

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

January 23, 2004

GSBCA 16308-RATE

In the Matter of DHL WORLDWIDE EXPRESS

Donna Moore, DHL GSA Coordinator, DHL Worldwide Express, Houston, TX, appearing for Claimant.

Col. John B. Hoffman, Staff Judge Advocate, Headquarters, Surface Deployment and Distribution Command, Department of the Army, Alexandria, VA, appearing for Department of the Army.

James F. Fitzgerald, Director, Audit Division, Federal Supply Service, General Services Administration, Washington, DC, appearing for General Services Administration.

DeGRAFF, Board Judge.

Claimant, DHL Express, asks us to review claims related to six shipments of goods. As explained below, we deny two of the claims and dismiss the remaining four claims.

G7892923

The Department of Defense (DoD) issued government bill of lading (GBL) G7892923 in December 1999, for the shipment of goods from the United States to Venezuela. The GBL tendered a shipment weighing 4025 pounds to Air Cargo International and showed the estimated shipping cost as \$5000. One day after DoD issued the GBL, it issued a correction notice that changed the carrier from Air Cargo International to DHL Airways, and changed the estimated shipping cost to \$21,400. On January 31, 2000, DHL sent DoD a voucher for the shipment, claiming the amount due was \$21,400. DoD paid the amount claimed.

In April 2001, the General Services Administration (GSA) issued a notice of overcharge to DHL regarding GBL G7892923. The notice said the applicable shipping rates for the shipment were contained in tender DHL C 220 and according to GSA's calculations, the total shipping charge should have been \$5438.10. GSA asked DHL to repay \$15,961.90 (\$21,400 - \$5438.10) plus \$888.98 in interest, for a total of \$16,850.88. Subsequently, GSA made deductions from payments due to DHL in order to collect the amount owed. In July 2001, DHL disputed the overcharge notice. In February 2002, GSA issued a settlement certificate which stated the notice of overcharge was correct.

DHL has not established its right to payment. DHL relies upon the correction notice, which said the estimated shipping cost was \$21,400, as the basis for the amount it claims. The actual shipping charge, however, is governed by the terms of the applicable tender. GSA says the applicable tender is DHL 220 and bases its calculation of the overcharge upon the terms contained in this tender. DHL has not explained why this tender is inapplicable or why GSA's calculation is incorrect. We deny this claim because the estimated shipping cost contained in the correction notice is not an appropriate basis upon which to determine the actual shipping charge and because DHL has not shown any error in GSA's calculation of the actual shipping charge.

G6817603

DoD issued GBL G6817603 in December 1999, for the shipment of 793 pounds of goods from the United States to Korea. The GBL contains the words "CUBE 102." DHL's airway bill shows the number of pieces in the shipment as "2" and the weight as 360 kilograms. The dimensions are shown on the airway bill as "176 x 118 x 138 x 2," and the volumetric weight is shown as 956 kilograms. DoD paid DHL \$5538.97 for transporting this shipment.

In January 2002, GSA issued a notice of overcharge to DHL regarding GBL G6817603. The notice said the applicable shipping rates for the shipment were contained in tender DHL 230 and according to GSA's calculations, the total shipping charge should have been \$2794.97. GSA asked DHL to repay \$2744 (\$5538.97 - \$2794.97) plus \$269.06 in interest, for a total of \$3013.06. Subsequently, GSA made deductions from payments due to DHL in order to collect the amount owed. In June 2002, DHL disputed the overcharge notice. In February 2003, GSA issued a settlement certificate which stated the notice of overcharge was correct.

The dispute between the parties concerns whether the shipment consisted of one piece or two pieces. GSA's calculations are based upon the shipment consisting of one piece and DHL says there were two pieces in the shipment. When the weight shown on the GBL of 793 pounds is multiplied by .4535924 in order to convert it to kilograms, the result is the 360 kilograms shown on the airbill as the weight of one piece in the shipment. Also, when the 102 cubic feet shown on the GBL is multiplied by 1728 in order to convert it to cubic inches, the result is 176,256 cubic inches; when this is multiplied times 16.387064 to convert it to cubic centimeters, the result is 2,888,318 cubic centimeters, which is very nearly consistent with the dimensions shown on the airbill of one piece in the shipment (176 x 118 x 138 = 2,865,984 cubic centimeters). If the shipment had contained two pieces, the weight shown on the GBL should have been nearly 1600 pounds and the cube size shown on the GBL should have been approximately 200 cubic feet.

