

DESTINATION ACCESSORIAL CHARGES

By George Carl Pezold

We have been hearing complaints from shippers about being billed for destination accessorial charges such as for "liftgate" and "inside delivery" services that have not been requested or authorized and sometimes have not actually been provided. Here is a recent example:

Question:

Extra Charges / Disputing the charge

I've been running into the problem of carriers charging inside delivery and liftgate delivery. On the BOL it states in the special instructions "Any extra services/ charges need to be approved by (the appropriate party)." The carriers will always come back and say that they have the right to not acknowledge the special instructions and charge what they "feel is necessary to successfully deliver". Consignees 90% of the time state that these services were not used and the carrier is charging for a service they never performed. Other than videoing each delivery, is there anything we can do to fight the carrier on the charges because they're false?

We thought it would be interesting to survey some of the TLC members that are engaged in freight bill audit services - and here are responses:

From ICC Logistics (Tony Nuzio)

Since the bill of lading is the contract between the shipper and the carrier, I do not see how the carrier(s) can just ignore the "special instructions" which are an integral part of the contract of carriage.

In addition to billing for the line-haul services rendered, assessing charges for inside delivery and lift gate delivery I believe the carrier has an obligation to prove these additional services were actually performed.

What is not totally clear is the shipper's statement that the special instructions need to be approved by the "appropriate party." Is that always the shipper, consignee, or does it relate to who is responsible for payment of the freight charges.

From TransAudit (Vikki Van Vliet)

The response from one of our expert analysts is below.

All you can do is either short pay these invoices at the time of payment or file a claim if the invoice has already been paid. If your claims are denied, you may present a stronger argument or perhaps ask your client to contact their carrier's sales rep to help negotiate a fair settlement.

Accessorial charges such as inside delivery and lift gate delivery are generally noted as an instruction listed on the bill of lading at the time of pick up granting the carrier the right to bill and perform such services and are usually supported by the delivery receipt. The delivery may or may not indicate that such service(s) were actually performed by the driver. In addition some carriers now rely on an electronic delivery receipt where the consignee just signs a handheld device.

Also there may be instances in which a carrier is asked to perform a service at the time of delivery even though no instructions were provided on the bill of lading and depending on the carrier and they may or may not perform the service and may bill with or without your approval. Common sense tells me if the service is not rendered then the carrier should not be entitled to compensation. Unfortunately nothing is ever that simple, as an example, In the case

of lift gate delivery, some carriers may argue that not all of their trailers in their fleet are equipped with a lift gate and if they provide a lift gate trailer for delivery then they would be entitled to bill for that service even if the service was not performed.

The only solution is to negotiate a clearly written pricing agreement addressing accessorial services, read and understand the carriers rules tariffs, ensure your special instructions on your bill of lading coincide with your pricing agreement and your carrier's rules tariff, and ultimately to instruct the carrier to provide a written delivery receipt indicating the service rendered at the time of delivery.

From American Truck & Rail Audits (Niki Bolton)

First off, know you are not alone and that this problem is not uncommon. As an after-payment freight cost audit firm, our truck auditors see this, and similar situations, quite often as we work for our clients. Before suggesting a solution, it is helpful to look at the various elements of your question that have a bearing on the situation.

"Any extra services/charges need to be approved by (the appropriate party). The carriers will always come back and say that they have the right to not acknowledge the special instructions..."

If a shipment is subject to the carrier's rules tariff, then the rules' notation about whom is responsible for freight charges would apply—shipper, consignee, service(s) requesting party, or the freight bill-to party can be listed options. Therefore, a carrier would revert to the rules tariff rather than following the required approval notation on the bill of lading.

"...and charge what they feel is necessary to successfully deliver".

While researching the rules and the language about who will be responsible for charges, it is beneficial to review all language included. There could be exceptions to when the charges would not be applicable, such as shipment service type, other performed accessories, or situational factors. Also, rules may contain language of requirements that specifies the requirements of different parties involved in a shipment. These requirements will determine if there was a proper request for the service or if the requirements are met to consider the service as being indicated as performed.

