



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

B-178237

June 6, 1973

31021

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

Attention: Mr. Larry Binenfeld
Audit Control

Gentlemen:

Your letter of July 28, 1972, and earlier letters, in effect, request review of our settlement certificate (claim TK-912888) dated January 28, 1971. That certificate disallowed your claim for \$671.94 on supplemental bill No. 6773. You maintain that a certain section 22 tender must be used to determine the applicable charges and the settlement certificate is predicated on the use of another section 22 tender providing a lower charge basis.

The transportation services involved were covered by Government bill of lading (GBL) B-9138001, issued March 22, 1967. Under that GBL a shipment of Electrical Instruments, NOI, weighing 23,660 pounds, was accepted by Trans Country for transportation from the United States Coast Guard Supply Center, Brooklyn, New York, to Avondale, Louisiana. The GBL shows that a 40-foot trailer having a capacity of 3,000 cubic feet was ordered and furnished, that exclusive use of trailer was requested, that the articles were released at a value of 60 cents per pound, and that "ICC No. 50" was considered by the Coast Guard to be the applicable tender for the computation of the charges. Reference to Tender I.C.C. No. 50 appears in the block on the GBL reserved for reference to Tariff or Special Rate Authorities.

For the subject services you originally claimed \$1,941.79 on your bill 6773 and were paid in that amount by a Government disbursing officer in May 1967. The amount of \$1,941.79 was produced by a rate of \$8.15 per 100 pounds applied to 23,660 pounds (\$1,928.29) and a \$13.50 per shipment charge.

In our audit it was determined that the allowable charges were \$1,269.65 (23,660 pounds at \$5.31 per 100 pounds), plus a

79-0086

091509

per shipment charge of \$13.50. Upon your failure to refund, the difference of \$671.94 between the allowable amount and the paid charges of \$1,941.79 was recovered by setoff in the payment of another bill. Our notice of overcharge (Form 1003), issued to you on March 1, 1968, shows that the charge basis was derived from Trans Country Van Lines Tender I.C.C. No. 50, supplement 4, effective March 1, 1967.

You disputed the setoff and subsequently submitted your supplemental bill 6773 for additional charges of \$695.60, somewhat higher than the original claim for \$671.94 due to the fact that you raised the line haul rate from \$8.15 to \$8.25 per 100 pounds.

The \$8.25 rate is derived from Government Rate Tender I.C.C. No. 1-U; it is your position that Tender I.C.C. No. 50 is not applicable to the transportation in question because the Coast Guard is not named in the tender as an offeree. Therefore, you believe that the Coast Guard was not entitled to take advantage of the rates set forth therein. Since Tender I.C.C. No. 1-U, specifically names the Coast Guard as one of the Government agencies authorized to ship goods under the terms of the tender, you believe that I.C.C. No. 1-U is the only tender for use in determining the charges. You also are of the opinion that since your commercial bill of lading contains a reference to "GRT11146" (Government Rate Tender I.C.C. No. 1-U, Section VI), the transportation contract requires the use of that tender to determine the charges due the carrier for these services.

Condition 2 on the back of GBL B-9138081 sets forth that--

Unless otherwise specifically provided or otherwise stated hereon, this bill of lading is subject to the same rules and conditions as govern commercial shipments made on the usual forms provided therefor by the carrier.

As noted, your usual form, the standard household goods bill of lading and freight bill, included a reference to Government Rate Tender I.C.C. No. 1-U. But there was "otherwise specifically provided or otherwise" stated on the related GBL (to which the commercial bill of lading specifically refers) that Trans Country Tender I.C.C. No. 50 was applicable to the transportation covered thereby. There thus was a reasonable basis for concluding that the Coast Guard and Trans Country (whose agent, when accepting the

B-178237

shipment, concurred in the GBL terms for the account of the principal) intended that I.C.C. No. 50 be the applicable tender.

It is obvious that the Coast Guard office issuing the GBL believed that there was no valid restriction to its use of I.C.C. No. 50, and it also seems probable that the reason Trans Country was offered the goods was because its I.C.C. No. 50 rates were comparable to other competing carriers who would have been eligible and available to handle the freight. As a matter of fact both Tender I.C.C. No. 1-U and Tender I.C.C. No. 50 were available for consideration by the shipping agency, but since the latter tender afforded the most favorable basis, the carrier is obliged to apply the price in that tender.

That the Coast Guard had a reasonable basis for concluding that I.C.C. No. 50 and Trans Country were appropriate for consideration in determining how the freight should be transported is initially found in I.C.C. No. 50 itself. Item 10 of I.C.C. No. 50, which is in the Uniform Tender of Rates And/Or Charges For Transportation Services Government form, stipulates that the carrier offers "on a continuing basis to the United States Government, hereinafter called the Government, pursuant to section 22 of the Interstate Commerce Act * * * the transportation services herein described." If it were intended that the tender be limited to a particular Government agency, that intention could have been effectuated simply; but the tender as issued authorized its use by any Government agency that wished to ship the various kinds of articles described therein, including electronic equipment and scientific instruments, subject to, among other types of special services, Exclusive Use of Vehicle handling.

If Trans Country intended to limit use of I.C.C. No. 50 to the Military Traffic Management and Terminal Service, it has not done so under the language of the tender, and it is immaterial that the Military Traffic Management and Terminal Service might have been the principal user or one of the Government agencies which acknowledged that it intended to use the service at the rates specified in the tender. A section 22 tender a carrier offers generally to the "United States Government" is available to any Government agency not excluded, willing to do business with the offering carrier.

The tender does not require that an agency give the carrier any special advance notice that it intends to take advantage of the carrier's offer. It is sufficient that the transportation

B-178237

contract as reflected in the GBL signify that intention any time during the period the tender is in effect and has not been cancelled in accordance with its terms--which in this case was when the carrier undertook to notify the United States Government that the tender was cancelled. And item 21 of I.C.C. No. 50 states that the tender may be cancelled by the carrier on written notice of not less than 30 days or otherwise by mutual agreement.

We believe that the transportation contract made between the parties in this case incorporated the terms of I.C.C. No. 50 and any charge basis contrary to those terms extending less favorable charges to the United States was superseded. Accordingly, the action of our Transportation and Claims Division in disallowing your claim based on the applicability of Tender I.C.C. No. 1-U, was correct and it is sustained.

Sincerely yours,

Paul G. Demblin

For the Comptroller General
of the United States