



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

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August 6, 2020

CBCA 6578-RATE

In the Matter of AARE LOGISTICS, LLC

Robert J. Henry of Scopelitis, Garvin, Light, Hanson & Feary, P.C., Chicago, IL, appearing for Claimant.

George J. Thomas, Jr., Director, Transportation Audits Division, Office of Travel, Employee Relocation and Transportation, Federal Acquisition Service, General Services Administration, Washington, DC, appearing for General Services Administration.

Todd P. Federici, Office of the Staff Judge Advocate, United States Transportation Command, Scott Air Force Base, IL, appearing for Department of Defense.

**SULLIVAN**, Board Judge.

AARE Logistics, LLC (AARE) seeks review of its claim for reimbursement of monies that it paid in response to seven notices of overcharge issued by the General Services Administration's (GSA) Transportation Audits Division, Office of Travel, Employee Relocation and Transportation. GSA issued the notices following an audit that found that AARE charged interstate rates for transportation services provided to the Military Surface Deployment and Distribution Command (SDDC). Because SDDC selected AARE to provide transportation services based upon valid tenders, we find no basis for the overcharges assessed by GSA.

Background

AARE, as a transportation service provider (TSP), participated in the Freight Carrier Registration Program, administered by SDDC. The governing regulations are contained in the Military Freight Traffic Unified Rules Publication-1 (MFTURP-1). SDDC maintained

two databases to manage the transportation services that AARE and other TSPs provide—the Global Freight Management (GFM) system and the electronic Transportation Operational Personal Property System (eTOPS). AARE submitted tenders identifying the routes on which it would transport freight and the rates for that transportation to SDDC that were accepted into the GFM system, which screens the tenders for compliance with the MFTURP-1.<sup>1</sup> The personal property shipping office (PPSO) used the eTOPS system to issue the government bills of lading (GBLs) to TSPs for shipment of household goods as freight. Because the GFM system and the eTOPS system were not linked, AARE provided the tenders that had been accepted into the GFM system directly to the PPSO that arranged the shipments at issue in this matter.

GSA issued overcharge notices on seven shipments that AARE transported between warehouses in California in 2014. The shipments were household goods of U.S. service members that had been in long-term storage while the service members were stationed overseas. According to the agencies, for these seven shipments, the service members were relocating to duty stations in California.

The tenders AARE supplied for the shipments at issue in this case all specified that AARE was offering to provide “interstate only” transportation and included routes that originated and concluded in California as well as many other states. These tenders were accepted into the GFM system. To arrange for the shipments, the PPSO identified AARE in the eTOPS system as providing the best value to the Government. The PPSO sent AARE an “advance notice” that identified the destination warehouse for the shipments; the origin for the shipments was the PPSO warehouse.<sup>2</sup> The PPSO required AARE to accept the offered shipment within two hours of receiving the advance notice. Under the MFTURP-1, AARE faced a penalty if it refused shipments. Upon AARE’s acceptance, the PPSO issued the GBL.

The agencies contend that AARE should have known that the shipments were intrastate based upon the locations of the origin and destination warehouses set forth in both

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<sup>1</sup> According to the agencies, “it was recently discovered that” the GFM system “did not prevent TSPs from submitting intrastate combinations . . . when interstate was selected.” Also, the eTOPS system “does not distinguish between intrastate and interstate tenders.” GSA and SDDC (collectively, “agencies”) Response at 2, 5 (July 2, 2020).

<sup>2</sup> The PPSO was the same for all seven shipments and was the owner of the warehouse where the service members’ household goods had been held in long-term storage. AARE transported the goods from this warehouse to another warehouse. AARE was not told the final destination for the freight.

the advance sheets and the GBLs, but acknowledge that AARE had no responsibility for transporting the freight to its final destination. The agencies acknowledge that there is no requirement in regulation for AARE to confirm that the shipments were interstate when it received an advance sheet based upon its interstate tender.

Following payment of the invoices for these shipments and others, GSA audited the shipments and determined that AARE's tenders for these shipments were invalid because AARE offered transportation between points in the same state. Although AARE marked the tenders as "interstate only," the agencies thought that the inclusion of these routes within the same state indicated that the tenders contained intrastate rates, which was not permitted by regulation.<sup>3</sup> Because it deemed the tenders invalid, GSA then calculated what SDDC would have paid if it had paid intrastate rates for the shipments based upon its determination of an average cost for these shipments. GSA deducted the average cost from the amount SDDC paid AARE for the shipments and issued a notice of overcharge for the difference.

AARE paid the overcharges on seven shipments, in the amount of \$15,549.08, and then submitted a claim to GSA for refund of that amount. When GSA denied its claim, AARE filed its current request for review by the Board.<sup>4</sup>

### Discussion

The premise of GSA's notices of overcharge is that AARE's tenders for the shipments were not valid because AARE included intrastate rates on an interstate tender. Interstate and interstate commerce are defined in federal regulation as follows:

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<sup>3</sup> The parties have not explained how interstate and intrastate rates differ, although one can surmise that they differ based on a variety of factors. *See Arpin Van Lines*, CBCA 1141-RATE, 10-1 BCA ¶ 34,460. For example, the MFTURP-1 notes that TSPs offering interstate transportation must maintain a satisfactory safety rating with the Federal Motor Carrier Safety Administration, whereas TSPs offering intrastate transportation services must maintain a satisfactory safety rating with the applicable state agency. MFTURP-1 at 14. Complying with different regulatory schemes must carry different costs.

