



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

March 4, 2013

CBCA 3024-RATE

In the Matter of **MJN SERVICES, INC.**

Steven Jardine, Vice President of MJN Services, Inc., Orem, UT, appearing for Appellant.

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

Clayton M. Buchner, Acquisition Attorney/Procurement Fraud Advisor, Surface Deployment and Distribution Command, Department of the Army, Scott Air Force Base, IL, appearing for Department of Defense.

STERN, Board Judge.

ORDER

Claimant, MJN Services, Inc. (MJN), appeals the deduction by the General Services Administration (GSA) of certain amounts that GSA classifies as overcharges by MJN for shipments made by MJN for the United States Army (Army).

Subsequent to the shipments made by MJN, GSA performed an audit of MJN's shipping charges and determined that MJN had overcharged for the shipments. On August 3, 2011, MJN protested the overcharge findings and asked GSA to allow the charges. After an exchange of correspondence, the "Chief, Disputes Resolution Branch, Transportation Audits Division" notified MJN by email on April 23, 2012, that all of the notices of overcharges were valid. On May 2, 2012, this same individual sent another email message to MJN listing

all of the overcharges, totaling \$46,049.30, and stating, “All protest [sic] were reviewed and denied [T]herefore these are valid overcharges and need to be resolved soonest.” The letter concluded that GSA would go to “Treasury for collection” if the overcharges were ignored. Subsequently, MJN appealed to the Board.

GSA requests dismissal of the appeal. Initially, GSA informed the Board that MJN had not filed a claim and protested the notice of overcharges with its audit division. The Army agreed with GSA’s assertion. GSA subsequently revised its position and now states that MJN did in fact appeal the notices of overcharges. Instead, GSA now argues that MJN has not fulfilled the regulatory requirement to request reconsideration of the settlement action by GSA. Absent exhaustion of MJN’s available administrative remedies, GSA argues that the matter should be dismissed.

Discussion

We are governed by the regulatory provisions which provide the Board with jurisdiction over claims filed by a transportation service provider (TSP). The regulations provide that a TSP that disagrees with a notice of overcharge may request review by the GSA audit division. If the claim is disallowed, as in the matter before us, the TSP may request review by the Administrator of General Services. 41 CFR 102-118.600, .625 (2011). The regulations provide that this Board only obtains jurisdiction in these matters over determinations made by the GSA Administrator. 41 CFR 102-118.650; *see McGill Specialized Carriers*, GSBCA 13926-RATE, 97-1 BCA ¶28,876; *Tri-State Motor Transit Co.*, GSBCA 13896-RATE, 97-1 BCA ¶28,873.

MJN has failed to seek review by the Administrator of General Services. Such a request is a prerequisite to the Board’s jurisdiction over this matter. MJN’s failure to seek that review deprives the Board of such jurisdiction. Accordingly, we dismiss the claim, without prejudice, as premature.

JAMES L. STERN
Board Judge