

DOCUMENT RESUME

03020 - [A2093191]

[Review of Settlement of Claim for Transportation Charges].  
B-187802. July 27, 1977. 5 pp.

Decision re: Delcher Intercontinental Moving Service, Inc.; by  
Robert P. Keller, Deputy Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).  
Contact: Office of the General Counsel: Transportation Law.  
Budget Function: General Government: Other General Government  
(806).

Organization Concerned: General Services Administration.

Authority: 49 U.S.C. 66(b). 49 C.F.R. 1056.26(a-b). 4 C.F.R.  
53.3, 53.4. DOD Regulation 4500.34-R. 22 Comp. Gen. 1063.  
Alcoa Steamship Co., Inc. v. United States, 333 U.S. 421  
(1949). Mackey v. United States, 197 F.2d 241, 243 (2nd Cir.  
1952). Pollard v. Vinton, 105 U.S. 7 (1881). Air Force  
Regulation 23-17, para. 7(b)(1).

The protestor requested a review of a settlement of  
their claim for transportation charges. A carrier of household  
goods in international door-to-door container-NAC (Code T)  
service was entitled to payment for services they performed  
under a Government bill of lading contract when part of a  
shipment of goods was lost or destroyed and when delivery of  
that part was prevented by the act of the shipper's agent.  
(Author/SC)

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**DECISION**

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

FILE: B-187602

DATE: July 27, 1977

MATTER OF: Delcher Intercontinental Moving Service, Inc.

**DIGEST:** A carrier of household goods in international door-to-door container-MAC (Code T) service is entitled to payment for services it performed under a Government bill of lading contract when part of a shipment of goods is lost or destroyed and delivery of that part is not made because delivery was prevented by the act of the shipper's agent.

Delcher Intercontinental Moving Service, Inc. (Delcher) requests review by the Comptroller General of the United States of a settlement action taken by the General Services Administration (GSA) on Delcher's claim for transportation charges. 49 U.S.C. 66(b) (Supp. V 1975). The carrier's request is in substantial compliance with the provisions of 4 C.F.R. 53.3 and 53.4 (1977) and the request for review is granted.

Government bill of lading (GBL) No. H-7041282, dated June 26, 1974, was prepared by the shipper, the Joint Personal Property Shipping Office, Alexandria, Virginia, to cover a shipment of household goods weighing 16,136 pounds owned by a member of the military from Vienna, Virginia, to La Paz, Bolivia. The shipment moved under a "one time only" rate tender offered by Delcher to the Government for "Door to Door Container (MAC) Code T" service. International door-to-door container-MAC (Code T) service is defined in paragraph am(2) (h) of Department of Defense Regulation 4500.34-R, Personal Property Traffic Management Regulation, as:

"(h) International door-to-door container-MAC (Code T). Movement of household goods whereby a carrier provides containerization at origin residence and surface transportation to the designated MAC [Military Airlift Command] terminal. MAC provides terminal services at origin (and destination) and air transportation to designated MAC terminal. The carrier provides surface transportation to destination residence."

The MAC plane carrying a portion of the shipment crashed in Bolivia. Approximately 8,552 pounds of the shipment was destroyed as a result of the crash. The balance of the shipment, 7,584 pounds, was delivered at destination by the American Embassy pack and crate

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contractor. No portion was delivered or is claimed to have been delivered at destination by Delcher.

The carrier filed a claim for transportation charges of \$5,696.01, which represents an amount equivalent to the value of the service performed by Delcher; i.e., transporting the 16,136 pounds of household goods from Vienna, Virginia, to Charleston Air Force Base, the designated MAC facility serving the origin of the shipment. The value of the service was based on a reduction of the quoted rate by \$4.10 per hundred weight, which Delcher alleges represents the rate applicable to the destination delivery portion of its rate tender.

GSA issued a settlement certificate on July 6, 1976, allowing \$2,677.15 and disallowing \$3,018.86 of the \$5,696.01 claimed. It allowed the part of Delcher's claim which covered the transportation charges from origin to the designated MAC facility at origin on that portion of the shipment which was delivered at destination, 7,584 pounds.

The reason stated by GSA on the settlement certificate for disallowing the balance of the claim was:

"Delcher One Time Only Quote 4154-101/4 less Delivery Charges since shipment was delivered by American Embassy Contractor. Charges are based on 7584 lb as only that portion of the shipment was delivered at destination. In cases where the carrier has failed to deliver at destination a shipment made under a Government bill of lading, the courts have held that the shipper is not liable for freight charges."

Delcher contends that it is entitled to payment of its full claim asserting that, in good faith, it fulfilled its obligation because it provided origin service which included pick-up, packing, containerization and overland transportation to the MAC terminal at Charleston Air Force Base. Delcher claims to have been prepared to perform delivery service in Bolivia. It contends that its inability to complete its obligation was predicated on MAC's failure to complete its transportation of the shipment and to tender the goods to Delcher for delivery at destination.

Delcher cites Item 32 of Military Basic Tender 1-D, published by Household Goods Forwarders Association of America, Inc., which states:

"The carrier shall not be liable for loss or damage when the carrier can reasonably establish that such loss or damage occurred while the shipment was in the custody and control of the Government. Effective Custody is defined herein

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to mean when a shipment is delivered to authorized representatives of the United States Government."

GSA upon review of the carrier's claim contends that paragraph 16 of Delcher's "one time only" rate tender incorporated by reference only the accessorial services in Military Basic Tender 1-D and that Item 32 of the Basic Tender has no application to this claim.

