

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

February 24, 2003

GSBCA 15941-RATE

In the Matter of NORTH AMERICAN VAN LINES, INC.

Carol Ford, Senior Credit Administrator of North American Van Lines, Inc., Ft. Wayne, IN, appearing for Claimant.

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

Col. John B. Hoffman, Staff Judge Advocate, Headquarters, Military Traffic Management Command, Department of the Army, Alexandria, VA, appearing for Department of Defense.

BORWICK, Board Judge.

In this matter North American Van Lines, Inc. (North American) disputes the settlement certificate issued by the General Services Administration (GSA) denying payment of a freight invoice because the invoice was submitted more than three years after the accrual of the claim. Here, the shipped goods remained in storage about four years after the end of the storage in transit (SIT) period, at the expense of Mr. Lawrence Sabia (the owner). Under those circumstances the cause of action accrued upon the expiration of the SIT period, not upon the delivery of the goods to the owner's residence four years later. GSA acted properly in denying payment as North American submitted its claim well beyond the three-year statute of limitations.

On June 6, 1994, under Government Bill of Lading (GBL) SP035771, North American was tendered the household goods shipment belonging to the owner. That GBL required North American to pick up the owner's shipment at his residence in Lubbock, Texas, and deliver the shipment to Oil City, Pennsylvania. According to the Statement of Accessorial Services Performed (DD 619-1), the shipment was picked up on June 28, 1994, in Lubbock, Texas, and delivered into SIT at the destination on July 8, 1994. The shipment remained in storage at Government expense until July 2, 1995, a total of 360 days, the period of storage that had been authorized by the Government. After more than four additional years of storage at the owner's expense, the shipment was finally delivered out of storage and to the owner's residence on October 7, 1999.

On January 12, 2000, three months after delivery to the owner's residence, North American submitted an invoice in the amount of \$2899 to the Defense Finance and Accounting Service (DFAS), Norfolk, Virginia. The invoice charged for 360 days of SIT for the period July 8, 1994, through July 2, 1995; added valuation; and SIT handling. During pre-payment audit, DFAS-Norfolk noted that the claim for SIT services was submitted more than three years after the services were provided. Accordingly, on November 15, 2000, DFAS-Norfolk referred the claim to GSA as a "doubtful" claim in accordance with 41 CFR 101-41.604.2(b)(3) and the carrier was so advised. Upon its review, GSA found that the claim was "time barred" by the three-year statute of limitations found at 31 U.S.C. § 3726, and issued settlement certificates on May 11, 2001, to that effect.¹

The shipping contract provided that the SIT services provided would be for a period not to exceed 180 days, unless additional storage was authorized by the personal property shipping office (PPSO) in accordance with the Joint Travel Regulations (JTR). The contract provided that if the shipment was not removed from SIT by the end of the period, "liability of the carrier shall terminate at midnight of the last day of the SIT period, the through Government Bill of Lading character of the shipment shall cease, [and] the warehouse shall be considered the final destination point of the shipment." The contract further provided that the warehouseman would become the agent of the property owner or shipper at that time.

The contract also stated that:

All claims . . . for recovery of [the carrier's] charges . . . will be filed within three years . . . from the date of (1) Final delivery of the property, (2) Payment of the transportation charges thereon, (3) Subsequent refund of excess charges, or (4) Deduction of such excess charges from the carrier's account, whichever is later.

Statute provides that a claim by a carrier for shipment of personal property will be allowed only if the claim is filed not more than three years from the latest of the following dates: (1) the date the claim has accrued; (2) the date payment for the transportation is made; (3) the date refund for an overpayment for the transportation is made; or (4) the date a deduction under another subsection of section 3726 is made. 31 U.S.C. § 3726 (c)(2) (2000). Items two through four are not applicable here; thus, we discuss only the first item--the accrual of the claim.

The Government argues that, based upon 31 U.S.C. § 3726 (c)(2), North American had three years from the end of the SIT period, July 2, 1995, to present its claim. North American argues that, under the contract, North American had three years from final delivery of the owner's property to his residence on October 7, 1999 to present its claim. Since North American submitted its invoice on January 12, 2000, three months after the delivery of the owner's property, North American views the claim as timely. North American sees an

¹ Apparently, North American submitted one invoice. GSA, however, issued two settlement certificates, one containing an incorrect statement of the amount North American had charged and another containing the correct amount North American was seeking. The reasons for denying both settlement certificates were the same.

inconsistency between the limitation of time in the statute and the limitation stated in the contract.

As noted above, 31 U.S.C. § 3726 requires that claims of this type be filed no more than three years after the "accrual of the cause of action." A right to demand payment for freight accrues when the services are rendered. Baggett Transportation Co. v. United States, 319 F.2d 864, 868 (Ct. Cl. 1963); American Stitching & Box, Inc., GSBCA 14615-RATE, 99-1 BCA ¶ 30,369. Here, the service that was rendered under the contract between the Government and North American was the provision of the SIT service only. When, as here, the shipment was not removed from SIT by the end of the period, the liability of the carrier terminated at midnight of the last day of the SIT period, the GBL character of the shipment ceased and the warehouse became the final destination of the shipment. Furthermore, the warehouseman became the agent of the property owner or shipper.

In short, under the circumstances presented here, at the end of the SIT period, the contract between the Government and North American came to an end. Consequently, delivery services to the owner's residence was not covered under North American's contract with the Government. Admittedly, the contract provision requiring all claims for recovery to be filed within three years from the date of the final delivery of the property is a narrow implementation of 31 U.S.C. § 3726. That provision cannot apply, however, because delivery to the owner's residence was not a service provided under the contract between North American and the Government. North American was obliged to file its claim for delivery services within three years of July 2, 1995.² North American did not do so and its claim is barred by the statute of limitations.³ See Park Cities Van Lines Inc., B-181333 (Mar. 26, 1975) (statute of limitations barred claim for SIT services when claim not filed within three years after SIT services came to an end.)

The Board sustains GSA's denial of the claim.

ANTHONY S. BORWICK

² According to North American's invoice, the SIT of the owner's goods commenced on July 8, 1994. On December 28, 1994, the Department of the Army (Army) approved the owner's request that SIT be extended an additional 180 days to and including the three hundred and sixtieth day. In its approval letter, the Army calculated the expiration date as June 30, 1995, the date GSA accepts. However, 360 days from July 8, 1994, is July 2, 1995, the date the Army in its submission to the Board says the SIT period expired. We need not resolve this discrepancy since it has no bearing on the result we reach here.

³ This matter involves the contractual relationship between the Government and the carrier. We do not decide whether under the Federal Travel Regulation or the JTR the owner would be entitled to have his goods delivered to his home by the Government or to be reimbursed for the cost of such home delivery.

Board Judge