



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

May 5, 2010

CBCA 1317-RATE

In the Matter of UNION PACIFIC RAILROAD

Rebecca B. Gregory and Raymond J. Hasiak of Union Pacific Railroad, Omaha, NE, appearing for Claimant.

Mary C. Bates, Acting Director, Transportation Audits Division, Office of Travel, Motor Vehicles & Card Services, Federal Acquisition Service, General Services Administration, Arlington, VA; and Aaron J. Pound, Office of General Counsel, General Services Administration, Washington, DC, appearing for General Services Administration.

John M. Dowling, Office of the Staff Judge Advocate, Headquarters, Military Surface Deployment and Distribution Command, Department of the Army, Scott Air Force Base, IL, appearing for Department of Defense.

GILMORE, Board Judge.

The General Services Administration (GSA) has moved for reconsideration of the Board's decision refunding to Union Pacific Railroad (UP) the amounts deducted from UP's accounts for alleged rate overcharges for services provided to the Department of Defense. *Union Pacific Railroad*, CBCA 1317-RATE, 10-1 BCA ¶ 34,312 (2009). In that case, the Board concluded that deductions for "overcharges" for transportation services are required under 31 U.S.C. § 3726(d) to be made no later than three years after the bills were paid. Because the deductions in issue were taken by GSA after the three-year period had run, the Board determined that the deductions were untimely and that the amounts should be refunded to UP. The Board rejected GSA's argument that if deductions were not taken under 31 U.S.C. § 3726(d) within the three-year period, the amounts could still be offset under 31 U.S.C. § 3716 within the ten-year period provided under that statute for administrative offsets.

GSA contends that the Board in its decision did not address GSA's argument that there are two distinct methods for effecting an offset and that the three-year deduction period applies only to the external "deduction" method set forth in 41 CFR 102-118.640(b). GSA argues that if it uses the internal "administrative offset" method under 41 CFR 102-118.640(a) to effect an offset, it has ten years to do so. UP asks the Board to deny the motion for reconsideration, stating that the Board addressed the statute and regulations in issue and concluded that they required the Government to "offset" or "deduct" rate overcharges within three years after the bills were paid. UP contends that GSA is merely reiterating its argument that there is a distinction between an "offset" and a "deduction." We deny GSA's request for reconsideration because GSA has not presented sufficient grounds to warrant reconsideration under the Board's rules.

Discussion

As we have held in the context of appeals of contracting officer decisions, "[a]rguments already made and reinterpretations of old evidence are not sufficient grounds for granting reconsideration." *Tidewater Contractors, Inc. v. Department of Transportation*, CBCA 50-R, 07-2 BCA ¶ 33,618. Nor is reconsideration to be used to retry a case or introduce arguments that could have been made previously. *Beyley Construction Group Corp. v. Department of Veterans Affairs*, CBCA 5-R, et al., 08-1 BCA ¶ 33,784.

GSA is again asking the Board to accept its interpretations of various regulations relating to administrative offsets while ignoring the plain language in 31 U.S.C. § 3726(d) which clearly limits the Government's right to offset any rate "overcharge" to three years after the bill is paid. The language in 31 U.S.C. § 3726(d) does not distinguish between making a deduction by an internal method or an external method. GSA also ignores the decisions of the Comptroller General, who decided these claims prior to the GSA Board of Contract Appeals and this Board, in which the Comptroller General concluded that the Government is precluded from deducting overcharges once the three-year period has run. GSA wants the Board to recognize a regulatory scheme that establishes two distinct offset methods for rate "overcharges" that have two different time limits to effect an offset. As we previously decided, this would be contrary to 31 U.S.C. § 3726(d), in which Congress carved out transportation rate "overcharges" as a special category of debt, to be handled in a different manner than ordinary debt, by placing a three-year limit on the time the Government could effect an offset once the bill was paid.

Decision

In conclusion, GSA has not provided sufficient grounds for the Board to reconsider its decision. Accordingly, GSA's motion for reconsideration is denied.

BERYL S. GILMORE
Board Judge