



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

July 2, 2010

CBCA 1637-RATE

In the Matter of LOGISTICS INTERNATIONAL, INC.

Alan F. Wohlstetter, Gwynedd, PA; and Stanley I. Goldman, Potomac, MD, appearing for Claimant.

Mary C. Bates, Director, Audits Division, Office of Travel and Transportation Services, Federal Acquisition Service, General Services Administration, Arlington, VA, appearing for General Services Administration.

Lt. Col. Sheila McDonald, Staff Judge Advocate, Surface Deployment and Distribution Command, Department of the Air Force, Scott Air Force Base, IL, appearing for Department of Defense.

KULLBERG, Board Judge.

The matter before this Board was brought by Logistics International, Inc. (LII) under 31 U.S.C. § 3726(i)(1) (2006), which provides that a freight forwarder may request review of an action taken by the Audits Division of the General Services Administration's (GSA's) Office of Travel and Transportation and Services. LII contends that GSA took deductions for overcharges beyond the three-year period allowed under 31 U.S.C. § 3726(d) and seeks a refund of those deductions that total \$12,216.83. GSA contends that its rights as a creditor are not extinguished by the three-year limitations period. In light of the Board's decision in *Union Pacific Railroad*, CBCA 1317-RATE, 10-1 BCA ¶ 34,312 (2009), *motion for reconsideration denied*, 10-1 BCA ¶ 34,435, the Board finds that GSA improperly took deductions beyond the three-year limitations period and those deductions must be refunded.

Background

GSA issued notices of overcharges (NOCs) during 2004 for payments made to LII on thirty-one government bills of lading (GBLs). Payments to LII on the GBLs, which were issued by the Department of the Army, were made on various dates during 2002 and 2003. During February 2008, GSA deducted overcharges on the GBLs that totaled \$12,216.83. The relevant information, including the GBL number, the date of payment, the amount paid, and the amount of each deduction, is summarized as follows:

GBL No.	Date Paid	Amount Paid	Date of Offset	Amount of Offset
GQ100391	4/1/03	\$2222.94	2/15/08	\$568.65
GQ100330	1/23/03	\$553.19	2/15/08	\$158.80
GQ100396	2/13/03	\$6371.29	2/15/08	\$1508.18
C5969538	5/15/02	\$17,482.75	2/15/08	\$223.72
GQ100307	1/23/03	\$930.90	2/15/08	\$241.38
GQ100301	1/23/03	\$315.54	2/15/08	\$45.40
GQ098091A	1/13/03	\$823.24	2/22/08	\$220.27
GQ100331	1/23/03	\$669.45	2/15/08	\$210.29
GQ100434	4/1/03	\$2128.91	2/15/08	\$978.46
GQ098100	1/23/03	\$459.46	2/15/08	\$55.41
GQ100238	1/23/03	\$218.22	2/15/08	\$25.60
GQ100312	1/23/03	\$266.35	2/15/08	\$96.83
GQ100442	4/11/03	\$8136.96	2/22/08	\$2823.72
GQ098074	1/23/03	\$353.01	2/15/08	\$42.84
GQ098074A	1/23/03	\$353.01	2/15/08	\$44.34
GQ100329	1/23/03	\$724.40	2/15/08	\$114.21
GQ100306	1/23/03	\$903.06	2/15/08	\$121.99
GQ100311	12/9/02	\$1449.06	2/15/08	\$395.68

GBL No.	Date Paid	Amount Paid	Date of Offset	Amount of Offset
GQ098096	12/6/02	\$853.35	2/15/08	\$362.68
GQ098061	12/6/02	\$672.13	2/15/08	\$241.81
GQ097806	7/17/02	\$6552.36	2/15/08	\$433.45
GQ100316	1/23/03	\$556.01	2/15/08	\$166.11
GQ098296	4/1/03	\$2176.44	2/22/08	\$159.98
GQ100437	4/1/03	\$2212.80	2/15/08	\$570.22
GQ098093	1/23/03	\$908.80	2/22/08	\$704.78
GQ100320	1/23/03	\$634.49	2/15/08	\$178.96
GQ100376	2/21/03	\$439.63	2/22/08	\$391.31
GQ098077	12/6/02	\$2057.93	2/15/08	\$676.66
JP581072	1/15/03	\$1197.04	2/15/08	\$380.96
GQ100302	1/23/03	\$244.55	2/15/08	\$28.74
GQ098081	1/23/03	\$315.32	2/15/08	\$45.40
			Total:	\$12,216.83

GSA issued settlement certificates with regard to each of the above listed deductions on June 18, 2009. Each settlement certificate had the following language:

The Government has the same right “which belongs to every creditor, to apply the unappropriated moneys of his debtor, in his hands, in extinguishment of the debts due him.” *United States v. Muns[e]y Trust of Washington*, 332 U.S. 234, 238 (1947). Statutory authority for GSA’s offset procedure based on this right is granted in the Federal Claims Collection Act. The rights under the act are not extinguished by 31 U.S.C. 3726(d)[.] *Burlington Northern v. United States*, 462 F.2d 526, 529 (Ct. Cl. 1972).

