



UNITED STATES  
CIVILIAN BOARD OF CONTRACT APPEALS

---

May 14, 2014

CBCA 3467-RATE

In the Matter of TOTAL QUALITY LOGISTICS, LLC

Christopher M. Brown and Shawn C. Emerson, Corporate Counsel of Total Quality Logistics, LLC, Milford, OH, appearing for Claimant.

Joyce Clark, Director, and George Thomas, Jr., Chief, Disputes Resolution Branch, Transportation Audits Division, Office of Transportation and Property Management, Federal Acquisition Service, General Services Administration, Arlington, VA, appearing for General Services Administration.

**ZISCHKAU**, Board Judge.

The matter before this Board was brought under 31 U.S.C. § 3726(i)(1) (2012), which provides that a carrier or freight forwarder may request the Administrator of the General Services Administration (GSA) to review an action taken by the Transportation Audit Division of GSA's Office of Transportation and Property Management. The Administrator has delegated the review function to the Civilian Board of Contract Appeals. Rule 301 (48 CFR 6103.301 (2013)). Total Quality Logistics, LLC (TQYL) performed transportation services for GSA, transporting government freight to a GSA distribution center. TQYL billed GSA for detention charges when its carriers' trucks were detained with the freight due to the distribution center's inability timely to accept the drop off of the freight. GSA authorized and paid the detention charges but subsequently sought to recoup those charges by issuing notices of overcharges.

TQYL requests that the Board reverse the notices of overcharges. We grant TQYL's claim.

Background

TQYL is a freight brokerage service headquartered in Milford, Ohio. TQYL contracted with GSA for the delivery of government freight originating in either Berkeley,

Missouri, or Houston, Texas. The destination of each shipment was GSA's Eastern Distribution Center (EDC) in Burlington, New Jersey.

Beginning in late January 2010, TQYL representatives discussed with representatives in GSA's Office of Transportation and Property Management a recurring issue TQYL had experienced with the delivery and acceptance of GSA's shipments at the EDC. The shippers in Missouri and Texas provided fixed dates to TQYL for pick up of the government freight. Within one business day of notice of the pick up date, TQYL would contact the EDC to receive the earliest delivery drop off date that the EDC would provide. Due to a heavy influx of deliveries to its facility, the EDC was unable to accommodate reasonable drop off dates based on TQYL's pick up dates and the actual travel time. The EDC's failure to book timely delivery appointments resulted in trucks of the carriers hired by TQYL arriving between one and nine days before the EDC-assigned drop off date, and thus having the trailers detained with government freight waiting for the EDC to accept the deliveries on the drop off dates. TQYL explored various options to deal with the detention issue, including attempts to deliver to the EDC days ahead of the scheduled appointment times. However, the EDC refused to accept early deliveries.

GSA's proposed solution to this problem was to pay TQYL for the time during which it effectively tied up TQYL's equipment with the government freight. After internal discussions between GSA's traffic manager, the Director of the Center for Transportation Management, and GSA prepayment auditors, GSA determined that it would use item 325, "Detention - Vehicles with Power Units," of the GSA Standard Tender of Service (STOS) 100-D National Rules Tender to cover the detention charges. Item 325 provides in relevant part:

(1) Except as otherwise provided herein, when, due to no disability, fault or negligence on the part of the carrier, the loading or unloading of freight at or on the premises of the consignor or consignee, or at a place designated by consignor or consignee for the receipt or delivery of freight is delayed, the following rules govern:

A. If the loading or unloading of freight is delayed beyond the free time during normal business hours described in ITEM 30 DEFINITION OF TERMS herein, the charge shown in subparagraph 1 below per vehicle for each 15 minutes or fraction thereof, will be made for the time consumed for such delay:

1. \$10.25

B. Free time for loading or unloading of freight will be allowed as follows: [free time ranging from 120 minutes to 420 minutes per vehicle depending on the weight of the vehicle] . . . .

C. Time consumed in loading or unloading freight shall be computed from time of arrival until departure of the vehicle, including waiting time reaching or leaving loading or unloading location. In computing free time, actual weight loaded or unloaded from vehicle and not billed weight shall govern the computation of free time.

D. The consignor or consignee will stamp or mark the delivery receipt with time of arrival and departure, or provide a certified statement verifying this time for computation of charges and presentation by the carrier for payment.

GSA determined that this was the most appropriate procedure for assessing the detention charges, which GSA acknowledged followed from the EDC's inability to book timely appointments. In an internal email message between GSA's transportation division and its post-payment auditors dated May 7, 2012, the transportation division explained in pertinent part:

We advised TQL to itemize the charges based on the date TQL received the appointment for delivery and the date the TSP [transportation service provider] was allowed to make the delivery. The significant delays between these two time frames are what accounts for the charges.

Some background on what happened. The [GSA shipper] insisted on the pick up or tendering of the shipments and then the EDC would not book timely delivery appointments. There was a period of 5-9 days pas[t] the transit time making the delivery date rather illogical. It is not reasonable for GSA to use the TSP's vans as a storage facility when GSA insists on a pick up date and refuses to accept timely delivery. The closest option within our STOS was item 325 detention because the government was tying up the TSP's equipment. We understand this first round of several invoices would be very expensive and hope to curb behavior.