<sup>4</sup> GSA issued a total of 115 overcharging notices. The parties agreed that AARE would pursue its appeal of seven of these notices to the Board and that the parties will be guided by the Board's decision when resolving the dispute over the remaining notices of overcharge. The Board dismissed a prior appeal by AARE for lack of jurisdiction because AARE had not perfected its appeal. *AARE Logistics, LLC*, CBCA 6084-RATE, 19-1 BCA ¶ 37,232 (2018).

*Interstate commerce* means trade, traffic, or transportation in the United States—

- (1) Between a place in a state or a place outside of such State (including a place outside of the United States);
- (2) Between two places in a State through another State or a place outside of the United States; or
- (3) Between two places in a State as part of trade, traffic, or transportation originating or terminating outside the State or the United States.

*Intrastate commerce* means any trade, traffic, or transportation in any State which is not described in the term “interstate commerce.”

49 CFR 390.5 (2013). Pursuant to the MFTURP-1, AARE was permitted to submit tenders for “interstate only” transportation, but these tenders may not contain any intrastate rates. “If a tender applies to interstate shipments, indicate by placing an ‘X’ in the appropriate space. Interstate tenders will not contain any intrastate rates.” MFTURP-1 at 31. Similarly, TSPs could also submit intrastate tenders, but these tenders “will not contain any interstate rates, and only one state per tender is permitted.” *Id.*

GSA’s determination that the tenders were invalid because they included rates for travel between two points in the same state is flawed. The auditors mistakenly assumed that the tenders contained intrastate rates, even though the definition of interstate transportation includes travel between two points within a state if part of transportation from or to somewhere outside that state. Given the definition of interstate commerce, it is foreseeable that SDDC would need tenders for routes within a single state at interstate rates to meet its mix of transportation needs. Moreover, the regulation does not prohibit AARE from submitting interstate tenders with interstate rates between two points in the same states; it only requires that AARE not include intrastate rates on interstate tenders. Finally, GSA’s notices of overcharging seem to undercut its position that the tenders were invalid because they contained intrastate rates. With its notices of overcharging, GSA seeks to determine the difference between the interstate rate AARE charged and the intrastate rates that SDDC could have obtained. The premise of this calculation is that AARE charged interstate rates, which is contrary to the determination of GSA’s auditors as to why the tenders were invalid.

GSA and SDDC appear to acknowledge that the PPSO, SDDC’s agent for arranging these shipments, made a mistake in selecting AARE to receive these advance notices, since

its tenders were marked “interstate only,” explaining that the mistake was made because the two databases did not communicate and the GFM system was not designed to identify the purported error in AARE’s tenders. But, as noted, the MFTURP-1 does not prohibit the inclusion of intrastate routes, only intrastate rates, on interstate tenders. Based upon regulation and the definition of interstate commerce, we find AARE’s tenders to be valid.

We next turn to the agencies’ contention that the price paid to AARE should be reduced because the travel was intra- versus interstate. AARE was sent advance notice and accepted the shipments based upon the actions and information provided by the PPSO. It is undisputed that the PPSO was responsible for selecting AARE to provide these services. We see no basis for making AARE bear the cost of the fact that the PPSO selected an interstate tender, when it should have selected an intrastate tender.

GSA and SDDC urge the Board to consider only the nature of the trips, arguing that it is undisputed that the transportation AARE provided was between two points in California and that the Board’s determination should be governed by the intent of the shipper. Cases that turn on the intent of the shipper look to the “fixed and persisting transportation intent of the shipper at the time of shipment.” *See, e.g., Tri-State Motor Transit Co.*, B-253445 (Apr. 20, 1994). The agencies argue that the GBLs, which show that both the origin and destination for the shipments were in California, are sufficient to show this intent. Given that the PPSO selected AARE’s tenders even though they were marked “interstate only,” the advance sheets and GBLs which just show transportation between two warehouses are less than the “fixed and persisting” evidence of transportation intent necessary to find that these were clearly intrastate shipments. Because AARE did not agree to provide transportation at intrastate rates, the fact that the transportation provided was intrastate is not determinative. *See Arpin Van Lines.*

The agencies suggest that AARE should have inquired about the nature of the shipments before accepting them to confirm that they were interstate, rather than intrastate, shipments. But, the MFTURP-1 contains no requirement that the TSP undertake this effort. Instead, given the tight response deadline for acceptance and the information that AARE provided, it was reasonable for AARE to believe that SDDC wanted a TSP that could provide interstate transportation services for these trips.

Finally, GSA and SDDC acknowledge that AARE was selected as the best value to the Government. Best value is based upon price and other non-price factors. MFTURP-1 at 261. To reduce the price AARE was paid would allow the agencies to obtain the best value services at a lower price than AARE was willing to provide them.

Decision

AARE's claim is granted.

*Marian E. Sullivan*  
MARIAN E. SULLIVAN  
Board Judge