



UNITED STATES
CIVILIAN BOARD OF CONTRACT APPEALS

April 25, 2017

CBCA 5663-RATE

In the Matter of LOGISTICS PLUS, INC.

Steve Srnka, Compliance Attorney of Logistics Plus, Inc., Erie, PA, appearing for Claimant.

George J. Thomas, Jr., Director, Transportation Audit Division, Office of Travel and Transportation Services, Federal Acquisition Service, General Services Administration, Washington, DC, appearing for General Services Administration.

David J. DiCenso, Attorney-Advisor, Military Surface Deployment and Distribution Command, Department of the Army, Scott Air Force Base, IL, appearing for Department of Defense.

DANIELS, Board Judge (Chairman).

Logistics Plus, Inc. (LPI) brokered a carrier to deliver a shipment on behalf of the Department of Defense (DoD) from Massachusetts to South Carolina in October 2016. Delivery was delayed because the facility in South Carolina was closed, pursuant to evacuation orders, due to an approaching hurricane. LPI believes that it should have been paid redelivery, storage, and detention charges in the amount of \$4050 as part of its compensation for making the delivery. DoD and the General Services Administration (GSA), which reviewed the claim, think differently. LPI filed a case with the Board, seeking to recover this money.¹

¹ LPI filed a similar case, involving the same matter, earlier. GSA and DoD responded by noting that under 41 CFR 102-118.645 and 102-118.650 (2016), a
(continued...)

Background

Relevant rules

The rules applicable to this matter are contained in two DoD publications, the Military Surface Deployment and Distribution Command's (SDDC's) Freight Traffic Rules Publication No. 1C-R (Publication No. 1C-R) and that Command's Military Freight Traffic Unified Rules Publication-1 (MFTURP-1).

Publication No. 1C-R includes the following provision:

Item 231, Transportation Facilities Guide (TFG):

Carriers must review and comply with TFG local installation policies and operating hours prior to delivery or pick-up. Failure to comply with this requirement may result in delays and/or non-compensation. Carriers must ensure they are in compliance with each installation's policy.

MFTURP-1 includes the following provisions:

Section A, III.E, Transportation Facilities Guide (TFG):

1. TSP [transportation service provider] will review the TFG for installation policies regarding the minimum requirements for normal operating hours, installation closures, or any other important information. TSP can access the TFG at the ETA [electronic transportation acquisition] website <https://eta.sddc.army.mil/>.
2. Failure to review the TFG for installation policies for pickup and delivery requirements may result in non-payment of detention, demurrage and/or storage charges.

¹ (...continued)

transportation service provider which has a claim against the Government must first file the claim with the GSA Transportation Audit Division, and only if the provider objects to the Audit Division's settlement may it request a review by the Board. LPI acknowledged the correctness of this position, asked the Board to dismiss the case, and submitted the claim to the GSA Audit Division. *Logistics Plus, Inc.*, CBCA 5539-RATE (Jan. 4, 2017). The Audit Division has since denied the claim. LPI brings this case to us in proper order.

3. Failure to review the TFG for installation operating hours may result in late shipments.

Section A, VI.D, Non-Applicable Charges/Transportation Service Provider Liability:

1. The TSP shall not charge any detention, demurrage or storage charges against any DOD sponsored shipment when the delay is caused by acts or omissions beyond DOD, its contractors[?], or its agents[?] control.^[2]

Relevant events

On October 5, 2016, a transportation officer of the Defense Contract Management Agency (DCMA) issued to LPI a commercial bill of lading for the shipment of various items from an address in South Deerfield, Massachusetts, to a Department of the Navy facility in Hanahan, South Carolina (just outside Charleston). LPI brokered this shipment to another firm, which loaded its truck in South Deerfield at approximately 3:45 to 4:00 p.m. on October 5.

² LPI, DoD, and GSA all appear to believe that MFTURP-1's Section C, Item 201, Demurrage (Straight) (DEM), paragraph 11, also applies to this case. This provision reads:

In circumstances where severe weather conditions (floods, earthquakes, hurricanes, tornadoes, or similar "acts of God") make it impractical or otherwise, [sic] impossible to load or unload a shipment, the duration in time of the severe weather condition shall be eliminated in computing demurrage, provided the shipper/consignee advises the railroad/TSP of the nature and expected duration of the weather interference at or/prior to the time the rail car is released.

