



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

November 2, 2010

CBCA 2014-RATE

In the Matter of ABF FREIGHT SYSTEM, INC.

Scooter Sayers, Traffic Services Director of ABF Freight System, Inc., Fort Smith, AR, appearing for Claimant.

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

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

SHERIDAN, Board Judge.

This matter was brought by a transportation service provider (TSP), ABF Freight System, Inc. (ABF), under 31 U.S.C. § 3726(i)(1) (2006), which provides that a TSP may request review of an action taken by the Audits Division of the General Services Administration's (GSA's) Office of Travel and Transportation Services. ABF contends that GSA improperly assessed \$379.64 in interest charges on several notices of overcharges (NOCs) filed against ABF. The Board finds that, pursuant to the terms and conditions that applied to the transportation documents (TDs) in issue, GSA properly charged ABF \$379.64 in interest on the overcharges pertaining to those TDs.

Background

At various times during 2007 and 2008, ABF was issued and received payments on several TDs, including five bills of lading (BLs), nine electronic invoices (EIs), and two transportation service orders (TSOs). Each TD, or the rate tender made to the agency pursuant

to which a particular TD was issued, provided that the shipment was subject to the terms and conditions set forth in 41 CFR 102-117 (Transportation Management Regulation) or 41 CFR 102-118 (Transportation Payment and Audit Regulation), or both.¹

The terms and conditions which are pertinent to this matter involving the accrual of interest are set forth in 41 CFR 102-117.65 which provides, *inter alia*,

Interest shall accrue from the voucher payment date on overcharges made and shall be paid at the same rate in effect on that date as published by the Secretary of the Treasury according to the Debt Collection Act of 1982, 31 U.S.C. 3717.

41 CFR 102.117.65 (c) (2007 & 2008) (emphasis added).² The terms and conditions set forth in 41 CFR 102-117.65 are mandatory for all TDs. 41 CFR 102-118.135, -118.140.

Subsequently, during 2009 and 2010, GSA performed post payment transportation audits on the TDs at issue and found overcharges on the part of ABF. GSA issued several NOCs against ABF, notifying it of the overcharges relating to the applicable TDs. Each NOC provided:

¹ BL N0,578,240 provided: "This government shipment is subject to the terms and conditions of 41 CFR 102-117." Three BLs, N0,776,485; N0,776,492; and N0,797,694, provided: "This government shipment is subject to the terms and conditions of 41 CFR 102-117 & 102-118." BL ZX,915,993 provided: "This bill of lading is governed by the regulation relating thereto as published in Title 41, Part 102-118 of the Code of Federal Regulations. Terms and Conditions are also contained in the tender of service." The rate tenders related to the nine EIs each included the following standard statement: "The transportation provider(s) (TSP) represent(s) to the United States that the services provided in this tender will be performed in accordance with applicable Federal, state and municipal laws and regulations including Federal Management Regulations, 41 CFR 102-117 and 102-118." The two TSOs provided: "This U.S. shipment is subject to the terms and conditions of 41 CFR 102-117 and 102-118."

² The language specifying that "interest shall accrue from the voucher payment date," was, for many years, printed on the back side of all government BLs (Optional Forms 1103 and 1203). Optional Forms 1103 and 1203, and government BLs generally, were phased out around 2002 in favor of commercial BLs and other forms of electronic commerce. 41 CFR 102-117.25, -117.85, -117.90, -117.95.

IN ACCORDANCE WITH THE DEBT COLLECTION ACT OF 1982 (31 U.S.C. 3711 ET SEQ.), GSA HAS THE AUTHORITY TO CHARGE INTEREST COSTS AGAINST COMMERCIAL DEBTORS. CURRENTLY INTEREST IS CHARGED AUTOMATICALLY UNDER THE DEBT COLLECTION ACT FROM THE DATE OF GSA'S NOTICE OF OVERCHARGE. ADDITIONALLY, IF THE GBL [GOVERNMENT BILL OF LADING] OR THE GTR [GOVERNMENT TRANSPORTATION REQUEST] CONTAINS A CONTRACT PROVISION RELATING TO THE ASSESSMENT OF INTEREST THEN INTEREST IS CHARGED UNDER THE CONTRACT TERMS THEREOF, I.E., THE ORIGINAL INVOICE PAYMENT DATE. IF NEITHER CONTAINS SUCH A PROVISION, THEN INTEREST IS ASSESSED UNDER THE DEBT COLLECTION ACT (31 U.S.C. 3717) AND THE FEDERAL CLAIMS COLLECTION STANDARDS (41 CFR PART 101-105), AND REGULATIONS PUBLISHED IN 41 CFR PART 105-55.

