

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

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December 12, 2002

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GSBCA 15967-RATE

In the Matter of AMERICAN VANPAC CARRIERS, INC.

Chris Freeman, Controller, American Vanpac Carriers, Inc., Martinez, CA, 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; and Robert N. Cook, Vendor Pay Site Manager, Defense Finance and Accounting Service - Norfolk, Norfolk, VA, appearing for Department of Defense.

**DANIELS**, Board Judge (Chairman).

The Prompt Payment Act, 31 U.S.C. § 3901-07 (2000), applies to bills from a carrier or freight forwarder for transporting an individual or property for the United States Government.

## Background

In June 2001, the Department of Defense issued a Government bill of lading (GBL) to American Vanpac Carriers, Inc. (Vanpac), for the shipment of goods from Indonesia to a location in the United States. The carrier delivered the goods in July 2001.

In August 2001, Vanpac sent to the Defense Finance and Accounting Service - Norfolk (DFAS-Norfolk) an invoice in the amount of \$8,034.72 requesting payment for its services. DFAS-Norfolk received the invoice on August 28. It returned the invoice to the carrier on September 25, asserting that the GBL number on the invoice did not match the number of the referenced GBL.

In February 2002, Vanpac sent to DFAS-Norfolk a rebuttal to the agency's assertion and a corrected invoice. It asked that if DFAS-Norfolk did not make payment in full within

nine days of the agency's receipt of this transmission, it also pay interest on the amount of the invoice. DFAS-Norfolk received the transmission on March 5.

DFAS-Norfolk sent Vanpac's transmission to its transportation audit contractor, National Traffic Service, Inc. (NTS), for review. NTS agreed with the carrier's challenge and approved for payment the full amount shown on the invoice. There is no indication in the record that NTS, DFAS-Norfolk, or anyone else associated with the Government has ever disputed the validity of Vanpac's February 2002 invoice. DFAS-Norfolk cut a check to Vanpac in the amount requested on that invoice, \$8,034.72, on June 10, 2002. Vanpac received the check on June 13.

On July 16, 2002, Vanpac submitted another invoice to DFAS-Norfolk, requesting payment of interest on the \$8,034.72 previously paid, as well as an additional penalty. DFAS-Norfolk refused to pay these amounts.

The General Services Administration (GSA) believes that interest is due, but that it has no authority to compel payment; it defers, regarding settlement of the interest claim, to the Defense Department's Military Traffic Management Command (MTMC). MTMC says merely that it will advise DFAS-Norfolk that GSA has concluded that interest is payable. DFAS-Norfolk continues to deny payment, on the ground that "rebuttals filed by carriers are not subject to the Prompt Payment Act."

### Discussion

The Prompt Payment Act was enacted to "provide incentives for the Federal Government to pay its bills on time" to "[t]hose suppliers of goods and services who do business with the Government." H. Rep. No. 97-461, at 1 (1982). To accomplish this goal, the Act requires that under regulations issued by the Director of the Office of Management and Budget, "the head of an agency acquiring property or service from a business concern, who does not pay the concern for each complete delivered item of property or service by the required payment date, shall pay an interest penalty to the concern on the amount of the payment due." 31 U.S.C. § 3902(a).

The legislature's objective in enacting the Act and the language of the Act itself are both very broad. Application is to every agency's acquisition of any property or service from any business concern. GSA has recognized, in promulgating regulations regarding agencies' payment for transportation services, that the acquisition of such services are subject to the Act. 41 CFR 102-118.165, .330, .475 (2001); see also Howard's Van Lines, Inc., GSBCA 15646-RATE, 01-2 BCA ¶ 31,638, at 156,290 n.2 (regarding previous version of regulation). The Court of Federal Claims has similarly recognized that "interest is mandated by the Act" when a transportation service provider submits an undisputed voucher to an agency. Arkansas Best Freight System, Inc. v. United States, 20 Cl. Ct. 776, 777 (1990); see also Cargo Carriers, Inc. v. United States, 34 Fed. Cl. 634, 645 (1995), aff'd, 135 F.3d 775 (Fed. Cir. 1998) (table). The Court of Appeals for the Federal Circuit has held that contracts for transportation services are unique in that disputes regarding proper payment under these contracts are governed by 31 U.S.C. § 3726, rather than the Contract Disputes Act of 1978,

41 U.S.C. §§ 601-13.<sup>1</sup> Inter-Coastal Xpress, Inc. v. United States, 296 F.3d 1357 (Fed. Cir. 2002); Dalton v. Sherwood Van Lines, Inc., 50 F.3d 1014 (Fed. Cir. 1995) (also holding that issuance and acceptance of a GBL constitute a contract). We are aware of no authority, however, that suggests that these contracts are not governed by the Prompt Payment Act.

Under the Prompt Payment Act, the date by which a proper invoice must be paid is generally thirty days after the date on which an agency receives the invoice. 31 U.S.C. § 3903(a)(1); see also 5 CFR 1315.4(f), (g)(1)(iv) (Office of Management and Budget regulations implementing Act). If an agency makes payment after the required due date, it must also pay interest on the sum owed, regardless of whether the business concern requests payment of interest. 31 U.S.C. § 3902(c)(1); 5 CFR 1315.4(i), .10(b)(2). Interest is calculated from the day after the due date until the day on which the debt is paid, at a rate prescribed by the Secretary of the Treasury in accordance with statute, compounded every thirty days. 31 U.S.C. § 3902(a), (b), (e); 5 CFR 1315.10(a). It runs until payment is made, a Contract Disputes Act claim is filed, or a year passes, whichever occurs first. 31 U.S.C. § 3907(b)(1); 5 CFR 1315.10(a)(5), .16(a)(2).