Normally, the GBL description of the item shipped is prima facie evidence of the identity of the item. However, we do not have to accept the description contained on the GBL as accurate when there is persuasive, contrary evidence. Southern Pacific Transportation Co. v. United States, 454 F.2d 740, 744 (Ct. Cl. 1972); C.I. Whitten Transfer Co., GSBCA 14106-RATE, 98-2 BCA ¶ 29,784; Tri-State Motor Transit Co., GSBCA 13877-RATE, 98-1 BCA ¶ 29,406. Here, the GBL shows one item was shipped and the weight and the cube size stated on the GBL are consistent with the shipment of one item.

Although the DHL airway bill shows the shipment consisted of two pieces, there is nothing to establish the airway bill is more reliable than is the GBL. We deny this claim because the description contained on the GBL is consistent with a shipment containing one item and the airway bill alone does not persuade us the GBL description is inaccurate.

M3093988, M3078020, and G4222415

DoD issued GBL M3093988 in May 2001, for the shipment of goods from Korea to the United States. In December 2001, GSA issued a notice of overcharge to DHL regarding this GBL. In January 2002, DHL disputed the overcharge notice. In April 2002, GSA sent a letter to DHL, stating DHL's protest regarding the GBL had been denied. DHL then asked us to review GSA's action.

The Department of State issued GBL M3078020 in January 2001, for the shipment of goods from Norway to the United States. In January 2002, GSA issued a notice of overcharge to DHL regarding this GBL. In June 2002, DHL disputed the overcharge notice and contended the amount of the overcharge as determined by GSA was based upon an expired tender. GSA agreed with DHL in part and issued an amended notice of overcharge. DHL asked us to review GSA's action.

Very little information was submitted to us regarding GBL G4222415. Apparently, GSA issued a notice of overcharge to DHL regarding this GBL and DHL disputed the overcharge notice.

So far as our record reflects, GSA has not taken any collection action regarding these three GBLs. GSA says we should dismiss this portion of DHL's case because DHL did not exhaust its administrative remedies before asking for our review.

This portion of the case must be dismissed. According to the applicable regulations, GSA may issue a notice of overcharge after it conducts a postpayment audit. 41 CFR 102-118.435(f) (2002). If a carrier disagrees with a notice of overcharge, the carrier can protest the overcharge by asking GSA to reconsider the notice of overcharge. 41 CFR 102-118.600. If GSA denies the protest and then takes some action to collect the amount it believes is due from the carrier, the carrier can submit a claim to GSA. 41 CFR 102-118.450, -118.645. If GSA disallows the claim, it will issue a settlement certificate. 41 CFR 102-118.620. A transportation service provider can ask the Board to review a settlement action taken by GSA. 41 CFR 102-118.650. Thus, according to the scheme contained in the regulations, DHL must submit claims to GSA regarding GBLs M3093988, M3078020, and G4222415 before it can ask us to review GSA's actions regarding those GBLs. Because DHL has not submitted claims to GSA, we must dismiss this portion of DHL's case. Action Capital Corp., GSBCA 15772-RATE, 02-2 BCA ¶ 31,895. If DHL submits a claim and GSA disallows the claim, DHL may ask us to review GSA's action. Tri-State Motor Transit Co., GSBCA 14352-RATE, 98-1 BCA ¶ 29,521.

5239186363

In May 2002, GSA issued a request for collection action regarding carrier bill number 5239186363. In its December 18, 2003 submission to us, DHL says, "DHL will honor GSA's

statement of record." We take this to mean DHL agrees with GSA's determination. Because there is no disagreement between DHL and GSA, there is nothing for us to decide regarding this bill. Accordingly, we dismiss this portion of the case. Tri-State Motor Transit Co., GSBCA 14873-RATE, 99-1 BCA ¶ 30,296.

Decision

We deny the claims related to GBLs G7892923 and G6817603, and we dismiss the remainder of the case.

MARTHA H. DeGRAFF
Board Judge