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DECISION

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

10,221

FILE: B-193727

DATE: May 18, 1979

MATTER OF: Y.W. & T. Metal Corporation

DLG 01614

DIGEST:

Where carrier without required Interstate Commerce Commission operating authority performs interstate transportation services on Government bill of lading, its properly certified voucher for those services may be paid on quantum meruit basis.

DLG 01370

Marilyn N. Barclay, an authorized certifying officer of the Mine Safety and Health Administration (MESA), United States Department of Labor, requests an advance decision pursuant to 31 U.S.C. § 82d (1976). Her question concerns the propriety of paying freight charges totaling \$71,987 for the transportation in January 1975 of heavy and bulky Government equipment, weighing a total of 719,870 pounds, on Government bill of lading (GBL) No. L-0097820 by Y.W. & T. Metal Corporation (Y.W. & T.) from Barstow, California, to Casa Grande, Arizona, in conjunction with the operation of a training institute under a Government grant.

The specific voucher which gives rise to the question was not submitted with the request. See 52 Comp. Gen. 83 (1972). See, also, 41 C.F.R. 101-41.302-1(m) (1978), which prescribes SF-1113, Public Voucher for Transportation Charges, for use in billing for transportation services performed on GBLs.

A copy of GBL No. L-0097820, which is illegible in part, together with copies of other documents, have been provided in support of the claim. The Department of Labor advised this Office informally that the location of the original GBL is unknown. In this connection, see 41 C.F.R. 101-41.307-1 (1978), which provides that when the original of the regular GBL has been lost or destroyed, the billing carrier shall use the original freight waybill, properly certified by the issuing office and by the carrier, as a substitute document for billing the charges.

The Interstate Commerce Commission has advised us informally that in January 1975 Y.W. & T. was not authorized to transport property in interstate commerce as required by the Interstate Commerce Act, 49 U.S.C. 1 et seq. (1976).

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Contracts in violation of the Interstate Commerce Act have been held to be unenforceable; Berger v. Dynamic Imports, Inc., 274 N.Y.S. 2d 537 (N.Y.C. Civ. Ct. 1966). Contra: Ets-Hokin & Galvan, Inc. v. Maas Transport, Inc., 380 F.2d 258, 260 (8th Cir. 1967) cert. den. 389 U.S. 977 (1967). Some courts have held such contracts to be void. Van-Pak, Inc. v. Cavalier Storage Corp., 208 A.2d 620, 622 (D.C. Ct. App. 1965); Shirks Motor Express Corp. v. Forster Transfer & Rigging Co., 133 A.2d 59, 64 (Md. 1957).

We have adopted the view expressed in the Berger case: that even though the contract is unenforceable, the carrier can recover quantum meruit for its services because the shipper has received the benefit of those services. See Shannon Spring Bed Manufacturing Co. v. North American Van Lines, Inc., 61 M.C.C. 73 (1952). And we normally measure quantum meruit by using the usual or going rates of other duly authorized carriers for the same or similar services.

The record shows that an official of MESA contacted the Transportation Audit Branch of the General Services Administration to obtain the usual rates for the services performed by Y.W. & T. Rates and charges derived from Heavy and Specialized Carriers Bureau Tariff No. 100-F, ICC MF-ICC No. 36, produced total freight charges of \$14,044.14.

In these circumstances, we are returning the file we received to the certifying officer. If Y.W. & T. presents to the certifying officer a properly certified Public Voucher For Transportation Charges, SF-1113, supported by the original U.S. Government Freight Waybill, SF-1105, certified as required by 41 C.F.R. 101-41.307-1, the voucher may be certified for payment of \$14,044.14, if otherwise correct.


Deputy Comptroller General
of the United States