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**DECISION**



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

FILE: B-198815

DATE: April 13, 1982

MATTER OF: Global Van Lines, Inc. . .

**DIGEST:**

1. An Army member who tenders to a carrier a sealed carton "packed by owner" without disclosing its contents to the carrier bears a heavy burden of establishing the carton's contents in any claims proceeding resulting from the carton's loss during shipment.
  
2. Where a shipper furnishes no substantive evidence to support his allegation that he tendered to a carrier property that was lost during shipment, and the record contains evidence that brings the allegation into question, the Government has not established a prima facie case of carrier liability, and the carrier thus cannot be held liable for the loss.

Global Van Lines, Inc. appeals a settlement of our Claims Group disallowing its claim for \$3,000, an amount which had been set off from monies otherwise due Global after Global was found liable for the loss of two oriental rugs allegedly contained in a shipment of household goods belonging to a member of the Army. Global transported the shipment from Brooklyn, New York, to Fort Hood, Texas, under Government bill of lading M-2041528.

We sustain the appeal.

Global argued before the Claims Group that there was no satisfactory proof that the oriental rugs had been shipped. The Claims Group, however, determined that the record indeed established a prima facie case of carrier negligence and liability, which Global had

not rebutted. The basis for that determination was Army evidence purporting to establish that the oriental rugs were tendered to Global, but never delivered by Global.

We do not believe the Government has established a prima facie case of carrier liability, because there is substantial doubt in the record as to whether the shipper (the Army member) tendered the oriental rugs to the carrier for shipment. To establish a prima facie case of carrier liability, the facts must show that (1) the property for shipment was tendered to the carrier in a certain condition, (2) the property either was not delivered by the carrier, or was delivered in a condition worse than when tendered, and (3) the amount of loss or damage. See Missouri Pacific Railroad Co. v. Elmore & Stahl, 377 U.S. 134 (1965). A prima facie case shifts the burden of proof to the carrier to show that it was not liable for the loss or damage. In this case, however, the record fails to establish one of the three elements of a prima facie case: that the property was tendered to the carrier.

The inventory of the shipper's property, prepared by Global and the shipper at origin, included 108 items, numbered from 231 to 338. Item number 283 was listed as a large carton that was "packed by owner." There was no description of the contents of this carton. On delivery, the shipper noted on the form for exceptions to delivery that item number 283 was missing. Subsequently, the shipper filed a claim for loss of personal property against the United States with the Army Claims Service in which he stated that the missing carton number 283 contained two oriental rugs, each 9 feet by 12 feet in dimension, with a combined total value of \$3,000.

Since inventory item number 283 was a carton packed by the shipper, with no indication of its contents listed in the inventory, the Army, in processing the claim, requested that the shipper provide proof that two oriental rugs in fact were shipped, plus proof of ownership and the value of the rugs. In making this request, the Army noted that four other rugs were specifically listed and described as inventory items, and that the Army therefore found it difficult to understand why the two allegedly missing oriental rugs would be packed in a carton and not specified on the inventory as were the other four rugs.

In response, the shipper provided proof of ownership and value estimates, and information in the form of an undated, signed statement to the effect that the oriental

rugs were folded and put into large container number 283 to protect them from damage during shipment. The Army Claims Service, and later our Claims Group, apparently accepted this statement, without additional evidence, as proof that the shipper tendered two oriental rugs to Global for shipment.

We believe that a shipper who tenders to a carrier a sealed carton that was packed by the shipper himself, without disclosing the contents to the carrier, bears a heavy burden of establishing the carton's contents in any claims proceeding resulting from the carton's loss during shipment. This burden is consistent with the standard of proof necessary to establish carrier liability which would be encountered by claimants resorting to litigation. For example, in Shore v. New York, N.H. & H.R. Co., 121 A. 344 (Conn. Sup. Ct. of Errors 1928), involving a fact situation similar to the one in the instant claim, a carton, packed by the shipper and allegedly containing shirts, was lost by the carrier. The court denied the shipper's claim against the carrier for the value of the shirts because the plaintiff failed to establish that the shirts were contained in the carton that was delivered to the carrier. The court noted that the evidence established only that the plaintiff delivered to the carrier a carton purporting to contain shirts.

The only evidence that the oriental rugs in issue actually were shipped is the shipper's bare statement that the missing carton contained the rugs. On the other hand, the record includes unresolved questions concerning the shipper's failure to list the two oriental rugs in the inventory while specifically listing four other rugs, and the shipper's justification for, and the feasibility of, folding and packing in a carton two large, valuable, oriental rugs.

In view of the standard of proof discussed above, we do not believe that the shipper's statement, which appears to conflict with other facts concerning the shipment, constitutes sufficient evidence that the oriental rugs were tendered to Global for shipment. In our opinion, to allow a shipper to establish tender of goods solely on the strength of an unsupported, self-serving statement in this circumstance places an unreasonable burden on the carrier with regard to its ability to rebut the claim.

Thus, we do not believe that the Government has established a prima facie case of carrier liability regarding the alleged loss of two oriental rugs. We therefore are instructing our Claims Group, to allow Global's claim.

*Milton J. Rowland*  
for Comptroller General  
of the United States