GSA reiterated its contention that where shipments are partially delivered, freight charges accrue only as to that part of the shipment actually delivered to the destination named in the GBL and accepted by the consignee, citing Alcoa Steamship Co., Inc. v. United States, 333 U.S. 421 (1949); Mac'ey v. United States, 197 F.2d 241, 243; (2nd Cir. 1952); Strickland Transportation Co., Inc. v. United States, 223 F.2d 466 (5th Cir. 1955); and 22 Comp. Gen. 1063 (1943).

The application of Item 32 of Tender 1-D is restricted by its own terms to "CLAIMS FOR LOSS AND DAMAGE." It applies only as a limitation on the carrier's liability for loss and damage to a shipment while in the custody and control of the Government. It does not refer to or apply to the question of the amount of transportation charges the Government may be liable for on such shipments. Therefore, irrespective of the Basic Tender's applicability to the shipment, Item 32 does not and would not have any applicability to the present claim.

GSA correctly contends that in the cases cited by it, freight charges accrued only as to the part of the shipment actually delivered to the destination named in the GBL and accepted by consignee. The law is well settled that when goods transported on a Government bill of lading are lost in transit, the carrier is not entitled to its freight charges. See the cases cited by GSA, supra.

Government bill of lading No. H-7041282 is a contract of carriage. Pollard v. Vinton, 105 U.S. 7 (1881); The Delaware, 81 U.S. (14 Wall.) 579 (1871); United States v. Mississippi Valley Barge Line Co., 285 F.2d 381 (8th Cir. 1960); East Texas Motor Freight Lines v. United States, 239 F.2d 417 (5th Cir. 1956). As such, it is subject to the rules which govern other contracts. See Mexican Light & Power Co. v. Pennsylvania R.R., 53 F. Supp. 483, 484 (D.C.E.D. Pa. 1940). And it is a generally accepted rule of contract law that to escape liability on a contract a party cannot take advantage of his own acts or omissions which make impossible the completion of performance of the contract by the party obligated to him. Rainier v. Champion Container Co., 294 F.2d 96, 103 (3rd Cir. 1961); Gulf Oil Corp. v. American Louisiana Pipe Line Co., 282 F.2d 401 (6th Cir. 1960).

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In Practice of Motor Carriers of Household Goods, 126 M.C.C. 250, 277 (1977), a recent decision reviewing the practices of motor carriers of household goods, the Interstate Commerce Commission stated this rule of contract law as it relates to a shipper's liability for freight charges on goods which have been lost or destroyed:

" . . . Where an act or failure to act by one party to a contract makes performance of the other party's contractual obligations impossible, the first party continues to be liable under the contract. Therefore, if the carrier of a household goods shipment can prove any or all of the loss or destruction is a result of such act or omission, the carrier may recover the freight charges from the shipper . . ."

The Commission implemented this rule by its order effective March 1, 1977. See 49 C.F.R. 1056.26(a) and (b).

Thus, as a party to the bill of lading contract, the Government's liability for the freight charges claimed by the other party (Delcher) depends upon whether MAC was acting as the shipper's agent or the carrier's agent when part of the goods were destroyed while in MAC's possession.

Air Force Regulation 23-17, effective December 9, 1970, lists among other things the special responsibilities and instructions of MAC. These responsibilities include, "performing assigned airlift functions that accommodate the approved airlift requirements of all DOD [Department of Defense] agencies." (AFR 23-17, para 7(b)(1)).

The shipper shown on GBL No. H-7041282 is the Joint Personal Property Shipping Office, Cameron Station, Alexandria, Virginia, an agency of DOD.

The regulations pertaining to DOD's Personal Property Movement and Storage Program are set forth in DOD Regulation 4500.34-R, supra. The Program's purpose and policy is stated in paragraphs 1000 and 1002 of Chapter 1 of the regulation:

"1000. Purpose and authority. This regulation describes the various aspects and interrelationships of the worldwide system for the management of the Personal Property Movement and Storage Program, hereinafter referred to as the Program, and identifies the procedures and responsibilities required to make the system function effectively. It establishes standard and special procedures concerning the movement and storage of personal property for all Department of Defense personnel

(military and civilian), and personnel of other Government agencies (US or foreign) when sponsorship is by one or more of the Department of Defense (DOD) components.

1002. Policy. It is DOD policy that--

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d. Military air and ocean transportation resources under the control of, or arranged by, the Military Airlift Command (MAC) or the Military Sealift Command (MSC) will be used to the maximum practicable extent for the movement of personal property."

It is evident from these regulations that part of DOD's intent in creating MAC and the Personal Property Movement and Storage Program was that each was to be used to facilitate the missions and goals of the other. Each in effect are agents of the Department of Defense and in participating in the transportation of the household goods under GBI No. H-7041282 MAC was operating as an agent of the Shipping Office in carrying out its mission.

The circumstances here differ significantly from those in the cases cited by GSA as authority for the partial disallowance of Delcher's claim because here the partial loss occurred while the household goods were in control of the shipper's agent and the failure of the carrier to complete its contractual obligations was occasioned by an act or omission of the agent of the shipper, and not the carrier.

We are in agreement with GSA and Delcher that the value of the service furnished is measured by the rate in the carrier's rate tender less the \$4.10 per 100 pound rate said to be applicable to the carrier's destination delivery service. Therefore, following the rules of contract law discussed herein, we find that Delcher should be allowed \$3,018.86, the balance of its original claim, if otherwise correct.

GSA should take action consistent with this decision.

*R. K. 114*  
Deputy Comptroller General  
of the United States