Because Section C is devoted to "Rail Transportation Service Provider Rules" and the shipment with which we are concerned was moved by truck, we believe that this paragraph does not apply to our situation.

On that morning, as Hurricane Matthew approached the South Carolina coast, the governor of the state had ordered a mandatory evacuation of coastal counties around Charleston. DoD's Joint Base Charleston had issued the following statement at 10:32 a.m.:

The South Carolina Governor has issued an evacuation order for Zone A around Charleston as of 1500L hours on Wednesday, 5 Oct 2016. They are saying that people need to get out at least 100 miles from the coastal regions that will be affected and that does include JB [Joint Base] Charleston. We have also had an official Limited Evacuation Order from our JB Charleston Air Base Wing CC [Command Chief] as well starting today at 1500 hours. Joint Base Charleston (Charleston Air Force Base and Naval Weapons Station Charleston) will not have Cargo/Personal Property/Passenger Travel services available starting 1500L, 5 Oct 2016 until an ALL CLEAR NOTICE is given.

The earliest communication between LPI and DoD included in our record, other than the bill of lading, is an October 7 electronic mail message from a DCMA traffic management specialist to an SDDC traffic management specialist, with a copy to an LPI representative. The message reads: "The carrier tried every phone number provided in the TFG with no success. Please advise on how to proceed. We are not sure if the facility is closed due to the impending weather." The SDDC official responded promptly, again copying the LPI representative, "The bases there in FL [Florida], GA [Georgia], and SC [South Carolina] are closed due to weather. Carrier should hold on to freight, and try to deliver Tuesday [October 11]. No additional funds will be authorized."

Discussion

LPI maintains that DoD is responsible for the predicament in which the transportation service provider found itself, and that the agency must therefore pay the redelivery, storage, and detention charges sought. The TSP argues that it relied to its detriment on DoD's instruction to pick up the goods for shipment and the agency's failure to note in its Transportation Facilities Guide, when the load was dispatched, that the delivery facility was closed. LPI acknowledges that MFTURP-1 precludes a TSP from charging "any detention, demurrage or storage charges against any DoD sponsored shipment when the delay is caused by acts or omissions beyond DoD's . . . control." The actions about which LPI complains were, however, within DoD's control, the TSP contends, so the cited provision of the publication does not apply. Further, says LPI, if it had refused to accept the shipment, it might well have suffered unsatisfactory performance ratings.

DoD and GSA argue to the contrary that a TSP is responsible, under Publication No. 1C-R, for "ensur[ing] [it is] in compliance with each installation's policy" for "operating

hours prior to delivery or pick-up.” LPI should have known, the agencies maintain, by monitoring widely-disseminated news reports, that coastal South Carolina had been evacuated before the goods were loaded on its brokered truck. The TSP should also have known, by checking with the delivery facility, that the facility had been evacuated as well. Consequently, say the agencies, per Publication No. 1C-R, the TSP’s failure to comply with the delivery facility’s notice of closure “result[ed] in delays and/or non-compensation.”

Neither side is blameless. We fault DoD for assigning a shipment to be delivered to a location which had been closed, due to approaching weather, and for not alerting the TSP to the situation when it arrived to pick up goods. The rules under which a TSP carries goods for the agency put the onus on the carrier to know when and where delivery is possible, however. LPI did not fulfill its responsibility of learning whether the delivery facility was open when its truck was loaded. We cannot conclude, as LPI urges, that information in the TFG was insufficient when the truck was loaded, since there is no evidence that the TSP checked that guide prior to October 7 – two days after the shipment was tendered – or ever accessed the TFG website. And even if LPI’s assumption is correct, we think that any carrier en route to a location threatened by a hurricane should be alert to more than TFG information for the possibility that a problem might occur with delivery. Thus, even if the TFG data was incomplete, that was a technical failing that did not make inability to deliver the financial responsibility of DoD, per the relevant provisions of Publication No. 1C-R and MFTURP-1.

Decision

We sustain the position of SDDC and GSA that LPI may not collect redelivery, storage, and detention charges due to delivery problems occasioned with the shipment at issue. The claim is denied.

STEPHEN M. DANIELS
Board Judge