If a business concern receives a payment after the required due date, and the agency does not include interest with that payment or pay interest within the next ten days, the concern may request that the agency pay an additional penalty. If the request is made within forty days after payment was made, the concern is entitled to an additional penalty equal to the sum of the late payment interest penalty (but not less than \$25 or more than \$5,000). 31 U.S.C. § 3902(c)(3); 5 CFR 1315.11(a)-(d).

The rules discussed in the previous two paragraphs pertain to proper invoices. The Prompt Payment Act "does not require an interest penalty on a payment that is not made because of a dispute between the head of an agency and a business concern over the amount of payment or compliance with the contract." 31 U.S.C. § 3907(c); see also 5 CFR 1315.16(a)(3). The Act does mandate, however, that agencies determine promptly whether an invoice is proper or not. The determination must be made within seven days of the agency's receipt of an invoice. If it is not, the number of days available for payment of the invoice without interest penalty, when that invoice is resubmitted in proper form, shall be reduced by one day for every day in excess of seven the agency takes to inform the business concern that the original invoice is not proper. 31 U.S.C. § 3903(a)(7); 5 CFR 1315.4(g)(5); see also 41 CFR 102-118.165.

How do these rules apply to the claim now before us? DFAS-Norfolk received Vanpac's original, allegedly improper invoice on August 28, 2001. The agency did not inform Vanpac of the alleged error in the invoice until September 25, twenty-eight days later. Because DFAS-Norfolk took twenty-one days more than the seven allowed to make this determination, the number of days the agency had to pay the invoice, when it was resubmitted in proper form, was reduced by twenty-one – from thirty to nine.

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<sup>1</sup>In compliance with this holding, we consider Vanpac's claim under authority vested in us by 31 U.S.C. § 3726(i) and a delegation of authority from the Administrator of General Services, rather than under authority vested in us by the Contract Disputes Act.

Vanpac's invoice was resubmitted in proper form on March 5, 2002. Because of DFAS-Norfolk's previous delay, the date by which payment on this invoice had to be made without imposition of an interest penalty was nine days after March 5, or March 14. DFAS-Norfolk did not actually make payment until June 10, eighty-eight days after March 14. Thus, DFAS-Norfolk owes Vanpac interest on the amount of the invoice, \$8,034.72, for those eighty-eight days. The prescribed rate of interest at the time the obligation to pay this interest accrued was 5.5%. 31 U.S.C. § 3902(a); 5 CFR 1315.2(d); 66 Fed. Reg. 67,366 (Dec. 28, 2001). For the thirty-day period beginning on March 15 and ending on April 13, interest in the amount of \$36.83 accrued on DFAS-Norfolk's debt to Vanpac, making the total amount due at the end of that period \$8,071.55. For the thirty-day period beginning on April 14 and ending on May 13, interest of \$36.99 accrued on \$8,071.55, making the total due at the end of that period \$8,108.54. For the remaining twenty-eight days during which payment was due (May 14 to June 10), interest of \$34.69 accrued on \$8,108.54, making the total due \$8,143.23. Thus, the total amount of interest due is \$108.51.

Vanpac received the payment of \$8,034.72 on June 13, but did not receive any interest within ten days of that date. The carrier was therefore entitled to an additional penalty, equal to the interest due, if it requested payment of that penalty within forty days of the date payment was made, June 10. Vanpac made a timely request on July 16. It is therefore entitled to an additional penalty of \$108.51.

Does GSA have the authority to direct DFAS-Norfolk to make this payment? Section 3726 of title 31, United States Code, requires the Administrator of General Services (who heads GSA) to issue regulations under which agencies that receive bills from carriers or freight forwarders for transporting individuals or property for the United States Government shall verify the correctness of those bills. This statute also requires the Administrator to adjudicate claims regarding payment of those bills which cannot be resolved by the agency procuring the transportation services. GSA's regulations, which apply to all agencies, 41 CFR 102-118.20, require that agencies establish procedures for payment of transportation services which assure that "[a]ll payments are subject to applicable statutory limitations." Id. -118.55(f). One of those statutory limitations is the Prompt Payment Act. Id. -118.330(b). A transportation service provider, under the regulations, may file a claim for any amount "owed but not included in the original billing." Id. -118.450(a). It may also file a supplemental claim which "cover[s] charges relating to" a "paid transportation document." Id. -118.555. If a transportation service provider disagrees with the determination of the relevant agency on one of these claims, GSA will review the determination and make a decision on it, and that decision is binding on the agency. Id. -118.570, .575, .590.

Vanpac's claim for Prompt Payment Act interest is for an amount owed, in accordance with statute, which was not included in the original billing. Vanpac's supplemental claim for an additional penalty, pursuant to the Prompt Payment Act, covers charges relating to the paid invoice. DFAS-Norfolk has made a determination with regard to these claims, and Vanpac disagrees with that determination and has asked GSA to review it. We find ample authority within GSA's regulations for GSA to review DFAS-Norfolk's determination and to make a decision on it which binds DFAS-Norfolk (although that decision may be appealed to us by the carrier, id. -118.580).

#### Decision

DFAS-Norfolk must pay to Vanpac interest on the undisputed invoice, plus an additional penalty equal in amount to that interest. The total amount due is \$217.02.

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STEPHEN M. DANIELS  
Board Judge