

Koles
Tamm.

DECISION



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

04725

FILE: B-189696

DATE: JAN 6 1978

MATTER OF: Suddath Van Lines, Inc.

DIGEST:

1. The measure of damages when the loss on an item is not total is ordinarily the reasonable cost of repairs necessary to put the item in as good a condition as it was before damage occurred. See cases cited.
2. In determining the cost of repairs, the best evidence is a paid bill of repair, or an estimate of repair cost, submitted by a reputable repairman or dealer. See Army Regulation AR 27-20, ch. 11-15 (September 1976); 32 C.F.R. 536.7 (1976).

Suddath Van Lines, Inc. (Suddath), claims \$164.55, part of an amount which was deducted by the U.S. Army Finance & Accounting Center from amounts otherwise payable to Suddath to compensate the Government as subrogee for damages to a shipment of household goods owned by a member of the military.

Under Government Bill of Lading No. K-2677799, dated April 23, 1975, Suddath transported household goods owned by Captain Richard S. Rogers III from Fort Benning, Georgia, to Pollock, Louisiana. The goods were delivered to Captain Rogers' residence on June 5, 1975, and exceptions were taken to certain items. On June 18, 1975, notification of further loss and damage was sent to Suddath along with an invitation to inspect the damage sustained. A Government claims examiner inspected the damage on July 28, 1975. Suddath chose not to make an independent investigation.

In October 1975 the member's claim against the Government was settled for \$748.83 and the Government thereby became subrogated to the member's claim against Suddath. Based on Government's evaluation and on the released valuation clause in the contract of transportation, the member's claim against Suddath was reduced to \$260.55. Several demands were made on Suddath which finally offered to settle the claim for \$164.55, an offer which was rejected. When after an exchange of correspondence Suddath refused to pay the Government's claim of \$260.55, it was deducted from monies otherwise due the carrier. Suddath now claims a refund of \$164.55.

The only dispute here involves the measure of damages. Buddath argues that the Government should rely exclusively on the claim examiner's damage estimate, which was the lowest estimate given.

The liability of a common carrier when goods in its possession are either lost or damaged is the ". . . full actual loss, damage, or injury . . ." to the goods. 49 U.S.C. §§ 20(11), 319 (1970). One measure of the damage is the difference between the fair market value of the goods undamaged and their fair market value as delivered in damaged condition. N. A. Stackpole Motor Transportation, Inc. v. Malden Spinning & Dyeing Co., 263 F.2d 47 (1st Cir. 1958). The reasonable cost of repairs is an appropriate measure of the loss where the property is not a total loss, but can be and is repaired and the cost of repair is not out of proportion to the value of the property or exceeds the value of the property before injury. Continental Can Company v. Pasor Express, Inc., 354 F.2d 222 (2nd Cir. 1965); Association of Maryland Pilots v. Baltimore & O. R.R., 304 F. Supp. 546, 556 (D. Md. 1969); Southwestern Motor Transport Co. v. Valley Weathermakers, Inc., 427 S.W. 2d 597 (Tex. 1968).

The Federal Claims Collection Act of 1966, 31 U.S.C. §§ 951-953 (1970), places the primary responsibility for investigation and adjustment of loss and damage claims against carriers in the Government agencies involved. The military services have established policies and procedures relating to the amount of damage or loss that is chargeable to the carrier. The regulations require an inspection and written report to be made by a claims officer. 32 C.F.R. 536.27(c)(2)(11)(b) (1976). See also 32 C.F.R. 536.27(c)(2)(1)(b) (1976). The measure of damages, however, is not based solely on this report. The regulations also require the member to provide evidence in the form of repair estimates on high cost repair items, or paid repair bills, and note that this is the best evidence of the cost of repairs. See Army Regulations AR 27-20, ch. 11-15 (September 1970); 32 C.F.R. 536.7 (1976).

While Buddath argues that the Government should rely on the repair costs suggested by a Government claims investigator, there is no basis to believe that the investigator is a qualified repairman who is familiar with existing repair costs. The U.S. Army Claims Service, which prepared the claim against the carrier, states that an estimate of repair costs prepared by a qualified repair facility was used as a basis for most of the member's claim against the Government. The Government's claim against the carrier to a great extent is based on the released valuation clause in the contract of transportation.

B-189896

We believe that the action of the U.S. Army Claims Service on the member's loss and damage claim was proper and in accord with the law and regulations. Consequently, Suddath's claim for \$4.55 must be and is disallowed.

Paul G. Dembling

For the Comptroller General
of the United States