

DECISION

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

FILE: B-213840

DATE: February 28, 1984

MATTER OF: The B&B Lines

DIGEST:

A freight bill acknowledging receipt of a shipment without exception is not conclusive evidence that a reusable container was delivered without damage. Where the shipper explains that the consignee's receiving employees failed to note on the freight bill that the container was damaged because they mistakenly thought a notation was unnecessary as the fuel tank within the container was not damaged, the shipper has established a prima facie case of carrier liability, which is not rebutted by the carrier's mere speculation that the damage occurred after delivery.

The B&B Lines appeals a decision by our Claims Group denying the firm's request for a refund of \$191.07 that the Department of the Air Force withheld from an amount otherwise due B&B to compensate for the cost of repairing a reusable wooden shipping container for an aluminum aircraft wing fuel tank that B&B transported for the government. The Air Force contends the container was damaged during shipment, while B&B maintains that the damage must have occurred after delivery.

We affirm the Claims Group's decision.

The consignee did not take any exception to the delivery when signing the freight bill acknowledging receipt of the shipment. The Air Force states that the damage nevertheless was noted by the consignee's receiving employees upon delivery; the record contains a written statement signed by the consignee's checker and supervisor that the damage was noted upon receipt

of the shipment. The Air Force explains that because there was no damage to the enclosed fuel tank, and since the receiving employees assumed the shipping container was not reusable, the employees did not note the damage on the freight bill. At the Air Force's request, B&B inspected the shipment and noted the obvious damage. The Air Force insists that the shipment remained undisturbed between delivery and the inspection because the fuel tanks are regarded as hazardous until their fuel content and vapor pressure can be determined.

B&B contends that the damage must have occurred during the 6 days between the delivery and the inspection, and insists that if the container had been delivered in a damaged condition, its own employees and the employees of the consignee would have seen it and noted it on the freight bill. B&B does not dispute the fact that it received the shipment in good condition or the reasonableness of the cost of repair.

As a common carrier, B&B's liability is controlled by the Carmack Amendment of 1906, section 20(11) of the Interstate Commerce Act, 49 U.S.C. § 11707 (Supp. IV 1980), formerly 49 U.S.C. § 20(11), which makes carriers subject to its provisions liable for the actual loss or damage caused by them to property they transport. The statute codifies the common-law rule that a carrier, although not an absolute insurer, is liable without proof of negligence for all damage to property it transports unless it can show that the damage was caused by (1) an act of God, (2) the public enemy, (3) the fault of the shipper, (4) public authority, or (5) the inherent nature of the property. In an action to recover damages for a shipment, the shipper must establish a prima facie case of carrier liability by showing delivery to the carrier in good condition, arrival at the destination in damaged condition, and the amount of damages. The burden is then shifted to the carrier to show both that it was free from negligence and that the damage was due to one of the excepted causes relieving it of liability. See Missouri Pacific R.R. v. Elmore & Stahl, 377 U.S. 134 (1964); Chandler Trailer Convoy, Inc., B-193432; B-211194, January 5, 1984.

Applying those principles, we believe B&B properly has been held liable for the damage in issue. A clear delivery receipt is not conclusive evidence of the

condition of the property at the time of delivery to the destination and thus does not preclude proof that the goods were in fact damaged when received from the carrier. Trans Country Van Lines, Inc., 57 Comp. Gen. 170 (1977); Chandler Trailer Convoy, Inc., *supra*. The Air Force's explanation as to why the damage noted by the receiving employees was not listed on the delivery receipt and the written statement of the employees are persuasive as to the existence of the damage at delivery, especially when coupled with the Air Force's assurance that the containers remained undisturbed from receipt until the formal inspection. The referenced explanation is not inconsistent with B&B's position that the receiving employees would have noticed the damage, but only with the carrier's speculation that the employees would have listed the damage on the delivery receipt, and that its own employee would have noticed the damage. In our view, this is not sufficient to overcome the prima facie case established by the Air Force. See Lee Way Motor Freight, Inc., B-185283, June 22, 1978.

B&B further contends that a carrier cannot be held liable for damage to shipping containers unless the carrier was placed on notice at the time of shipment that it would be held liable for any such damage. However, while B&B may be correct with respect to ordinary shipping containers, which function simply to protect the goods during transportation, the settled rule where the carrier knows the containers are reusable is that the carrier unquestionably is liable for the reasonable cost of repairs in the event of container damage. Sigmond, Miller's Law of Freight Loss and Damage Claims 311 (4th ed. 1974).

The Claims Group's decision is affirmed.


Comptroller General
of the United States