

Siegel  
TRANS

DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20541

80240

FILE: B-185291

DATE: December 28, 1977

MATTER OF: Trans Country Van Lines, Inc.

DIGEST:

1. Prima facie case of liability of common carrier is established when shipper shows delivery to carrier at origin in good condition and delivery by carrier at destination in damaged condition. Once prima facie case is established burden of proof shifts to the carrier and remains there. To escape liability carrier must show that loss or damage was due to one of the excepted causes and that it was free of negligence.
2. A delivery receipt signed by the consignee does not establish as a matter of law that property was in good condition when delivered to him. A delivery receipt is subject to explanation and correction.

Trans Country Van Lines, Inc. (Trans Country) by letter dated June 17, 1977, requests review of the disallowance of its claim for \$2,083.17. The claim represents the amount collected by the Government by setoff from monies otherwise due the carrier to satisfy the Government's claim for damage against Trans Country.

The Government's claim, No. Z-2625150, arises from the damages sustained to a shipment of magnetic tape drives while in transportation from Washington, D.C., to Kelly Air Force Base, Texas, under Government Bill of Lading (GBL) F-8775397, issued on September 13, 1972. The actual costs to the Government for repairs were \$2,739.07 but recovery is limited to the released valuation of 60 cents per pound per article.

Trans Country asserts that it did not receive notice of concealed damages and therefore did not have an opportunity to inspect all of the items damaged. Trans Country also contends that it has not been established that the carrier is responsible for all of the concealed damages and that the damages might have occurred after the shipment was delivered. The carrier also suggests that if the "delicate characteristics of this shipment" necessitated exclusive use of the vehicle service or the need for air ride equipment, the Government should have ordered the equipment and paid for premium service.

Trans Country also invites attention to the provisions of Rule 29, Movers' & Warehousemen's Association of America Tariff 63, MF-ICC 90, which contains certain rules said to be applicable in connection with shipments rated under ICC Tender 150. Under those rules the carrier is not liable for any damages which occur subsequent to delivery at destination or for damage to the mechanical operation of the machines unless it can be established that such damage resulted from other physical damages to the articles shipped.

It is well established, however, that where a shipper shows that the goods were tendered to the carrier at origin in good order and condition, and received from the carrier at destination in a damaged condition, that a prima facie case of carrier liability has been established. The carrier, to relieve itself of liability, must show both that it was free from negligence and that the damage to the cargo was due to one of the excepted causes set forth in section 20(11) of the Interstate Commerce Act, 49 U.S.C. 20(11). Missouri Pacific RR v. Elmore & Stahl, 377 U.S. 134 (1964); Super Service Motor Freight Co. v. United States, 350 F.2d 541 (6th Cir. 1965); L. E. Whitlock Truck Service, Inc. v. Regal Filling Co., 333 F.2d 488 (10th Cir. 1964).

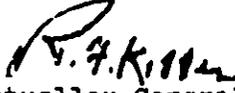
In Mears v. New York, N.H. & H. RR, 52 A. 610 (Conn. 1902), it was held that a clear delivery receipt is a mere piece of evidence and does not prevent a shipper from afterwards proving that the goods were in fact damaged when received from the carrier. In Lyon v. Atlantic Coast Line RR, 81 S.E. 1 (N.C. 1914), it was held that in a shipper's action for damages, it was the actual condition of the goods that determined the carrier's liability, and that the shipper's receipt of them in apparent good order and condition was not conclusive. Acceptance of a shipment does not waive a shipper's rights to recover for concealed damages. M & S Tomato Packing Co. v. Boston and Maine Corp., 310 F. Supp. 100 (D. Mass. 1970).

The record shows that the articles shipped were all tendered to the carrier at origin in good operating condition, and that the carrier loaded the shipment on a vehicle selected by Trans Country. Upon arrival at destination, three of the magnetic tape drives were visibly damaged. A Discrepancy in Shipment Notification (DD Form 1061) was thereupon issued on September 18, 1972, to the carrier in which the carrier was requested to make an immediate inspection. The record also shows that additional damages were discovered after delivery and photographs of the damaged articles were taken on September 20, 1972. Arrangements were then made to have all of the articles repaired.

Since the record establishes that the damages occurred during the transportation and not after delivery at destination, and since the

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carrier has not shown that the damages resulted from a cause for which the carrier is not liable, the settlement action taken is proper and is hereby sustained.

  
Acting Comptroller General  
of the United States