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COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

B-157883

DEC 30 1965

San Diego & Arizona Eastern  
Railway Company  
65 Market Street  
San Francisco, California 94105

Attention: Vernon Baves  
Auditor

Gentlemen:

Reference is made to your letter of October 15, 1965, file YN-8-85-D-S-16629-M, received here October 19, in which you request review of our settlement certificate of October 17, 1962, which disallowed your claim (our TK-735134) for \$28.93 additional transportation charges on supplemental bill No. DS-16629-M.

For the transportation service rendered the Department of the Army, under Government bill of lading WZ-T-378144 dated April 7, 1961, you originally claimed and were paid pursuant to your bill No. FS-16629 dated May 19, 1961, the amount of \$367.91 as evidenced by voucher 341852 dated June 8, 1961, in the account of Lieutenant Colonel A. G. Perry, Army Disbursing Officer. In our audit of such payment, it was considered that an overcharge of \$92.28 had been made and you were requested to remit such amount by our notice of overcharge (Form 1003) dated June 11, 1962. Such amount was refunded by your check 59897 dated August 9, 1962, received here August 13, 1962, and that amount was deposited into the Treasury on August 17, 1962. By your supplemental bill No. DS-16629-M of March 9, 1962, you claimed \$28.93 additional charges and this claim was disallowed by the settlement certificate of October 17, 1962. You now renew your claim for the amount disallowed.

The regulations of this Office provide for review, in the discretion of the Comptroller General, of a claim settled here, upon application of the claimant or his duly authorized attorney or agent. While such regulations do not place a specific time limit upon requests for review, it is obvious in the light of the act of August 26, 1958, 72 Stat. 860, 49 U.S.C.A. 66, generally barring transportation claims against the Government more than three years old, that an indefinite time may not be allowed, and that a request for review should be received within a reasonable time from the date of settlement. Without attempting a strict definition of what would constitute a reasonable

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time in all cases, we cannot regard as timely the subject request which was received here more than three years after the settlement was issued. Considering your letter, therefore, as a request for review of the subject settlement, review is denied because the request was not timely filed.

Viewing your letter as a new claim in connection with the transportation services in question, we are unable to consider it on the merits because of the expiration of the statutory time period governing the jurisdiction of this Office. At present, as well as at the time the services in question were performed, the settlement functions of this Office concerning claims for transportation services are and were governed by the act of August 26, 1958, 72 Stat. 860 (49 U.S.C.A. 66).<sup>X</sup> That act forever bars every claim against the United States cognizable by the General Accounting Office for transportation charges within the purview of such section unless such claim is received in our Office within three full years from the date of (1) accrual of the cause of action thereon, or (2) payment of charges for the transportation involved or (3) subsequent refund for overpayment of such charges, or (4) deduction of the overcharge from amounts subsequently found due the carrier, whichever is later. The transportation was completed, payment was made and refund effected, more than three years before receipt of your letter of October 15, 1965. It follows, therefore, that if your letter is viewed as a new claim, it is barred under the cited statute, and we are precluded from making any further allowance thereon.

Very truly yours,

FRANK H. WEITZEL

Acting Comptroller General  
of the United States



UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

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TRANSPORTATION DIVISION  
IN REPLY PLEASE QUOTE

December 30, 1965  
DEC 15 1965

B-157883-O.M.

T-SR-013036-FJMcC

The General Counsel

Reference is made to your 1st indorsement of October 25, 1965, B-157883, transmitting a letter from the San Diego & Arizona Eastern Railway Company dated October 15, 1965, wherein the carrier protests the settlement dated October 17, 1962 (TK-735134), by which we disallowed its supplemental bill No. D-S-15629-M April 1961, in the amount of \$28.93. The claim involved the so-called "Storage in Transit-Lyoth, California" issue which dealt with the question of whether section 22 quotation tender EC-WTA No. 67-A (WTA-67A) permitted application of the transit privilege in the manner sought by the Government.

Although not specifically so stated by the carrier, it appears to be claiming the additional charges on the basis of the adverse decision to the Government in the case of Southern Pacific Company v. United States, Ct. Cl. No. 13-62 (B-147969). There the Court of Claims held that the Government was not permitted under WTA No. 67-A to use transit credits created by inbound rail shipments as a credit on payment of outbound rail shipments that had moved into the depot by truck. The Department of Justice advised in its letter of April 15, 1965, that no further action would be taken with respect thereto, and on May 10, 1965, we certified the judgment claim for payment.

We have prepared and placed in the claim jacket a worksheet which shows the carrier to be due the amount claimed and, while there is no argument now between this Office and the carrier as to the rates and charges, a question arises as to the time limitation within which this Office may review a protest to settlement action. The record shows that the carrier previously claimed by its supplemental bill dated March 9, 1962, this amount and that its claim was disallowed by settlement certificate dated October 17, 1965, for the reasons stated therein. Now, three years later, its protest letter having been received in this Office on October 19, 1965, the carrier asks for reconsideration. In this respect see B-153369-O.M., dated September 14, 1964, wherein this Division was informed that--

"\* \* \* As to the period of time within which this Office should entertain protests to or requests for review of settlements, a definite statement of factors to be considered will have to be reserved for determination in individual cases since the exercise of discretion would depend upon the varying circumstances of each case."

T-SR-013036-FJMcC

If a carrier is allowed an indiscriminate length of time in which to protest a settlement action it conceivably could, upon a favorable decision by a court, revive claims which it and this Office, prior to the court's decision, considered closed. In the present case, no Form T-109, or other communication, was sent to the carrier which would in any way indicate that this Office considered the claim held in abeyance pending the outcome of the Southern Pacific case.

In the event it is held that the carrier's protest is timely filed, we propose, with your approval, to allow the carrier the amount claimed.

Paul T. Smith

For Director

Enclosures  
FJMcC/dbn

Indorsement

DEC 30 1965

B-157883-O.M.

Director, Transportation Division

Returned. See the attached copy of our letter of today to the carrier, in view of which no further action by your Division appears, on the present record, to be necessary.

FRANK H. WEITZELActing Comptroller General  
of the United States

Attachments