

ARMED SERVICES BOARD OF CONTRACT APPEALS

Appeals of -)
)
Supreme Foodservice GmbH) ASBCA Nos. 57884-QUAN, 58666-QUAN
) 59636-QUAN, 61361-QUAN
)
Under Contract No. SPM300-05-D-3130)

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OPINION BY ADMINISTRATIVE JUDGE O'CONNELL

In the Board's May 27, 2020, post-hearing decision, we remanded to the parties for a limited quantum determination. Specifically, the Board remanded for the parties to calculate final truck rates based on our various findings. In addition, we directed the parties to calculate the net amount due a party after consideration of the final truck rates and government withholdings. *Supreme Foodservice GmbH*, ASBCA No. 57884 *et al.*, 20-1 BCA ¶ 37,618, *recon. denied*, 20-1 BCA ¶ 37,716.

In a January 29, 2021, joint letter to the Board (jt. ltr.), the parties reported that they had completed these calculations and requested that the Board issue an order adopting their quantum amounts. The Board grants this request, as follows.

Final Truck Rates

For the period from December 2005 until December 14, 2012, the final rate is \$0.23 per pound. During this period, Supreme delivered 2,392,143,150 pounds of Premium Outbound Transportation (POT) cargo. It is entitled to POT fees of \$550,192,924.50 for this period. (Jt. ltr. at 1-2)

From December 15, 2012 to December 14, 2013, the final rate is \$0.24 per pound. During this period, Supreme delivered 380,068,757 pounds of POT cargo. It is entitled to fees of \$91,216,501.68 for this period. (Jt. ltr. at 1-2)

Gross trucking quantum is \$641,409,426.18¹ (jt. ltr. at 2).

Net Amount Due

As a result of the findings in the Board's May 27, 2020, opinion with respect to rotary and fixed wing deliveries and the above determination of trucking quantum, Supreme is entitled to a total of \$1,369,618,849.55 in POT fees² (jt. ltr. at 2).

DLA paid Supreme \$1,767,473,638 for POT. *Supreme Foodservice GmbH*, 20-1 BCA ¶ 37,618 at 182,631. (Jt. ltr. at 2) Thus, DLA overpaid Supreme by \$397,854,788.45³ (*id.*) The government subsequently withheld more than this amount from payments to Supreme. Specifically, it withheld \$540,832,442.70 (*id.*). Of this


¹ \$550,192,924.50 + \$91,216,501.68 = \$641,409,426.18

² \$405,472,897.96 (rotary) + \$172,785,730.61 (rotary with government provided fuel) + \$149,950,794.80 (fixed wing) + \$641,409,426.18 (truck) = \$1,369,618,849.55. *Supreme Foodservice GmbH*, 20-1 BCA ¶ 37,618 at 182,635-36; (jt. ltr. at 2)

³ \$1,767,473,638 - \$1,369,618,849.55 = \$397,854,788.45

withheld amount, the government is entitled to retain \$397,854,788.45. Supreme is entitled to the remainder, \$142,977,654.25⁴ (*id.*).

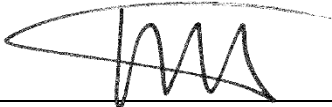
Dated: March 2, 2021



MICHAEL N. O'CONNELL

Administrative Judge
Armed Services Board
of Contract Appeals

I concur



RICHARD SHACKLEFORD

Administrative Judge
Acting Chairman
Armed Services Board
of Contract Appeals

I concur



J. REID PROUTY

Administrative Judge
Vice Chairman
Armed Services Board
of Contract Appeals

⁴ DLA states in the Joint Letter that it has claims totaling \$88,494,087.78 against Supreme in three pending appeals (ASBCA Nos. 60250, 60309, and 61370) and that it anticipates that the Defense Finance and Accounting Service will continue to withhold from payment to Supreme this amount, as well as any applicable interest or fees on the \$397,854,788.45 overpayment (*jt. ltr.* at 2). The Board expresses no opinion with respect to either the merits of ASBCA Nos. 60250, 60309, and 61370, or the government's entitlement to interest or fees on the overpayment.

I certify that the foregoing is a true copy of the Opinion and Decision of the Armed Services Board of Contract Appeals in ASBCA Nos. 57884-QUAN, 58666-QUAN, 59636-QUAN, 61361-QUAN, Appeals of Supreme Foodservice GmbH, rendered in conformance with the Board's Charter.

Dated: March 3, 2021



PAULLA K. GATES-LEWIS
Recorder, Armed Services
Board of Contract Appeals