



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

B-177326

May 22, 1973

30952

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 October 12, 1972, requesting review of our settlement certificate of October 2, 1972, which disallowed your claim (our claim TK-948301) for \$2,366.75 additional freight charges on a shipment of Government property. The shipment consisted of 161 pieces of electrical instruments weighing 56,960 pounds which moved from Torrance, California, to Norfolk, Virginia, under Government bill of lading (GBL) D-1158431, dated February 10, 1970.

For this service you originally claimed and were paid \$5,321.93. In our audit of the payment voucher it was found that since the shipment was released at a value not exceeding 60 cents per pound a charge of \$427.20 for "additional liability (valuation)" was inapplicable. A Notice of Overcharge (GAO Form No. 1003) for refund of the \$427.20 was issued on April 5, 1972. You protested the overcharge notice contending that the charges should be based upon a released value of \$1.50 per pound. On that basis you maintain that the original billing was understated and that the correct assessable charges should be \$7,688.68, which less the \$5,321.93 originally collected, gave rise to your claim for \$2,366.75 disallowed by the aforementioned settlement certificate of October 2, 1972.

The record shows that the shipment moved in two 40-foot trailers and that the shipment fully loaded the trucks used. Government bill of lading D-1158431, in the block entitled "Tariff or Special Rate Authorities," bears the notation "TRANSCOUNTRY TENDER 150." The first or face sheet of the bill of lading shows that 161 pieces of miscellaneous Navy freight as per the continuation sheet two attached were shipped. This face sheet of the bill of lading also bears the notation "RELEASED VALUE NOT EXCEEDING 60 CENTS PER POUND."

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The bill of lading continuation sheet (No. two) shows the following description:

ELECTRICAL INSTRUMENTS, NOI 'THE AGREED OR DECLARED VALUE OF THE PROPERTY IS HEREBY SPECIFICALLY STATED BY- THE SHIPPER TO BE NOT EXCEEDING \$1.50 PER POUND'
NMFC 61700

It is noted that both Trans Country Van Lines I.C.C. No. 50, the tender named on the GBL, and Movers' & Warehousemen's Association of America Government Rate Tender I.C.C. No. 1-V, apply only upon shipments moving on GBLs or on commercial bills of lading endorsed to show that such bills of lading are to be exchanged for GBLs at destination. The GBL form, under the caption "Description of articles," bears the admonition to "USE CARRIERS' CLASSIFICATION OR TARIFF DESCRIPTION IF POSSIBLE, OTHERWISE A CLEAR NONTECHNICAL DESCRIPTION."

Thus the description on the GBL continuation sheet which included the reference to the \$1.50 per pound released value was placed there in a mistaken effort to conform with the GBL instructions regarding National Motor Freight Classification and other tariff information. Such information cannot be considered material or of prevailing significance where, as here, it is obvious that the entire 161 pieces of electrical instruments were made specifically subject to the 60-cent per pound limitation on the face of the GBL.

By letter of February 12, 1972, a copy of which was previously furnished you, the Military Traffic Management and Terminal Service advised, in pertinent part, as follows:

* * * The intended released valuation was 60 cents per pound per article. The shipper erred in showing release value of \$1.50 per pound on page 2. Because many tariffs have exception ratings on Electrical Instruments, NOI, i.e., requiring a released value, the shipper included this as a part of his freight description. The original GBL, Page 1, does show a released value not exceeding 60 cents per pound and it should apply to this shipment.

You contend that this administrative advice is post documentation and cannot be accepted in support of the disallowance of your claim. We view the administrative advice as explanatory of the conflicting released valuation annotations on the bill of lading.

Both tenders, Trans Country's I.C.C. No. 50 and GRT I.C.C. No. 1-V, have provision for a released value not exceeding 60 cents per pound per article. Since the bill of lading specifically refers to Trans Country tender I.C.C. No. 50 and bears the 60 cents per pound released value notation, your company had adequate notice of the conflicting valuation notation of \$1.50 per pound.

The duty of issuing appropriate bills of lading rests upon the carrier, not the shipper. 49 U.S.C. 20(11) and 319. The fact that it is not uncommon for shippers to prepare bills of lading for execution by the carriers' agents does not relieve the carrier of that duty. Further, the obligation rests upon the carriers' agents to refrain from executing bills of lading which contain conflicting provisions. See Cooperative Grange League Federation Exchange, Inc. v. Chicago, B. & Q. R. Co., 308 I.C.C. 507 (1959); Southgate Brokerage Co., Inc. v. Lehigh Valley R. Co., 274 I.C.C. 245 (1949); Exposition Cotton Mills v. Southern Ry. Co., 234 I.C.C. 441, 442 (1939); Parkersburg Rig & Reel Co. v. Baltimore & Ohio R. Co., 234 I.C.C. 105 (1939); Southeast Shippers Association v. Associated Transport, Inc., 61 M.C.C. 645 (1953); B-176436, October 12, 1972, 52 Comp. Gen. _____; 39 id. 678 (1960); 27 id. 601 (1948).

The GBL reference to Trans Country tender I.C.C. No. 50 and to the released value of 60 cents per pound by the shipper should have placed your agent on notice that the shipper expected the rate named in your tender I.C.C. No. 50 to be applied on the shipment. If the reference to the valuation of \$1.50 cents per pound contained in the commodity description shown on the bill of lading created a conflict with the other provisions inserted thereon, it was the duty of your agent to obtain clarifying instructions from the shipper.

You also contend that you are entitled to the amount of \$20 for two extra pick-ups or deliveries. Such charges are provided in item 100 of GRT I.C.C. No. 1-V, if they are applicable. You state that an extra pick-up is one or more pick-ups after the first pick-up at one or more places of origin and that an extra delivery is one or more deliveries after the first delivery at one or more places of destination. Therefore, you contend that since two vehicles were utilized, the second vehicle is considered as a second pick-up and a second delivery at the applicable charge.

Our view of item 100 is that the item obviously refers to an extra pick-up or delivery involving each vehicle utilized; that is the carrier would be entitled to an additional \$20 when its driver of a single vehicle was required by the shipper to stop and load freight at two origin points and to stop and unload freight at two destination points. If the two vehicles were covered by separate bills of lading no extra pick-up or delivery charge would be involved and you would obviously have no valid basis to bill for such a charge. The mere circumstance that two vehicles are covered by one bill of lading cannot be recognized as supporting the assessment of a charge for an additional pick-up or delivery. The substance of the transaction (pick-up at only one point of origin and delivery at only one point of destination) and not the incidental form of billing (two vehicles used to handle a single shipment) is controlling. Exposition Cotton Mills, supra; Willingham v. Seligman, 179 F. 2d 257 (1950); 36 Comp. Gen. 119, 121 (1956).

Accordingly, the disallowance of your claim was correct and is sustained.

Sincerely yours,

PAUL G. DEMBLING

For the Comptroller General
of the United States