

Board of Contract Appeals
General Services Administration
Washington, D.C. 20405

October 10, 2001

GSBCA 15646-RATE

In the Matter of HOWARD'S VAN LINES, INC.

Becky J. Cronister, President of Action Capital Corporation, Atlanta, GA, 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).

Howard's Van Lines, Inc. (Howard) stored household goods for the Department of the Navy, pursuant to a Government bill of lading (GBL), during 1997. Howard billed the Navy for its services. The Navy did not pay Howard, however; instead, it paid the line-haul carrier for which Howard was an agent. Howard complained to the General Services Administration (GSA), which audits Government payments to carriers and freight forwarders. GSA determined that the Navy had acted permissibly in paying the carrier. At Howard's request, we review GSA's determination. 31 U.S.C.A. § 3726(i) (West Supp. 2001).

Background

On January 13, 1998, Howard submitted to the Navy an invoice in the amount of \$4,957.54 for storage and associated services involving household goods which had been shipped under a GBL. The invoice listed the payee as "Global Worldwide, c/o Howard's Van Lines, Inc., P.O. Box 56346, Atlanta, GA 30343."

Howard has provided an explanation regarding this invoice. The explanation has not been contested by either the Military Traffic Management Command (MTMC) (which is representing the Department of Defense in this proceeding) or by GSA, so we accept it as accurate. The invoice was a "waivered supplemental household goods storage invoice."

"Global Van Lines Inc.¹ issued the waiver to allow [Howard] to bill and collect the charges on the storage invoice directly from the Navy, which was common practice at that time. Action Capital Corporation factored the invoice for [Howard] and paid [Howard] the full amount of the invoice less [Action Capital's] small fee. Action Capital's address was on the invoice."

On September 11, 1998, Action Capital, on behalf of Howard, told the Defense Finance and Accounting Service (DFAS) that it had not received payment on its invoice. (Howard has since confirmed that it did not receive payment, either.) Action Capital asked DFAS to stop payment on the check which had been written and issue a replacement check. Having received no response, Action Capital on behalf of Howard asked for a check again in February 2000, and yet again in March 2001.

Meanwhile, unbeknownst to Action Capital or Howard, events relevant to this matter had been occurring. A check dated July 7, 1998, was issued from the United States Treasury, made payable to "Global Worldwide [sic] or Howard's Van Line [sic]" in the amount of \$5,082.53. GSA suspects that the amount of the check is greater than the amount of the invoice because Prompt Payment Act interest was included in the check. The check was cashed on October 5, 1998. The check was received and cashed by Global Van Lines.

In early 2000 – January, according to GSA, or February, according to Howard – Global Van Lines filed for bankruptcy. Shortly thereafter, a DFAS employee indicated to Action Capital that payment for Howard's storage services had been made to Global Van Lines. Action Capital later asked Global Van Lines for confirmation that it had received the payment. Global Van Lines performed an incomplete search of its records and said that it could not confirm receipt.

In April 2001, DFAS finally provided to Action Capital a copy of the canceled check. Action Capital and Howard then began the series of correspondence which has ended with the request for review by this Board.

Discussion

Federal Property Management Regulations issued by GSA govern the situation at issue here. Two provisions of those regulations are especially important. Section 101-41.302-3(a) of title 41, Code of Federal Regulations (1997) provides that a voucher for payment for services performed under a GBL "shall be presented to the paying office indicated in the 'Bill Charges To' section on the face of the GBL for payment to" any of four specified entities. One of these entities is

[a] carrier [in privity with the contract of carriage as evidenced by the covering GBL] or its properly designated warehouse agent billing in the name of the

¹Although the invoice shows the carrier as "Global Worldwide," the explanation calls the carrier "Global Van Lines Inc." From GSA's filing, we gather that Global Worldwide and Global Van Lines may be or have been two separate entities. Whether the two Globals are or were separate, or one and the same, is not important to our decision.

carrier as authorized in § 101-41.309-2 dealing with certification of shipments in storage.

