

# Board of Contract Appeals

General Services Administration  
Washington, D.C. 20405

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May 21, 2003

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GSBCA 16074-RATE

In the Matter of APOLLO VAN LINES, INC.

Nancy Stout, Office Manager of Apollo Van Lines, Inc., Rodeo, CA, appearing for Claimant.

James F. Fitzgerald, Director, Audits Division, Office of Transportation and Property Management, Federal Supply Service, General Services Administration, Washington, DC, appearing for General Services Administration.

Col. John B. Hoffman, Staff Judge Advocate, Headquarters, Military Traffic Management Command, Department of the Army, Alexandria, VA, appearing for Department of Defense.

**DeGRAFF**, Board Judge.

The General Services Administration Audits Division (GSA) decided that a claim submitted by Apollo Van Lines, Inc. should be denied because it was untimely filed. Because we conclude that Apollo has not met its burden of proving that the claim was timely filed, we dismiss the claim.

## Background

In September 1998, Apollo transported a shipment of household goods belonging to a civilian employee of the Department of Defense. The government bill of lading under which the shipment moved identified the paying office as the Defense Finance and Accounting Service (DFAS) in Norfolk, Virginia. On January 14, 2002, Apollo sent a letter to the DFAS office in Charleston, South Carolina, stating that its invoice for the shipment had been "lost in transit" and "resubmitted on May 17, 2000." Apollo said that it had never been paid and submitted a voucher to Charleston for payment of \$2304.64.

On April 25, 2002, Apollo sent another letter to DFAS in Charleston. In this letter, Apollo said it originally submitted a voucher to the DFAS office in Norfolk, Virginia, which told Apollo to submit the voucher to Charleston. According to Apollo's April 25 letter, for more than three years it had been submitting and resubmitting the voucher to either Charleston or Norfolk, and had not yet been paid.

On June 6, 2002, Apollo submitted its voucher to DFAS in Norfolk. On June 12, DFAS in Norfolk submitted the claim to GSA for review because DFAS doubted that the claim should be paid.

On September 26, 2002, GSA denied the claim because it had not been timely filed. On October 7, 2002, Apollo responded to GSA's denial of the claim. Apollo said that its "original submission" was made on December 9, 1998, and when it did not receive payment, it resubmitted its bill on March 9, 1999. Then, said Apollo, it was told to submit its bill to DFAS in Charleston, which it said it did on May 17, 2000. When it still received no payment, Apollo said it sent its claim to DFAS in Norfolk.

On February 12, 2003, GSA again denied the claim because it had not been timely filed, and advised Apollo that it could ask the Board to review GSA's decision. Apollo submitted its request for review to us on February 26, 2003.

DFAS says that its regular practice is to retain a record of any claim it receives and to respond to claims in writing. DFAS's records, however, contain no claims or responses to claims prior to Apollo's January 14, 2002 letter to the DFAS office in Charleston. Apollo provided us with nothing to show that it submitted a request for payment before January 14, 2002.

#### Discussion

The United States Code imposes a time limitation upon the filing of carrier claims:

(a) A carrier or freight forwarder presenting a bill for transporting an individual or property for the United States Government may be paid before the Administrator of General Services conducts an audit, in accordance with regulations that the Administrator shall prescribe. A claim under this section shall be allowed only if it is received by the Administrator not later than 3 years (excluding time of war) after the later of the following dates:

- (1) accrual of the claim;
- (2) payment for the transportation is made;
- (3) refund for an overpayment for the transportation is made; or
- (4) a deduction under subsection (b) of this section is made.

31 U.S.C. § 3726 (2000). Only the first event listed above, accrual of the claim, is relevant here. A claim includes an unpaid original bill requiring direct settlement by GSA, including one, such as here, that the agency doubts should be paid. 41 CFR 102-118.450(d) (2002). A claim can be received either by the GSA Audits Division or by the agency within which the claim arose which, in this case, is the Department of Defense. 41 CFR 102-118.470. The burden is on the carrier to establish that either GSA or the agency received a claim within the period of limitations set out in the statute. American Stitching & Box, Inc., GSBCA 14615-RATE, 99-1 BCA ¶ 30,369; Stevens Worldwide Van Lines, GSBCA 14652-RATE, 99-1 BCA ¶ 30,115 (1998).

Apollo has not established that either GSA or the Department of Defense received its claim within the time required by the statute. Apollo's claim accrued in September 1998. According to the statute, Apollo had to submit its claim so that it would be received not later than September 2001, in order for the claim to be timely. The first claim document contained in our file is dated January 14, 2002. Apollo says that it submitted earlier claim documents, but our record contains no such documents, much less any evidence that they were received within the required time. Although DFAS's regular practice is to retain a record of any claim it receives and to respond to claims in writing, DFAS has no record of receiving a claim before the one dated January 14, 2002. Because the evidence fails to establish that Apollo filed a claim that was received by either GSA or the Department of Defense within three years after the claim accrued, GSA correctly decided to deny the claim.

Apollo's claim for payment is time barred and, accordingly, is dismissed.

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MARTHA H. DeGRAFF  
Board Judge