Consignee 90% of the time states that these services were not used, and the carrier is charging for a service they never performed. Other than videoing each delivery, is there anything we can do to fight the carrier on the charges because they're false?

As far as documentation, a shipper can consider the bill of lading (BOL) and delivery receipt (DR) of the shipment. Review the BOL to determine if the accessorial/service was requested or required. If it was not properly requested or noted as required on the BOL, this is a good indicator the service might not have been performed. Also review the DR for notes, checked boxes, or initials that annotate the accessorial/service was performed. If the DR is not marked, this could also be another good indicator a service was not performed. These can be submitted to the carrier as documents of proof against their service charges.

"Any suggestions for shippers with the same problem?"

Given our experience in successful overcharge recoveries and partnering with shippers and carriers in similar situations, we would like to offer two suggestions. First, start with a proactive measure. Request that when your consignees sign for the freight that they make a note on the DR that no accessorial services were performed. This will ensure proper documentation to present to the carrier if they are billing when the service is not being performed. If that doesn't work on the front-end consistently, securing an after-payment freight cost audit, such as we offer, can help recover those overcharges on the back end. By leveraging the experience, knowledge and partnerships of our experts, such overcharges can be recovered.

From Williams & Associates (Gil Williams)

I checked with some of my auditors that day in and day out deal with this issue. They tell more often than not the service was not performed. They refuse to pay it. They also tell me if the carrier still insist they send it to our on-line client approval process asking if we should pay and the client always states we should not pay.

Special instructions not to provide services without approval prior to delivery is binding and part of the Contract for Carriage.

Our comments

First of all, it would seem that charging for a service that is not provided would be at least dishonest and very likely amount to commercial fraud.

That said, one of the problems for a shipper on "freight prepaid" shipments is that it is usually difficult to know what the circumstances are and what actually happens at the time of delivery. In fact, the shipper usually doesn't find about any destination accessorial charges until it gets the freight bill for payment – which can be quite some time after the fact. The consignee may have no record or recollection of the services that were performed or may not want to be bothered or cooperate since it is not the payor of the freight bills.

As noted above, in the absence of a formal Transportation Agreement, the bill of lading is considered to be the "contract of carriage" between the shipper and the carrier. Thus, it would certainly seem that if the shipper places a special instruction on the face of the bill of lading that says: "Any extra services/ charges need to approved by (the appropriate party)", it should be an enforceable part of the contract. And, if the shipper does not prepare the bill of lading it should be equally valid to apply the instruction with a stamp on the carrier's bill of lading.

Some thoughts on special instructions on the bill of lading. One suggestion might be: "Notice: Any destination accessorial services must be noted on the bill of lading or delivery receipt and signed by the consignee at the time of delivery or the accessorial charges will not be paid".

Someone asked about signing "Section 7" on the bill of lading. Most major LTL carriers use some version of the Uniform Straight Bill of Lading as published in the National Motor Freight Classification, which contains "Section 7" or "Non-Recourse" provision. Essentially, if the non-recourse box on the face of the bill of lading has been signed by the shipper, it should shift the liability for destination accessorial charges to the consignee. It should be noted that, although the current version of the NMFC bill of lading says "For Freight Collect Shipments", the older court decisions also applied the same rule on a "prepaid" shipment. In any event, regardless of whether a shipment is "prepaid" or "collect", entering the name of the shipper in the box might, *in theory*, protect the shipper against destination charges such as liftgate, inside delivery, detention, redelivery, etc. and the carrier would bill the consignee for these charges.

As suggested above, the best way to protect against or limit unreasonable accessorial charges is to have a formal Transportation Agreement that deals with these issues. Many shippers include their own schedule of maximum accessorial charges and/or include provisions regarding notification or authorization for billing such charges.

Lastly, a good freight bill audit service can help by carefully reviewing your freight bills, challenging improper charges and recovering overcharges.