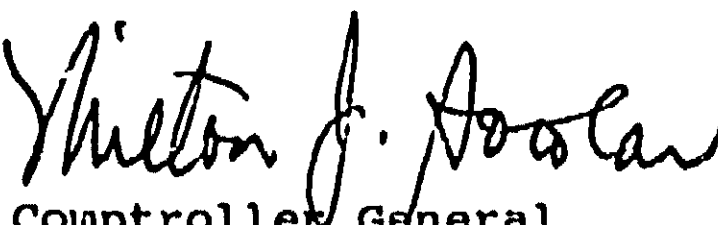
and rendering a decision. As a result of GAO referring these claims to GSA for its views, GSA thereby received notice of these claims prior to the expiration of the 3-year statute of limitations.

Concerning the merits of AFL's claims, this Office has held in a directly analogous situation, that, where contract language permits application of a discount when an invoice is paid within 9 days from the date of the invoice, the Government is not entitled to the discount where the payment is made later than 9 days after the date of the invoice. American Brands, Incorporated Philip Morris, Incorporated, B-172101, March 7, 1974, 74-1 CPD 122. AFL's tender clearly stated the vouchers had to be, "paid within 15 days of date of voucher" for the discount to be applied. Thus, since the only date supplied by the carrier on the voucher is the voucher date, the discount was improperly taken.

Therefore, in our view, under the tender's terms, the discount was improperly taken on these 23 bills.

GSA also contends that AFL cannot assert these claims because of its established course of conduct in accepting the discounted payment over the past 3 years. However, the act specifically contemplates the filing of supplemental bills and claims for transportation charges within the 3-year statute of limitations and, thus, in view of this statutory provision, the theory of estoppel is inapplicable to these claims. Cf., American Farm Lines, B-200939, May 29, 1981.

GSA should take settlement action consistent with this decision.

for   
Comptroller General  
of the United States