It is clear from the record that ABF paid the amounts for the overcharges within thirty days of the issuance of the NOCs, but not within thirty days of the applicable voucher payment dates relating to the NOCs.

ABF contests the \$379.64 in interest charged against it, arguing that, pursuant to the Debt Collection Act of 1982 (DCA), GSA is not permitted to charge interest if the carrier pays a NOC within thirty days of receiving it. GSA argues that the \$379.64 in interest charged against AFB was calculated using the various voucher payment dates, and that pursuant to the terms of the TDs, these were the proper dates for calculation of applicable interest on the overcharges.

Discussion

The DCA provides for the payment of appropriate interest on debts owed to the Government. 31 U.S.C. § 3717 (2006). In addressing interest and penalties on claims, section 3717 provides in pertinent part:

(b) Interest under subsection (a) of this section accrues from the date—

....

(2) notice of the amount due is first mailed to the debtor

....

(d) Interest under subsection (a) of this section may not be charged if the claim is paid within 30 days after the date from which interest accrues under subsection (b) of [the Act].

....

(g) This section does not apply--

(1) if a statute, regulation required by statute, loan agreement, or contract prohibits charging interest or assessing charges or explicitly fixes the interest or charges.

31 U.S.C. § 3717.

Section 3717 of the DCA provides authority for charging interest on debts owed to the Government.³ Where a contract contains a clause mandating the payment of interest, it is that clause, and not the DCA, that serves as the authority for the Government to assess the interest due. 31 U.S.C. § 3717(g)(1); *Advanced Injection Molding, Inc. v. General Services Administration*, GSBCA 16504-R, 05-2 BCA ¶ 33,097 (referencing *Westchester Fire Insurance Co. v. United States*, 52 Fed. Cl. 567, 584-87 (2002)). See also *DKW Construction, Inc. v. General Services Administration*, CBCA 438, 08-1 BCA ¶ 33,755 (2007). Ergo, section 3717 of the DCA applies only where a contract vehicle fails to address payment of interest on a government claim.

Each of the contract vehicles in issue here referenced the terms and conditions set forth in 41 CFR 102-117, 41 CFR 102-118, or both, that provide for the accrual of interest as of the voucher payment date. We note that the TSP does not assert it was unaware of the terms providing for the accrual of interest as of the voucher payment date. Rather, ABF takes the position that reading section 3717 (b) and (d) of the DCA together provides that “interest may not be charged if the claim is paid within 30 days after the . . . date notice of the amount due is first mailed to the debtor.” ABF asserts:

³ It has been well established that the Government also has a common law right to interest on a debt owed to it even in the absence of a statute or a contract clause expressly providing a right to interest. *Swartzbaugh Manufacturing Co. v. United States*, 289 F.2d 81, 84-85 (6th Cir. 1961); *Asheville Contracting Co.*, DOT CAB 78-29, 79-2 BCA ¶ 13,898; *Read Plastics, Inc.* GSBCA 4159, et al., 77-2 BCA ¶12,859; *Harrisville Heights, Inc.*, ASBCA 20707, 77-1 BCA ¶ 12,358.

Section (d) [of the DCA] states that “interest may not be charged if the claim is paid within 30 days after the date from which interest accrues under subsection (b) of this section.” Note that the verbs “charged” and “accrues” are both used in this sentence and these verbs have completely different definitions. One is transitive while the other is intransitive. The fact that an amount has accrued does not mean it is owed.

ABF’s position is not compelling. The DCA in clearly provides in subsection (g) that when a contract explicitly fixes the interest or charges, section 3717 does not apply. The interest relief contained in section 3717(d) is not applicable here because the contract vehicles addressed interest and charges, taking the TDs outside of section 3717.

Decision

Based on the foregoing analysis, the Board finds that GSA properly charged ABF \$379.64 in interest on the applicable overcharges.

PATRICIA J. SHERIDAN
Board Judge