Id. 101-41.302-3(a)(3) (emphasis added).

Subsection (b)(3) of 41 CFR 101-41.309-2, the provision referenced above, says that the carrier's certification –

may include a statement designating the warehouseman as an agent of the carrier with authority to receive payment in the name of the line-haul carrier for all storage-in-transit, delivery-out, and other applicable charges. A signed copy of the certificate shall be attached to the supplemental bill for such authorized billing.

MTMC correctly notes that these regulatory provisions no longer exist. Under the current Federal Management Regulation, the applicable provision reads as follows:

May my agency pay an agent functioning as a warehouseman for the TSP [transportation service provider] functioning as a warehouseman for the TSP providing service under the bill of lading?

No, your agency may only pay the TSP with whom it has a contract. The bill of lading will list the TSP with whom the Government has a contract.

41 CFR 102-118.205 (2000). This provision has been in effect only since April 20, 2000, however. 65 Fed. Reg. 24,567, 24,568, 24,575 (Apr. 26, 2000). Thus, it cannot apply to the voucher at issue in this case. We apply the regulatory provisions which were in effect at the time the voucher was submitted.

The parties to this case do not contest each other's recitations of facts relevant to the dispute. We draw the following conclusions from those recitations:

1. From the fact that in response to Howard's voucher, the Navy issued a check listing Howard as an alternate payee, we find that the agency considered that the line-haul carrier in privity of contract with the Government had designated Howard, its warehouseman, as having authority to receive payment in the name of that carrier for the storage and related services Howard had provided.

2. From the facts that the check appears to have included Prompt Payment Act interest, and that the Prompt Payment Act requires that interest begins to run only after an agency receives a proper invoice, see 31 U.S.C. § 3901(a)(3), (4) (1994),² we find that the Navy considered Howard's voucher to be a proper invoice.

²By regulation, GSA has made clear that the Prompt Payment Act's provisions apply to carrier bills. 41 CFR 101-41.401(e); see also id. 101-41.103(h).

3. The voucher stated that payment should be made to the address of Action Capital, Howard's factor.
4. After the check was issued, but nearly a month before it was cashed, Action Capital, on behalf of Howard, (a) put the Government on notice that the check had not been received by the entity to which payment should have been made and (b) asked that payment be refused on that check and a replacement check issued.
5. The Government failed to comply with this request. The check remained outstanding until Global Van Lines cashed it.
6. The Government continued to be unhelpful in responding to Action Capital's entreaties until, more than a year later, a DFAS employee indicated that the check had been received by Global Van Lines.

From these facts, the conclusion is inescapable that the Government made two fundamental errors with regard to Howard's voucher. First, it mailed the check containing payment to an address other than the one which was noted on the voucher as the one and only appropriate address for payment. Second, when told that the check had not been received, the Government failed to take any action which would have ensured that the appropriate recipient of the funds, as designated by the carrier in privity of contract with the Government, became the actual recipient. In short, because the Navy and DFAS bungled this transaction, someone other than the appropriate recipient of the funds ended up with the money.

GSA and MTMC suggest that the solution to this predicament is that Howard should seek the money from Global Van Lines, which cashed the check. Howard protests that this proposed resolution is impossible, since Global Van Lines is now operating under protection of the bankruptcy laws. We hold that whether it is possible for Howard to get the money from Global is irrelevant. GSA's regulations regarding payments for transportation services are binding on all agencies. 41 CFR 101-41.100. The Navy and DFAS are obligated, under those regulations, to pay Howard for the storage services it provided. That obligation must be met now, whether payment has improperly been made to a Global entity or not. It is the Government, not Howard, which should be pursuing recovery of the improper payment made to Global. See Interstate Van Lines, Inc., B-194029 (June 18, 1979), aff'd on reconsideration (Oct. 22, 1979).

STEPHEN M. DANIELS
Board Judge