



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON, D.C. 20548

09)791

40171

D-179325

November 7, 1973

Arkansas-Best Freight System, Inc.  
P.O. Box 48  
Fort Smith, Arkansas 72901

Attention: Bruce Whittaker  
Director of Customer Service

Gentlemen:

We again refer to your letter of September 6, 1973, ABF Claim No. 36848, with which you enclosed a copy of our letter of August 23, 1973, D-179325, to Senator J. W. Fulbright, pertaining to your claim for refund of \$846.28 deducted by the Department of the Army. The amount deducted represented transportation expenses incurred by the Government in returning an air conditioner to origin for repairs and transporting it again to intended destination. The air conditioner originally was damaged while being transported by Arkansas-Best Freight System (ABF) between San Antonio, Texas, and Wright-Patterson Air Force Base, Ohio.

While admitting liability for the damages, you had contended that the deduction for the expense of shipping the air conditioner to, and return from, the point of repair should not have been charged to ABF, that ABF should have been permitted to carry the damaged and repaired machine on a free-stray basis and that the transportation expenses charged to ABF were excessive since there was available to the Government a lower freight-all-kinds rate.

You now contend that it is the Government agency's responsibility to act in the best interest of the carrier and to make every effort to minimize the damages. In your opinion, the Government failed to act in the carrier's best interest because it returned the air conditioner to the point of manufacture by a carrier other than ABF.

The liability of the carrier for the costs of repair includes reasonable and necessary incidental expenses incurred, Tampa Electric Co. v. Nashville Coal Co., 214 F. Supp. 647, 652 (1953), including transportation to and from the point of repair, Pasadena State Bank v. Isaac, 228 S.W. 2d 127, 129 (1950); Panhandle & B.F. R. Co. v. Shell, 265 S.W. 758 (1924); W.C. Cook & Co., Inc. v. White Truck & Transfer Co., 13 P. 2d 549 (1932). Therefore, the Government as a shipper and consignor is entitled to reimbursement for the transportation charges.

BEST DOCUMENT AVAILABLE

718456

B-179325

We agree that one fundamental rule of damages is that the shipper or consignee mitigate damages to the extent possible, and that this principle is applied to cases involving damages by carriers. Gulf, Colorado & C. Ry. v. Texas Packing Co., 244 U.S. 31 (1917). But whether or not the shipper's obligation to mitigate damages has been discharged depends on the reasonableness of its conduct. And where a choice has been required between two reasonable courses, the person whose wrong forced the choice cannot complain that one rather than the other was chosen. In re Kellett Aircraft Corp., 186 F. 2d 197 (1950).

The Government's conduct here was reasonable to the extent that the damaged air conditioner was shipped to the manufacturer and returned as part of larger truckload and less than truckload shipments; because of the increased weight, the Government was able to take advantage of a lower rate. Thus, the Government did mitigate the damages and acted reasonably under the circumstances.

In our letter to Senator Fulbright, we stated that we found no legal requirement that the Government permit AIF to transport the damaged air conditioner on a free-stray basis to and from the repair facility. Nevertheless, we did instruct our Transportation and Claims Division to recalculate the transportation charges using the lower freight-all-kinds rate, if available and applicable.

We have been advised by our Transportation and Claims Division that a Settlement Certificate was issued October 9, 1973, allowing AIF \$243.20, based on the available through rates applicable via your company. By now, you should have received notice of that settlement, showing the basis for our action and for the computation of the charges.

Sincerely yours,

Paul G. Dembling

For the Comptroller General  
of the United States

BEST DOCUMENT AVAILABLE