At the time of the discussions with TQL and GSA, there were only 8 or 9 shipments. Clearly the poor scheduling of functions took a while to be curbed.

The overall remedy to this was to get the [GSA shippers] to get contractual

modifications to allow for later pick up dates to match with transit time and the EDC accepting timely deliveries. I personally discussed this with the Contracting Office in Region 9 for future shipments. The EDC gets overwhelmed with more trucks than they can schedule for delivery which is why appointments are sometimes 5-9 days after the request for the appointment. However, this is an internal GSA problem and we, as transporters, can't influence. If we hold the TSP's equipment as in not accepting delivery, or setting appointments to get the vans offloaded, GSA needs to take responsibility for that.

Managers in [the transportation office] made the decision to allow this TSP to bill for detention charges because GSA would not accept the loads timely. Yes, we are aware that this is a bit different from how item 325 reads. Yet again the closest applicable service in mind. We were authorizing the billing of detention.

There were four shipments in 2010 and seventy-five shipments in 2011 for which TQYL incurred detention charges, submitted invoices for those charges, and was paid by GSA. Under the procedure arranged by GSA, TQYL was to compute its detention charges based on the interval between the time it offered delivery to EDC and the time it actually offloaded the shipment. TQYL was then to send GSA a bill of lading (BOL) and an itemized invoice including dates and hours to support its calculation of detention charges pursuant to item 325. The first three shipments for which detention charges were paid by GSA occurred in February and March 2010, and payment was made in March and May 2010. In approximately July 2010, GSA confirmed with TQYL that its invoices should reflect charges based upon the arrival time for the attempted delivery and the time of offload. The remaining shipments covered the period from October 2010 through October 2011, with GSA payments occurring between February and November 2011.

Beginning in March 2012, GSA's transportation post-payment audit division began serving TQYL with notices of overcharge. In each notice, GSA stated that the detention charge was inapplicable and directed TQYL to remit payment for the billed detention charge, plus interest, or challenge the notice of overcharge. TQYL challenged the notices of overcharges. In an April 18, 2013 letter to TQYL, GSA denied TQYL's challenges on the ground that the EDC had no knowledge of, and had never authorized charges for, any detentions billed by TQYL. As an additional basis for denial, GSA stated that TQYL had failed to furnish any documentation that would prove that the carriers' tractors and trailers remained attached during the time of the detention. With the exception of the first nine invoice payments that GSA's audit division deemed to be "authorized" charges, GSA rejected the challenges to the remaining seventy invoice payments and directed TQYL to

repay GSA an amount of \$339,895.73. By letter of May 1, 2013, TQYL requested that GSA reconsider its decision, but GSA declined to reconsider. TQYL seeks review of GSA's actions and reversal of the notice of overcharges.

The Board has conducted a number of conferences with the parties and their relevant representatives, and the parties have submitted supplemental documentation into the record. The parties request a decision on the merits based on the record as supplemented.

### Discussion

The record readily demonstrates that GSA's transportation division authorized TQYL to bill for detention under Item 325 for the shipments at issue during the period 2010 through 2011. Notwithstanding this authorization, GSA argues that the EDC did not authorize the detention charges. We see no factual or legal basis for the argument that the EDC's authorization was required. It was the EDC's inability to schedule a reasonable drop off time, when coupled with the assigned pick up date at the GSA shipper, that caused the detention problems in this case.

GSA also argues that the transportation division's authorization only extended to the first nine shipments. This argument is not supported by the record. GSA has not produced any communication that advised TQYL to cease making these shipments, to refrain from billing detention charges, or in any way giving TQYL direction as to how to prevent its carriers' equipment from being tied up holding government freight while awaiting permission to offload its shipments at the EDC. Rather, the record shows that GSA had authorized the billing of detention prior to most of the actual shipments, specified how TQYL was to invoice for the charges, approved the invoices and supporting documentation from TQYL containing the charges, made payment on the invoices, and subsequently confirmed that the detention charges under item 325 were authorized.

GSA's remaining challenge, coming a year or more after the fact, that TQYL has failed to prove for each shipment that its carriers' tractors and trailers were attached during the time of detention, is equally without merit. GSA itself had specified the documentation, including the certified bills of lading, that TQYL had to submit for payment of the detention charges. The record shows that TQYL submitted the proper documentation specified by GSA and that GSA properly paid those detention charges based on the invoices and supporting documentation. In addition, TQYL has stated that its carriers were required to maintain a sealed shipping environment and that at no time were the tractors not attached to the trailers during the detention period.

Decision

Having reviewed each of the contentions advanced by GSA, we find that its bases for the notices of overcharges are erroneous. Accordingly, the GSA notices of overcharges are invalid. We sustain TQYL's claim that it is not indebted to the Government for the \$339,895.75 asserted in the Transportation Audit Division's letter of April 18, 2013.

---

JONATHAN D. ZISCHKAU  
Board Judge