On July 2, 2009, LII brought its claim for a refund of all of the amounts offset.¹

Discussion

The parties do not dispute that a period of more than three years passed between the date of payment and the date that a deduction was taken for overpayment for each of the GBLs that is at issue in this matter. LII contends that “it is entitled to recover the monies offset because GSA is time-barred from offsetting overcharges more than three years after the date of payment by 31 U.S.C. § 3726(d).” Claimant’s Response at 1. GSA contends that “[u]nder 31 U.S.C. § 3716, the Government is authorized to effect administrative offset using common-law precedents separately and distinctly from any limitations in other statutes. This includes 31 U.S.C. § 3726 which clearly limits the narrowly defined ‘deduction action.’” Government’s Response at 5.

Under 31 U.S.C. § 3726, the Administrator of GSA has the authority to conduct audits of payments previously made to freight forwarders and deduct the amount of any overpayment from subsequent payments. That statute, however, also provides that “[n]ot later than 3 three years (excluding time of war) after the a bill is paid, the Government may deduct from an amount subsequently due a carrier or freight forwarder an amount paid on the bill that was greater than the rate allowed.” *Id.* § 3726(d). The applicable regulation, 41 CFR 102-118.640(b) (2007), states that “[a] 3-year limitation applies on the deduction of overcharges from amounts due a [transportation service provider] (31 U.S.C. [§] 3726).”

This matter involves the same issue that the Board decided in *Union Pacific Railroad*, in which the Board discussed in detail and rejected GSA’s contention that it has the authority to collect overcharges beyond the three-year limitations period set forth in 31 U.S.C. § 3726(d). The Board stated the following:

The three-year deduction limitation for overcharges under 31 U.S.C. 3726(d) is clear and unambiguous. Although the issue of whether the Government can deduct the alleged debt once the three-year period has run is one of first impression for this Board, the Comptroller General, who decided these claims prior to the GSA Board of Contract Appeals and this Board, addressed this

¹ LII’s previous claim before the Board was filed before GSA issued settlement certificates, and the Board dismissed the claim as premature. *Logistics International, Inc.*, CBCA 1255-RATE, 09-1 BCA ¶ 34,091 (2008), *motion for reconsideration denied*, 09-1 BCA ¶ 34,123.

issue in a number of reviews under the same statute. The Comptroller General concluded that the three-year statute of limitations for overcharges precludes the Government from deducting the overcharged amount once the three-year period has run. *Double M Transport*, B-236378 (Feb. 6, 1991) (statute precludes deduction of overcharges after three years but does not apply to loss or damage claims); *Mike Meadors Trucking*, B-225138 (May 22, 1987) (Government in error in deducting carrier's debt three years after payment); *Trans Country Van Lines, Inc.*, B-188647 (Dec. 28, 1977) (deduction not authorized after three years is a nullity).

10-1 BCA at 169,492. It was recognized by the Board that the clear intent of Congress in enacting the statute now codified at 31 U.S.C. § 3726(d) was to “treat the Government’s collection of transportation ‘overcharges’ in a specific and distinctive manner.” *Id.* at 169,493. Consequently, the Board rejected GSA’s argument that it could collect by offset overcharges under 31 U.S.C. § 3716, which has a ten-year limitations period, in that doing so “makes the three-year limitation in 31 U.S.C. § 3726 meaningless.” *Id.* The Board ruled that GSA had improperly deducted overcharges beyond the three-year limitations period set forth under 31 U.S.C. § 3726(d). *Id.*

As was the case in *Union Pacific Railroad*, GSA contends in this matter that it has the right to collect overcharges by means of an offset more than three years after payment. This Board recognized in *Union Pacific Railroad* that deducting an overcharge beyond the three-year limitation period is a “nullity.” 10-1 BCA at 169,492 (citing *Trans Country Van Lines, Inc.*, B-188647 (Dec. 28, 1977)). A nullity is “a cause which the opposite party may treat as though it had not taken place, or which has absolutely no legal force or effect.” *Black’s Law Dictionary* 963 (5th ed. 1979). Although GSA attempts to justify deducting overcharges beyond the three-year limitations period under 31 U.S.C. § 3726(d) by calling an overcharge a “debt” and the deduction an “offset,” GSA’s action is a nullity with no legal force or effect. LII, consequently, has met its burden of proof in this matter in that it has been shown without dispute that the deductions made in connection with all thirty-one GBLs were beyond the three-year period allowed under 31 U.S.C. § 3726(d).

Decision

The Board finds that GSA improperly deducted overcharges totaling \$12,093.71 on thirty-one GBLs, and GSA must refund that amount.

H. CHUCK KULLBERG
Board Judge