



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Tri-State Motor Transit Company

File: B-260748

Date: September 19, 1995

DIGEST

Under item 325(1)(c) of the Military Traffic Management Command's Freight Traffic Rules Publication 1A, the Department of Defense is charged for a minimum of 5,000 pounds when it ships a lesser amount of "initiating or priming explosives, wet" Thus, when the Army shipped 10.2 pounds of an article that it described on the government bill of lading (GBL) as "CLASS A-EXPLOSIVE-INITIATING EXPLOSIVE-DANGEROUS-DO NOT STORE OR LOAD WITH HIGH EXPLOSIVES," and there is nothing in the record suggesting that the article did not meet the definition of a Class A initiating explosive described in title 49, Code of Federal Regulations (49 C.F.R.), §§ 173.70 through 173.78, it is reasonable to conclude that the article shipped was such an initiating explosive. It was not necessary to include the word "wet" in the GBL description because, generally, the substances listed in 49 C.F.R. §§ 173.70 through 173.78 cannot be transported in a dry condition.

DECISION

Tri-State Motor Transit Company, requests that we review the General Services Administration's (GSA) denial of its claim for \$643.75 as an additional charge in government bill of lading (GBL) transaction D-0,718,670. We reverse GSA's settlement.

The facts are not in dispute. On June 5, 1990, Picatinny Arsenal in New Jersey, tendered a shipment weighing 10.2 pounds to Tri-State for dromedary transportation service to Englewood, Colorado. The GBL described the article shipped as "CLASS A-EXPLOSIVE-INITIATING EXPLOSIVE-DANGEROUS-DO NOT STORE OR LOAD WITH HIGH EXPLOSIVES."

Tri-State argues that under item 325(1)(c) of the Military Traffic Management Command's (MTMC) Freight Traffic Rules Publication 1A (MFTRP 1A), it is entitled to rate this dromedary shipment as a minimum 5,000 pound shipment. At the time of shipment, Item 325(1)(c) (2d Rev. page 89) stated:

"c. Dromedary service will be subject to line-haul rates alternating between the lower minimum weight of 2,500 pounds and the higher minimum weight of 5,000 pounds. Shipments of white phosphorus or, initiating or priming explosives, wet: Diazodinitrophenol, fulminate of mercury, guanyl, nitrosamino guanylidene hydrazine, lead azide, lead styphnate, nitro mannite, nitrosoguanidine, pentaerythrite tetranitrate, tetrazene, lead mononitroresorcinate, will be subject to a line-haul minimum weight of 5,000 pounds or actual weight, if greater, at the 5,000 pound tender rate. (See Note 3)."

Note 3 after item 325(3)(c) of MFTRP 1A involved the minimum weight for a shipment of a commodity with additional descriptive information following its hazardous material description which identified it as "chemical ammunition with incendiary charges or white phosphorus."

In its administrative report, GSA stated that our reconsideration of Tri-State Motor Transit Company, B-253293 et al., Dec. 10, 1993, would be dispositive of the issue here. Otherwise, in its Settlement Certificate, GSA denied Tri-State's claim, noting that item 325(1)(c) involved shipments of initiating or priming explosives, wet, while the shipment in issue involved Class A Explosive-Initiating Explosive. MTMC stated that the 5,000 pound minimum weight charge did apply to the commodity shipped here even though it did not include the word "wet" in the commodity description "because 'dry' cannot be transported or tendered for shipment."

The issue here is distinguishable from the one we are reconsidering in B-253293.2 et al. Our reconsideration, B-253293.2 et al., involves the interpretation of Note 3, particularly, whether certain commodities were "chemical ammunition with incendiary charges or white phosphorus." Nothing indicates that the commodity here involves "chemical ammunition with incendiary charges or white phosphorus;" therefore, Note 3 is not involved. The issue is whether "CLASS A-EXPLOSIVE-INITIATING EXPLOSIVE," as described on the GBL, is a shipment of "initiating or priming explosives, wet."

In our view, the record supports the conclusion reached by MTMC that the commodity shipped was "initiating or priming explosives, wet" as described in item 325(1)(c). The description of an article on a GBL is prima facie correct. See Yellow Freight System, Inc., B-197298, Sept. 12, 1980, 80-2 CPD ¶ 193 and Yellow Freight System, Inc., B-192872, May 7, 1979. This rule does not apply when the carrier or the government demonstrate that something different was shipped or when the GBL description was ambiguous (e.g., pertinent classification characteristics were missing). Id. But, in this case, the only issue raised by GSA in its audit was whether the minimum weight provision applied to all initiating explosives, "wet" or otherwise.

The Hazardous Materials Regulations in effect at the time of shipment, title 49, Code of Federal Regulations (49 C.F.R.), particularly §§ 173.70 through 173.78 (1989) relate to the specific types of Class A initiating explosives named in item 325(1)(c). These regulations support the general prohibition against transporting the initiating explosives listed in item 325(1)(c) in a dry condition. They also required the marking of the container holding the named initiating explosives with "INITIATING EXPLOSIVE-DANGEROUS-DO NOT STORE OR LOAD WITH ANY HIGH EXPLOSIVE." The notation on the GBL involved here is nearly identical to the regulatory marking requirements. Thus, the GBL description and associated notation suggests that the article involved one of the initiating explosive substances described in 49 C.F.R. §§ 173.70 through 173.78 and that by item 325(1)(c), MTMC intended to apply a 5,000 pound minimum weight when the Department of Defense shipped one of these substances.

In the absence of something on the record to suggest a reasonable basis for questioning whether the article shipped was, in fact, an initiating explosive, we conclude that the GBL did justify it. GSA's settlement is reversed and the claim is allowed.

/s/Seymour Efros
for Robert P. Murphy
General Counsel