UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

May 5, 2010

CBCA 1141-RATE

In the Matter of ARPIN VAN LINES

Matthew E. Shea, Vice President, General Services Division, Arpin Van Lines, Inc., East Greenwich, RI, appearing for Claimant.

James F. Fitzgerald, Director, Audit Division, Office of Transportation and Property Management, Federal Supply Service, General Services Administration, Arlington, VA; and Aaron J. Pound, Office of General Counsel, General Services Administration, Washington, DC, appearing for General Services Administration.

Susan A. Pratt, Manager, Household Goods, Relocation Services, Federal Bureau of Prisons, Department of Justice, Annapolis Junction, MD, appearing for Department of Justice.

HYATT, Board Judge.

Arpin Van Lines (Arpin) has requested the Board's review of notices of overcharge issued by the General Services Administration's (GSA's) Audit Division, Office of Transportation and Property Management. These notices were issued as a result of audits conducted with respect to Government Bill of Lading (GBL) transactions involving shipments of household goods to destinations originating and ending in the same state, but with storage in transit (SIT) outside the state.

Background

Arpin transported household goods pursuant to GBLs issued by the Federal Bureau of Prisons (BOP). The shipments in question involved trips between points that were wholly within one state. The audited shipments were from Pekin, Illinois, to Highland, Illinois;

Pikeville, North Carolina, to Butner, North Carolina; Highland, Illinois, to Herrin, Illinois; LaGrange, North Carolina, to Butner, North Carolina; and El Paso, Texas, to Mansfield, Texas. Arpin has requested our review of GSA's audit of GBL transactions NO709968, NO710084, NO710024, WP553212, NO709920, N0709945, NO553291, NO709327, NO709122, NO709112A, NO553303, and NO709216. Substantial overcharges have been claimed as a result of the audits.

With respect to the subject shipments, BOP requested transportation of household goods and storage in transit at an approved facility. Storage in transit (SIT) is ordinarily required to be accomplished at a facility no more than fifty miles distant from the delivery destination. Arpin inquired about using its own storage facilities in Leavenworth, Kansas, at no additional charge to BOP. Arpin preferred to use its own facility to maintain quality service standards. BOP had no objection to storage in Kansas, for the carrier's convenience, and at no additional cost to the Government, and so noted on the GBLs. BOP has confirmed that the line-haul mileage was to be calculated using the direct distance from the point of origin to the point of destination, and SIT rates would be the same as if Arpin had used their agents located within the origin and destination state.

Arpin billed for the shipments based on that agreement, using its intrastate rates for the in-state line-haul mileage and storage facilities, which is all that was charged for. Arpin used intrastate discounts on its 415-G tariff of forty-five percent for transportation and thirty-five percent for storage.

When GSA audited the bills of lading, it concluded that because Arpin had in fact transported the household goods outside the state, it could not use intrastate rates to bill BOP. Instead, GSA recalculated the payments for Arpin using the greater interstate discounts (sixty percent for line-haul and forty percent for storage) for the intrastate distances.

Discussion

The question raised by this case is whether interstate or intrastate rates apply when a shipper and transporter agree to the application of intrastate rates for an intrastate shipment when, for the convenience of the carrier, they agree upon an interstate route. As support for its position, GSA relies on various regulations which define interstate and intrastate commerce similarly. The Federal Motor Carrier Safety Administration defines the terms as follows:

> *Interstate commerce* means trade, traffic, or transportation in the United States—

> (1) Between a place in a State and a place outside of such State (including a place outside of the United States);
>
> (2) Between two places in a State through another State or a place outside of the United States; or
>
> (3) Between two places in a State as part of trade, traffic, or transportation originating or terminating outside the State or the United States.
>
> *Intrastate commerce* means any trade, traffic, or transportation in any State which is not described in the term "interstate commerce."

49 CFR 390.5 (2007).

In essence, GSA maintains that because Arpin transported the shipments out of state to its storage facility in Kansas, the shipments, having left the state, must be treated as interstate in character and thus interstate discounts must apply. At the same time, GSA applies the lower interstate rates, not to the interstate routes actually driven, but solely to the direct intrastate route between the given destinations within the states in which the services were provided. This results in substantial "overcharges" by Arpin.

Clearly, Arpin transported the household goods outside the state for storage and then returned to the state to deliver the shipment to its destination. This was indeed interstate commerce. It is well-settled that transportation of property by motor vehicle between points in the same state through another state is interstate transportation no matter how small a distance may be traversed in the other state. *See Central Greyhound Lines, Inc. of New York v. Mealey*, 334 U.S. 653, 660-661 (1948).

This, however, is not dispositive of whether interstate or intrastate rates should apply to the subject transactions. A well-developed body of law under the Interstate Commerce Act has addressed similar scenarios involving whether shipments should be deemed to be interstate or intrastate in character. For the most part, the issue arises when either a shipper or carrier attempts to segment the trip into interstate and intrastate components to take advantage of rates that are more beneficial than the through rate. The concern is to protect the shipper from being overcharged or the carrier from being underpaid for a given trip.

