



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

December 6, 2018

CBCA 6084-RATE

In the Matter of AARE LOGISTICS, LLC,

Robert J. Henry of Scopelitis, Garvin, Light, Hanson & Feary, P.C., Chicago, IL, appearing for Claimant.

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

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

GOODMAN, Board Judge.

Claimant, AARE Logistics, LLC, is a transportation service provider (TSP) who ships household goods for relocating service members. The Transportation Audits Division (TAD) of the General Services Administration (GSA) conducted post-payment audits on AARE's shipments and issued 115 Notices of Overcharge (NOCs). On October 5, 2017, claimant requested that TAD reconsider the NOCs.¹ In response to the request for reconsideration, TAD adjusted some of the NOCs and issued a decision on February 14, 2018, assessing a debt against claimant in the amount of \$286,928.06. Claimant has asked this Board to review TAD's decision of February 14, 2018.

¹ Claimant refers to its request for reconsideration of the NOCs as a "protest," a term not used in the regulations.

GSA's TAD and the procuring agency, the Surface Deployment and Distribution Command (SDDC), both move to dismiss claimant's request for review as premature, asserting that there has been no agency action that is reviewable by the Board. TAD states:

[Claimant] continue[s] to advance [its] objection of Transportation Audits findings to the Board prior to completion of the administrative claims process. The petitioner has not filed a claim with Transportation Audits, therefore, GSA has not had an opportunity to review or render a decision. By not filing a claim with Transportation Audits the petitioner has not exhausted its administrative remedies. In accordance with 41 CFR § 102-118.645, a Transportation Service Provider (TSP) may file an administrative claim involving collection actions resulting from the transportation audit performed by the GSA directly with the GSA Audit Division. If the claim is disallowed GSA will issue a settlement certificate (41 CFR § 102-118.620). 41 CFR §102-118.625 allows the TSP to request a reconsideration of the settlement action by the Administrator of General Services. 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. [citing additional precedent from this Board.]

The SDDC stated:

We join GSA in their request to dismiss. The petitioner has not yet exhausted [its] administrative remedies by filing a claim with GSA's Transportation Audits office. Until GSA has had an opportunity to review the matter and render a decision, it is premature for AARE to pursue a remedy through the CBCA. We note the provisions of 41 CFR §102-118.650, and the cited precedent provided by GSA

In response to inquiries from the Board, TAD stated: "AARE has not submitted payment to GSA and GSA Audits has not pursued nor effected collections through administrative offset. Therefore, a settlement certificate cannot be issued."

Discussion

In *Platinum Services, Inc.*, CBCA 5963-RATE (Nov. 29, 2018), we discussed the statutory and regulatory requirements for challenging the decisions of TAD, including the right to have TAD's final administrative decision 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, following the issuance of TAD's reconsideration decision, TAD has not pursued collections of the amounts assessed against claimant through administrative offset, nor has claimant filed an administrative claim with regard to the reconsideration decision. 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." *Platinum Services Inc.*, slip op. at 3 (quoting *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 claimant has not submitted an administrative claim, we must dismiss this case. *DHL Worldwide Express*, 04-1 BCA at 160,989.

Decision

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

Allan H. Goodman
ALLAN H. GOODMAN
Board Judge