



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

November 29, 2018

CBCA 5963-RATE

In the Matter of PLATINUM SERVICES, INC.

Robert G. Rothstein of Seaton & Husk, L.P., Vienna, VA; and Carol L. O’Riordan, Anthony J. Marchese, and Kenneth A. Martin of The O’Riordan Bethel Law Firm, LLP, Washington, DC, appearing for Claimant.

George J. Thomas, Jr., Director, Transportation Audits Division, Office of Travel, Employee Relocation, and Transportation, Federal Acquisition Service, Washington, DC, appearing for General Services Administration.

David J. DiCenso, Attorney-Advisor, Military Surface Deployment and Distribution Command, Department of the Army, Scott Air Force Base, IL, appearing for Department of Defense.

BEARDSLEY, Board Judge.

Claimant, Platinum Services, Inc. (PSI), is a transportation service provider (TSP) that ships household goods for relocating service members. The Surface Deployment and Distribution Command (SDDC), the procuring agency within the Department of Defense, has issued notices of overcharge (NOCs) to PSI, alleging in whole or in part that PSI failed to utilize its full capacity when making shipments (capacity load NOCs). PSI requested reconsideration¹ of the capacity load NOCs. In response, the GSA Transportation Audit Division (TAD) reconsidered twelve of the 234 capacity load NOCs. Thereafter, GSA transferred the twelve capacity load NOCs to the Department of the Treasury for collection.

¹ PSI calls its requests for reconsideration “protests,” a term not used in the regulations.

PSI has filed this case at the Board, requesting review of TAD's reconsideration of the twelve capacity load NOCs as well as the outstanding requests for reconsideration.

TAD and SDDC both move to dismiss PSI's request for review at this Board as premature, asserting that PSI failed to exhaust administrative remedies. TAD and SDDC argue, "It is only after GSA has acted on an administrative claim that a TSP may then request a review of a settlement action by the Civilian Board of Contract Appeals under 41 CFR 102-118.650." PSI disagrees with TAD and SDDC as to what constitutes a "settlement action" for which a TSP may seek review at this Board. PSI asserts that TAD's decision on reconsideration of twelve NOCs is a settlement action reviewable by the Board. PSI requests that all of its requests for reconsideration—including those that have yet to receive a decision from TAD—be reviewed by the CBCA in one proceeding for reasons of judicial economy.

Discussion

Statutes and regulations detail the post-payment audit process for challenging the decisions of TAD, including the right to have TAD's final administrative action reviewed by this Board. After an agency submits a government bill of lading to the TSP and pays for transportation services, TAD may conduct a post-payment audit of the TSP's transportation bills. 41 CFR 102-118.405 (2017); 31 U.S.C. § 3726 (2012). As the result of a post-payment audit, the agency may issue a NOC for "charges for transportation that exceed those applicable under the executed agreement for services such as bill of lading." 41 CFR 102-118.35 (definition of "overcharge"); 41 CFR 102-118.430(f). If a TSP disagrees with a NOC resulting from a postpayment audit, the TSP can request that TAD reconsider the NOC. 41 CFR 102-118.600.

If TAD's reconsideration decision is not favorable to the TSP, but confirms the NOC, and TAD subsequently takes action to collect the amount it believes is due from the TSP, the TSP can submit an administrative claim to TAD for amounts deducted or set off by the agency that are disputed by the TSP. 41 CFR 102-118.450 (b), -118.645; 31 U.S.C. § 3726. A claim is defined as "[a]ny demand by the TSP for amounts not included in the original bill that the TSP believes an agency owes them. This includes amounts deducted or offset by an agency; amounts previously refunded by the TSP, which is believed to be owed; and any subsequent bills from the TSP resulting from a transaction that was prepayment or postpayment audited by the GSA Transportation Audits Division." 41 CFR 102-118.35.

Only if TAD allows or disallows the claim will it take a "settlement action" by issuing a GSA Form 7932 settlement certificate. 41 CFR 102-118.610, -118.620. A "settlement action" requires the issuance of a settlement certificate. 41 CFR 102-118.650; *Logistics International, Inc.*, CBCA 1255-RATE, 09-1 BCA ¶ 34,123, at 168,721 (citing *McGill*

Specialized Carriers, GSBCA 13926-RATE, 97-1 BCA ¶ 28,876, at 144,014, and *Tri-State Motor Transit Co.*, GSBCA 14352-RATE, 98-1 BCA ¶ 29,521, at 146,408); *DHL Worldwide Express*, GSBCA 16308-RATE, 04-1 BCA ¶ 32,549, at 160,989 (citing *Action Capital Corp.*, GSBCA 15772-RATE, 02-2 BCA ¶ 31,895).

A settlement certificate is the final administrative action by TAD. 41 CFR 102-118.515. Once the final administrative action occurs, by issuance of the settlement certificate, a TSP may ask the Board to review that settlement action by TAD. 41 CFR 102-118.650.

In this case, TAD's reconsideration decision confirmed twelve capacity load NOCs and TAD took action to collect the NOC amounts. Reconsideration remains pending on the other capacity load NOCs. PSI, however, has not filed an administrative claim with regard to the reconsideration of the twelve capacity load NOCs. Accordingly, without an administrative claim, there can be no settlement certificate or final administrative action. "The failure by a TSP to file its administrative claim at GSA before submitting it to the Board will result in the dismissal of that claim as premature." *Moyer & Sons Moving & Storage, Inc.*, CBCA 5012-RATE, 16-1 BCA ¶ 36,342, at 177,197-98 (citing *MJN Services, Inc.*, CBCA 3024-RATE, 13 BCA ¶ 35,254, at 173,052). Because PSI has not submitted administrative claims for the twelve capacity load NOCs, we must dismiss this portion of the case. *DHL Worldwide Express*, 04-1 BCA at 160,989. We also cannot review the other capacity load NOCs for which reconsideration remains pending.

Decision

As the TSP has not filed an administrative claim, no final administrative action has occurred. This Board does not have authority to review the issues raised in the capacity load NOCs. Accordingly, this case is **DISMISSED**.

Erica S. Beardsley

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Board Judge