



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

March 12, 2013

CBCA 3098-RATE

In the Matter of CONTINENTAL AIRLINES CARGO/UTI WORLDWIDE

Beverly Lee, Manager, Government & Military Sales, of Continental Airlines Cargo, Chicago, IL; and Blaine Kurtz, Global Vice President, Aerospace Defense Group, of UTi Worldwide, Winchester, VA, appearing for Claimant.

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

Maj. Sandra K. Whittington, Commercial Law and Litigation Directorate, Department of the Air Force, Joint Base Andrews, MD, appearing for Department of the Air Force.

WALTERS, Board Judge.

Claimant, Continental Airlines Cargo/UTi Worldwide, seeks the Board's review of a decision by the General Services Administration (GSA) affirming a denial by the Department of the Air Force (Air Force) contracting officer with respect to a request for equitable adjustment of a one-time-only (OTO) quote under tender number CAZQ-0024.00 for expedited air cargo services from the Defense Logistics Agency (DLA) Distribution Depot, Susquehanna, Pennsylvania, to Benghazi, Libya. In response to an inquiry about this rate matter's prior history, the Board has been advised by the Air Force that the matter is also the subject of an appeal before the Armed Services Board of Contract Appeals (ASBCA) under the Contract Disputes Act, 41 U.S.C. §§ 7101-7109 (Supp. IV 2011) (CDA), and that the ASBCA presently is considering an Air Force motion to dismiss that appeal for lack of jurisdiction under the CDA.

For its part, GSA has informed the Board that it has considered claimant's request for equitable adjustment and has rejected the claim three times, the latest rejection by letter dated February 8, 2012. It appears that GSA, though asking the Board to deny the appeal, is really seeking that claimant's request for administrative review be dismissed as untimely, since claimant's request for review had not been received by the Board within six months of GSA's February 8, 2012, action.

In support of its position, GSA relies on the time limitation for Board review specified in the applicable regulation, 41 CFR 102-118.655 (2011). As explained below, the Board finds claimant's request for review to be timely.

Discussion

This Board provides review of rate matters on behalf of and under delegation from the Administrator of General Services. Although the regulation governing our ability to assert jurisdiction in these matters is time limited, the six-month bar alluded to by GSA regarding transportation service provider (TSP) requests to this Board for administrative review does not always preclude the Board from exercising its jurisdiction. More particularly, 41 CFR 102-118.655 provides, in part, as follows:

Are there time limits on a TSP request for an administrative review by the CBCA?

(a) Yes, the CBCA must receive a request for review from the TSP within six months (not including time of war) from the date the settlement action was taken [by GSA] *or within the periods of limitation specified in 31 U.S.C. 3726, as amended, whichever is later.* [Emphasis added.]

The statute called out in the regulation likewise indicates that the time bar for such review may well be beyond six months. In this regard, 31 U.S.C. § 3726(i) (2006) states: "A carrier or freight forwarder may request the Administrator of General Services to review the action of [GSA] if the request is received not later than 6 months (excluding time of war) after [GSA] acts *or within the time stated in subsection (c) of this section, whichever is later.*" (Emphasis added). Subsection (c), in turn, makes plain that a claimant may pursue a claim "if it is received by [GSA] *not later than 3 years (excluding time of war) after . . . (A) the date of accrual of the claim.*" (Emphasis added).

In the present case, the claim could not have accrued prior to September 2011, when the contract was negotiated and performed. Under such circumstances, the Board would have jurisdiction to address a request for review, so long as it was received before September 2014, which it was. Accordingly, we find the request for the Board's

administrative review in this case to have been timely.

Because it appears that the record needs further development in order for the Board to render its decision, the matter will proceed. A telephone conference with the parties' representatives will be arranged to establish a schedule for additional submissions.

RICHARD C. WALTERS
Board Judge