In *Baltimore & Ohio Southwestern Railroad Co. v. Settle*, 260 U.S. 166, 170-72 (1922), Justice Brandeis reasoned that whether a particular portion of travel is interstate or

intrastate "depends on the essential character of the movement." The Court rejected an interstate shipper's attempt to pay lower total tariffs by shipping its goods first from one state into another, and then, after taking possession of them, re-shipping them to their ultimate destination in that second state, taking advantage of lower local rates applicable to that segment of the trip. The Court observed:

> Through rates are ordinarily made lower than the sum of the intermediate rates. This practice is justified, in part, on the ground that operating costs of a through movement are less than the aggregate costs of the two independent movements covering the same route. But there may be traffic or commercial conditions which compel, or justify, giving exceptionally low rates to movements which are intermediate. The mere existence of such intermediate rates confers no right upon the shipper to use them in combination to defeat the applicable through rate. Here there had been published interstate rates for the transportation from the [original destination] to [the ultimate destination]. For such transportation the interstate rates to [the ultimate destination] were the only lawful rates. To permit the applicable through interstate rate to be defeated by use of a combination of intermediate rates would open wide the door to unjust discrimination, and it would unjustly deplete the revenues of the carrier.

Id. at 171-72.

Under the facts of the case, which were undisputed, the Court concluded that the shipper had always intended to ship its goods to the ultimate destination in the second state and thus, the interstate rates applied to the entire distance. At the same time, the Court expressed the caveat that the "essential character" of movement that determines incorporation into interstate transport depends on the individual facts of each case, and that mere proximity in time and space will not automatically make an intrastate trip part of a larger interstate voyage. *Id.* at 173.

The Interstate Commerce Commission (ICC) (now the Surface Transportation Board) has applied this standard to the determination of whether carriers are engaged in interstate or intrastate commerce. Thus, the ICC also looked to the fixed and persisting intent of the shipper, or the one for whose benefit the shipment is made, as one of the most important factors in determining the essential character of commerce. Another factor to be considered is the character of the billing, that is, whether it is local or through. No single factor, however, is necessarily to be regarded as determinative in the final conclusion as to the essential character of the traffic. Rather, the determination is derived from all of the facts and circumstances surrounding the transportation. *See, e.g.*, *Pittsburgh-Johnstown-*

Altoona Express, Inc., 8 I.C.C.2d 821 (1990); *Armstrong World Industries, Inc.*, 2 I.C.C. 2d 63 (1986), *aff'd sub nom. Texas v. Interstate Commerce Commission*, 866 F.2d 1546 (5th Cir. 1989).

This approach was adopted by the Comptroller General, one of our predecessors in reviewing settlements of transportation cases such as this one. In *Trans Country Van Lines, Inc.*, B-188647 (Dec. 28, 1977), GSA had audited a shipment originating at Van Nuys, California, with an intermediate delivery and pickup at Mare Island, Vallejo, California, and then continuing on to Norfolk, Virginia. Since the shipment originated in California and ended in Virginia, GSA concluded that the interstate tariff rates should be applied across the board to all segments of the trip. The carrier challenged this action, claiming the items unloaded at Mare Island were in fact traveling purely in intrastate commerce and subject to the intrastate tariff rates. The Comptroller General noted that a portion of the shipment unloaded at Mare Island was consigned to the Naval School Command there and agreed that this portion of the shipment might well have been purely local in nature and thus would be an intrastate shipment.

In an earlier decision, also reviewing a GSA audit, the Comptroller General summarized the analysis to be made as follows:

> Whether a shipment is through or local depends upon the essential character of the movement and this character is not necessarily determined by the contract between the shipper and the carrier but the intention to move the goods to the ultimate destination from the initial point of shipment determined as a matter of law the essential nature of the entire movement.

8 Comp. Gen 509 (1929); *see also Tri-State Motor Transit Co.*, B-253445 (Apr. 20, 1994); 3 Comp. Gen. 618 (1924).

Although it is irrefutable that Arpin traveled outside the individual states with respect to the audited deliveries, it does not necessarily follow that the routes for which GSA considers BOP should pay must be deemed to be a segment of interstate commerce. Significantly, this is not a situation where the carrier attempted to inflate the mileage or charge higher rates than BOP would ordinarily be expected to pay for the deliveries. Here, the record establishes that BOP, the shipper, was seeking, and intended to pay for, only the intrastate transportation of household goods, with storage in transit at a site near the destination. It had no objection to Arpin's request to store the household goods in transit at Leavenworth, Kansas, so long as it was not charged for the extra distance or other

possible costs involved, and, indeed, Arpin did not charge for the extra mileage driven to make use of its own storage facility.

In sum, considering the totality of the facts and circumstances surrounding these transactions in light of the guidance provided by case law, we conclude that we should recognize the intrastate character of the contracted-for transaction and effectuate the shipper's intent. The approach adopted by GSA does not reflect the intent of either party to the transaction. BOP's intent was always to ship the household goods from a point within a given state to another destination in that state, with storage also within that state. This is an intrastate transaction. Neither Arpin nor BOP regarded the carrier's plan to store the household goods in Leavenworth for no extra charge as creating an interstate transaction that would result in charging interstate rates for the entire distance actually traveled, which is what the tariffs would ordinarily contemplate. This would have created a far more expensive transaction than the intrastate route that was specified for payment. Further, neither party intended that Arpin would find its revenue severely depleted by treating the intrastate legs of the trips, the only portions for which BOP agreed to pay, as interstate commerce for which the lower rates would be charged even though no payment would actually be made for any portion of the actual interstate portion of commerce that has been identified by GSA. This is simply not an example of a carrier attempting to overcharge the shipper by selecting routes to take advantage of higher rates. BOP obtained the rate to which it was entitled -- shipment of the household goods over the direct route from and to cities within one state.

Accordingly, based on the above discussion, GSA's audits cannot be sustained. The monies that GSA collected from Arpin as alleged overcharges must be returned.

CATHERINE B. HYATT
Board Judge