

DECISION

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

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FILE: B-206558

DATE: November 29, 1983

MATTER OF: Continental Van Lines, Inc.

DIGEST:

Common carrier is liable for full amount of damage in transit to household goods under government bill of lading bearing both a released valuation notation of 60 cents per pound per article and a lump-sum valuation notation of \$20,000, since, under the Interstate Commerce Act, the carrier has the obligation of issuing a proper bill of lading or bear any resulting loss.

Continental Van Lines, Inc. (Continental), claims refund of amounts recovered by the Army Claims Service (Army) for damages in transit to the household effects of John W. Carpenter, transported from Belton, Texas, to Chesterfield, Missouri, under government bill of lading (GBL) No. M-3757772, dated July 5, 1980.

We deny the claim.

On delivery at destination, damage to several articles was noted by the consignee. Army determined the amount of the damages to be \$3,537.61 and a claim for the damages was presented to Continental. Continental offered full settlement of the claim on the basis of a released value of 60 cents per pound per article, which it computed to be \$489. Army rejected the offer contending that Mr. Carpenter had declared a lump-sum valuation of \$20,000 and, since the declared value exceeds the amount of the damages, Continental is liable for the full amount of the damages. The full amount of damages claimed by the Army was subsequently recovered by setoff.

The GBL bears the following commodity description: "HOUSEHOLD GOODS RELEASED AT VALUATION OF .60¢ [\$0.60] PER LB. PER ARTICLE." Also on the GBL is the notation, "MBR HAS DECLARED EXCESS VALUATION IN AMOUNT OF \$20,000.00."

Continental alleges that the notation "RELEASED AT VALUATION OF .60¢" constituted a release of the shipment at \$0.60 per pound per article. Continental also asserts that

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the valuation "is ambiguously shown on the GBL" because of the lump-sum valuation notation. Continental contends that the action of the Army in this case is in conflict with our decision in Four Winds Van Lines, 59 Comp. Gen. 436 (1980).

In the cited decision, the GBL was noted, as here, with a release of valuation at \$0.60 per pound per article. The owner of the household goods declared a lump-sum valuation, which, however, was noted only on the carrier's commercial bill of lading and not noted on the GBL. Since the shipment was governed by the GBL, the released valuation on the GBL was effective and the lump-sum valuation was not effective since it was not noted on the GBL. In the present case, the lump-sum valuation was noted on the GBL as well as the 60-cent released valuation. The facts in this case, therefore, are substantially different from the facts in the cited decision.

Continental also questions the time when the lump-sum valuation was actually noted on the bill of lading.

The GBL standard form (SF) 1103, et al., is printed in a multiple copy with carbon interleaves for simultaneous preparation and consists of (1) the original GBL, SF 1103, (2) the shipping order, SF 1104, (3) an original and one copy freight waybill, SF 1105 and SF 1106, and (4) memorandum copies, SF 1103-A, B, etc. On release of the shipment to the carrier by the consignor for carriage to destination, the multiple form is separated. Some copies are retained by the carrier, some accompany the shipment, some are retained by the shipper and one or more copies are given to the consignee. See 41 C.F.R. § 101-41.302-2 (1982). Any notation not on the GBL before delivery of the shipment to the carrier at origin and separation of the multiple copies will not be on all copies of the GBL.

The record contains a copy of the original GBL and one memorandum copy, both of which contain identical notations. No copy of the GBL has been presented which does not contain both notations. From the evidence, it appears that both valuation notations were on the GBL when the shipment was tendered to the carrier and the multiple form GBL was separated.

Army contends that it is an accepted practice for a GBL to be issued without mention of specific liability or with \$0.60 per pound released valuation, or with excess valuation

only, or, as in the present instance, with a \$0.60 released valuation notation at the top of the articles' description block on the GBL "which is automatically superseded by a declared excess valuation or declared lump-sum valuation at the bottom." However, no authority is cited for this proposition. Army also alleges that carriers do not find inconsistent notations of this nature on the GBL to be ambiguous. In support of this allegation, the Army furnished a GBL issued by Allied Freight Forwarders, Inc. (Allied), bearing valuation notations nearly identical to those on GBL M-3757772. However, there is no statement from Allied as to its interpretation of the GBL.

We agree with Continental that the GBL as issued is ambiguous.

The reverse of the GBL provides, in pertinent part, that the GBL is governed by the regulations published in 41 C.F.R. § 101-41.3. Subparagraph (e) of 41 C.F.R. § 101-41.302-3 (1982) provides that the shipment is made at the restricted or limited valuation specified in the applicable tariff or special government tender under section 22 of the Interstate Commerce Act, 49 U.S.C. § 10721 (Supp. IV 1980), at which the lowest rate is available "unless otherwise indicated on the face of the GBL." Two declarations of valuation, one at 60 cents per pound per article and one for a lump-sum of \$20,000, are indicated on the face of the GBL. However, according to Continental, its liability in this case would be \$489 based on the 60 cents per pound per article released valuation, whereas the actual damages as claimed by the Army are \$3,537.61. When the carrier's tariff or section 22 tender offers a lower freight rate for a released valuation, the liability of the carrier for loss or damage in transit and the applicable freight charges are different under the different notations. The GBL, as issued, contains conflicting provisions which cannot be performed.

Sections 20(11) and 219 of the Interstate Commerce Act, 49 U.S.C. § 11707 (Supp. IV 1980), place upon a common carrier by motor in interstate commerce the duty to issue a proper bill of lading, even though it is not uncommon for shippers, including the government, to prepare the bill of lading. 52 Comp. Gen. 211 (1972). Therefore, if a bill of lading contains conflicting provisions, the carrier is obligated to seek clarification or run the risk of liability for any resulting damages. See Ross Industries-Dept. of Cargill v. Atchison, T. & S.F. Ry., 356 I.C.C. 870 (1977).

The GBL bears the notation that the value of the shipment is declared to be \$20,000 as well as the released value notation of \$0.60 per pound. Since Continental failed to request clarification, it is liable for the full amount of the damage in transit.

In additional support of its contention, Continental asserts that it was paid freight charges on the basis of the 60-cent released valuation rates. While no evidence has been presented, we assume that Continental was paid the freight charges claimed without audit in accordance with section 322 of the Transportation Act of 1940, 31 U.S.C. § 244 (Supp. IV, 1980). Continental may, therefore, be entitled to additional freight charges. In any event, the government intended to contract for transportation at the lump-sum valuation and endorsed the GBL to that effect. Continental was obligated to seek clarification of any discrepancies and did not. Continental is, therefore, liable for the additional damages.

Continental has also challenged the computation by Army of the damages on an eight-piece sofa of which only six pieces sustained damage. Army concedes that it erred and has recomputed the damages to allow Continental a refund of \$501.22. Continental was notified of the recomputation by letter of September 9, 1983. Continental has not objected to the recomputation, which, therefore, is deemed correct and acceptable to Continental.

Milton J. Fowler
for Comptroller General
of the United States