

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

December 11, 2001

GSBCA 15389-RATE

In the Matter of OLD DOMINION FREIGHT LINE, INC.

Glenn Jacobs of Old Dominion Freight Line, Inc., High Point, NC, appearing for Claimant.

James F. Fitzgerald, Director, Audit Division, Office of Transportation and Property Management, Federal Supply Service, Washington, DC, appearing for General Services Administration.

Colonel Harry L. Dorsey, Staff Judge Advocate, Headquarters, Military Traffic Management Command, Department of the Army, Alexandria, VA, appearing for Department of Defense.

DANIELS, Board Judge (Chairman).

This case requires us to decide whether payments should have been made for the carriage of household goods for a Government agency under a particular tender issued by the carrier.

Old Dominion Freight Line, Inc., transported several shipments of household goods under Government bills of lading for the United States Coast Guard.¹ Old Dominion billed for the shipments under tenders it had made to the Department of Defense (DOD), and the Coast Guard paid in accordance with the terms of those tenders. The General Services Administration (GSA), in auditing these payments, determined that those tenders did not

¹We do not know precisely when these shipments occurred. Only one of the bills of lading has been included in the record; it shows a requested pick-up date of December 10, 1998, and a required delivery date of January 4, 1999. Old Dominion's claim was made to the General Services Administration (GSA) on April 12, 2000. Obviously, all of the shipments must have occurred prior to that date. A carrier claim for transporting property for the Government may be made no later than three years (excluding time of war) after accrual of the claim or another of three specified events, 31 U.S.C. § 3726(a) (1994), so it is unlikely that any of the shipments occurred earlier than 1997.

apply to the shipments. Instead, GSA concluded, the Coast Guard should have paid in accordance with a GSA freight rate tender, whose rates were lower than those of the DOD tenders Old Dominion had used.

Old Dominion believes that its tender number 1052 to DOD should apply to these shipments because "the Coast Guard is considered Military." The carrier does not suggest that if tender number 1052 is inapplicable to the shipments, some rate authority other than the one selected by GSA should be applied.

The iterations of tender number 1052 which are included in our record were effective from October 1, 1997, to September 30, 2000. They state that the tender is a standard tender of freight services to DOD, pertains to crated household goods and unaccompanied baggage, and is governed by MTMC (Military Traffic Management Command) Freight Traffic Rules Publication No. 1A (MFTRP No. 1A).

The Coast Guard is not a part of DOD. Rather, it is a part of the Department of Transportation. 14 U.S.C. § 1 (1994);² C. I. Whitten Transfer Co., GSBCA 13911-RATE, 97-1 BCA ¶ 28,860, at 143,989. From a date no later than October 20, 1992, until August 1, 1999, MFTRP No. 1A pertained to "motor transportation service needs of the Department of Defense" alone – and not the Coast Guard – "for the movement of its freight traffic." MFTRP No. 1A, item 5.1 (Feb. 1, 1997). Effective on August 1, 1999, the Publication was amended in response to our Whitten decision to include the sentences, "Movements of ammunition to, by, or on behalf of the United States Coast Guard (USCG) are also covered by this publication. References throughout this publication to DOD shall be understood to include such shipments for the United States Coast Guard as well." 64 Fed. Reg. 34,636 (June 23, 1999); MFTRP No. 1A, item 5.1 (Aug. 1, 1999).

To the extent that any of the shipments in question occurred between October 20, 1992, and August 1, 1999, Old Dominion DOD tender number 1052 could not have been an appropriate authority for applicable rates because the tender was governed by MFTRP No. 1A, and that Publication did not apply to Coast Guard freight traffic. To the extent that any of the shipments in question occurred after August 1, 1999, Old Dominion DOD tender number 1052 could not have been an appropriate authority for applicable rates because the tender was governed by MFTRP No. 1A, and that Publication did not apply to movements of goods other than ammunition – such as household goods – to, by, or on behalf of the Coast Guard. Since all of the shipments occurred during one of these periods of time, Old Dominion DOD tender number 1052 could not have been an appropriate authority for applicable rates for any of them.

We note that effective September 30, 2000, MFTRP No. 1A was replaced by MFTRP No. 1B. The new version of the Publication is more expansive in its coverage of Coast Guard shipments than the old version was – even as that old version was amended effective August 1, 1999. MFTRP No. 1B states, "Movements for the United States Coast Guard" – not merely movements of ammunition to, by, or on behalf of the Coast Guard – are also

²When war is declared or the President so directs, the Coast Guard operates as part of the Navy. 14 U.S.C. § 3. Such a situation did not occur at any time relevant to this case.

covered by this publication." MFTRP No. 1B, item 5.1 (Sept. 30, 2000). If this rule had been in effect when the shipments in question were made, the result in this case might be different. Similarly, DOD has a Personal Property Shipment and Storage Program which applies to "military services," including the Coast Guard, and if Old Dominion's DOD tender number 1052 had been governed by the rules of that Program, the result in this case might be different. But MFTRP No. 1B was not in effect at the relevant time and the tender under which Old Dominion asks to be compensated was not governed by the DOD Personal Property Shipment and Storage Program, so this speculation does not help us to resolve the claim before us.

Old Dominion's claim is denied.

STEPHEN M. DANIELS
Board Judge