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DECISION



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

[Claim by Carrier for Amount Collected in Setoff Action]

FILE: B-200549

DATE: November 18, 1980

MATTER OF: National Freight Claim Council *R-DLG05512*
Agent for Walsh Trucking Service, Inc.

DIGEST:

Carrier's delivery of apparent overage on free astray basis at one Air Force base does not relieve carrier of liability for shortage on delivery at another Air Force base where carrier cannot provide clear and convincing proof to rebut presumption that shortage was due to carrier negligence. Here, carrier has not shown that one of the units in alleged overage shipment was unit missing from shipment which contained shortage.

Walsh Trucking Service, Inc. (Walsh), through its agent, National Freight Claim Council, requests review of our Claims Division's Settlement Certificate dated March 17, 1980, in which the Division disallowed Walsh's claim for \$2,597.67. The amount claimed was collected by administrative setoff from Walsh to liquidate a claim of the United States Air Force resulting from shortage in delivery of an interline shipment that was transported on Government bill of lading (GBL) M-0969214. *AGC0005*

The record indicates that IML Freight, Inc. (IML), *AGC00046* transported two similar less-truckload shipments from McClellan Air Force Base (McClellan), California, to its Albany, New York, terminal where they were transferred to two interline carriers for delivery to different destinations: Plattsburgh Air Force Base (Plattsburgh), New York, and Griffiss Air Force Base (Griffiss), New York. Red Star Express Lines (Red Star) received from *DLG05514* IML and delivered to Griffiss, without exception, a shipment of 11 pieces on GBL M-0969212.

The shipment moving on GBL M-0969214, consigned to Plattsburgh, consisted of 13 pieces. Although Walsh acknowledged receipt and tendered delivery of that quantity to Plattsburgh, the consignee accepted only 12 pieces and rejected one because it was marked for

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Griffiss. Walsh, on free astray billing, delivered the rejected piece to IML, which in turn transferred it to Red Star. The latter delivered the carton to Griffiss on free astray billing. "Free Astray," according to the Transportation Logistics Dictionary, Traffic Services Corporation, Washington, D.C., is a term applied to freight transferred to a correct terminal, free of charge, after it has been unloaded at a wrong terminal.

Walsh does not dispute the fact that a prima facie case of carrier liability has been made out here by proof that a stated quantity of goods was received by Walsh in good condition from IML, that a lesser quantity was delivered at the destination point, Plattsburgh, and that the damages were \$2,597.67. Missouri Pacific R.R. v. Elmore & Stahl, 377 U.S. 134 (1964); Browning Freight Lines, B-191889, October 2, 1978. Walsh contends that Griffiss received the missing Plattsburgh piece because Red Star actually delivered 12 items to Griffiss (11 pieces on its bill 7882241 and one piece on free astray billing), one of which was the item missing from the Plattsburgh shipment.

Once a shipper has established a prima facie case of carrier liability, the burden of proof shifts to the carrier and remains there. Super Service Motor Freight Co. v. United States, 350 F.2d 541, 543 (6th Cir. 1965); St. Johnsbury Trucking Co., Inc., B-193007, November 9, 1978. Such proof by the carrier must be clear and convincing. Yeckes-Eichenbaum, Inc. v. Texas Mexican Ry., 263 F.2d 791, 794 (5th Cir. 1959) cert. denied, 361 U.S. 827. [We have stated consistently that the carrier's delivery of an apparent overage on a free astray basis at one delivery point does not explain a shortage of a different item at another delivery point.] St. Johnsbury, supra; Pacific Intermountain Express Co., B-190147, November 15, 1977; Consolidated Freightways, B-195131, September 30, 1976. Walsh has not provided any evidence that links the alleged overage at Griffiss with the shortage at Plattsburgh. For example, Walsh simply states that, "With the two shipments having very similar requisition numbers, similar products, and consisting of an accumulation of small packages, it is possible that McClellan [AFB] made an error and marked 12 instead of 11 for Griffiss." (Emphasis added.) However, the record does not contain any factual support for this view, although Walsh contends that its free astray bill constitutes such evidence.

In this connection, Walsh refers to the annotation on its free astray bill,

"Above ctn mixed in with shipment of 13 marked for Plattsburgh . . . ctn for Rome to be returned to IML for exchange for 1 carton for Plattsburgh."

and contends this document supports its theory. However, we believe the annotation is a self-serving statement by Walsh that Griffiss received an extra carton marked for Plattsburgh. The Air Force states that Griffiss did not report an overage in the shipment that moved on GBL M-0969212, and that existing transportation records at Griffiss do not reflect an overage.

Furthermore, whether an overage did or did not exist on the Griffiss shipment, Walsh has not established by clear and convincing evidence that the Griffiss shipment included the unit missing from the Plattsburgh shipment. Thus it has failed to overcome the prima facie case in favor of the Government. 48 Comp. Gen. 638 (1969); Pacific Intermountain Express Co., B-190147, November 15, 1977.

Accordingly, our Claims Division's settlement of March 17, 1980, is sustained.

Harry R. Van Cleave
For the Comptroller General
of the United States