



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Tri-State Motor Transit Company

File: B-266292; B-266293; B-270862

Date: June 25, 1996

DIGEST

A carrier's claim for excess valuation charges for potential liability above the default released value is denied where the government bill of lading notes "FULL CARRIER LIABILITY" but the carrier fails to determine what that value is prior to movement and the carrier billed as if the default valuation applied.

DECISION

Tri-State Motor Transit Company, a motor carrier, requests review of the General Services Administration's (GSA) disallowance of its claims on government bill of lading (GBL) transactions C-9,186,742, D-1,265,218, D-1,265,219 and C-9,215,773, covering shipments of military commodities¹ it transported for the Department of the Army during 1991. The common issue for each of these GBLs is whether the carrier is entitled to additional charges because of the statement "FULL CARRIER LIABILITY" that appears on each GBL. We affirm the disallowances.

Background

Under the contractual arrangement between the Department of Defense and its motor carriers, a shipment is made at the reduced or released value specified in the governing tariff or rate tender, unless a higher value is stated by the shipper on the GBL.² To the extent that the released value of a shipment is less than its actual value, the government becomes a co-insurer with the carrier for loss or damage to the shipment. Strickland Transportation Co. v. United States, 334 F.2d 172, 175 (5th Cir. 1964).

¹The shipments contained Class A Explosives or inert missiles shipped as Freight All Kinds.

²See 41 C.F.R. § 101-41.302-3 and Item 190 of the Military Traffic Management Command's Freight Traffic Rules, Publication 1A.

For the shipments in question, the contract of carriage provided that the released value was \$2.50 per pound unless the shipper chose to declare a higher value on a shipment. In that event, the carrier was entitled to an additional charge of 15 cents for each \$100 or fraction thereof by which the declared value exceeded the released value. For the shipment transported under GBL D-1,265,218, for example, the default released value was \$77,500, calculated at \$2.50 per pound for a 31,000 pound shipment. Tri-State originally billed the Army for this shipment without any additional charge for increased valuation. A few years later it submitted a supplemental bill for an excess value charge based on a value of \$500,000 that Tri-State has estimated for the shipment.³

Tri-State's claim was denied by GSA, the agency responsible for auditing government transportation vouchers. See 31 U.S.C. § 3726. Tri-State then appealed to our Office pursuant to 31 U.S.C. § 3726(g)(1). A similar pattern has been followed with respect to the other three GBL's.

The dispute between Tri-State and the Army concerns the meaning of the phrase "Full Carrier Liability" as it appears on these GBL's. According to the carrier, the phrase means that the government elected to declare these shipments at full value, thereby increasing the carrier's potential liability in the event of damage or loss to the articles shipped.

The Army argues that if it had wanted to declare a value higher than the standard released value, it would have stated a specific dollar figure on the GBL. In this regard, the Army points out that Tri-State's own Tariff 100-A, item 856, provides that a released valuation in excess of \$2.50 per pound must be specifically and prominently shown on the shipping document by a total release value in dollars and cents.

Discussion

Generally, there is not an exact form for releasing a shipment to a certain value, such as a value "not exceeding \$2.50 per pound;" the carrier only needs to be

³With regard to this GBL and GBL D-1,265,219, Tri-State also claimed additional amounts based on its contention that the commodities shipped under these 1991 shipments had been assigned unique commodity codes. An October 1992 amendment to MFTRP 1A discontinued the practice of shipping unique commodity code shipments as Freight All Kinds like these two shipments were. The amendment was retroactive to 1990. In Tri-State Motor Transit Company, B-255630, et al., Aug. 18, 1994, we held that the amendment cannot be applied retroactively to allow a carrier higher rates for shipments initiated prior to the amendment. We see no reason to alter our position.

reasonably apprised of the shipper's intentions. See B-147576, June 1, 1962. Thus, a notation on a GBL stating that the released value of each article in a shipment of vehicles not exceed "\$2.50 (or \$1.75) per pound per article" was held to be sufficient to increase the released value of each vehicle from the default released value of \$20,000.00, to \$2.50 per pound multiplied by the weight of each vehicle. Tri-State Motor Transit Company, B-254378.2, et al, July 5, 1995.

Although the Army insists that it never intended to request excess values on the shipments involved here, the notation "Full Carrier Liability" on a GBL does indicate a contrary intention. However, this notation by itself is not sufficient to invoke the excess value provisions in this instance. Construing the GBL together with the other parts of the contract of carriage, the shipper was required to state a specific value on the GBL, as it did in B-254378.2, et al, if it wished to declare a value higher than the released value. Without such a statement of value on the GBL, the carrier lacked the information needed to determine its potential liability for the shipment or to assess a proper excess value charge.

Instead of seeking clarification from the Army as to the value it wished to declare on each of these shipments, Tri-State accepted the shipments and billed the Army at its base rate. Much later, after the shipment had been safely delivered without loss or damage, Tri-State sought additional charges on the theory that if loss or damage had occurred it would have been liable for the full value without regard to the default limitation. Since Tri-State had an obligation to determine any specific excess value that Army placed on these shipments before accepting them (Starflight Inc., B-213773, July 23, 1984, 84-2 CPD ¶ 150), it must bear the consequences of the ambiguity caused by the Army's failure to do so. Accordingly, Tri-State is obligated to honor the charges it billed for its services.

GSA's disallowances are sustained.

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