DECISION

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

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FILE: B-213837 **DATE:** March 20, 1984

MATTER OF: Starck Van Lines of Columbus, Inc.

DIGEST:

1. A clear delivery receipt obtained by the carrier at the time of delivery is not conclusive evidence of the condition of the property at delivery and does not preclude proof that the goods were in fact damaged when received from the carrier.

2. Shipper establishes prima facie case of carrier liability for damage in transit by showing that the household goods, while having some damage when picked up by the carrier, were in worse condition when delivered by the carrier. The burden then shifts to the carrier to show that the damage did not occur in its possession or was the sole result of an excepted cause, and mere speculation does not satisfy this burden.

Starck Van Lines of Columbus, Inc. has appealed our Claims Group's denial of its claim for a refund of $187.50 which the Department of the Air Force withheld from Starck to compensate for damage, incurred during transport by Starck, to seven items of household goods owned by an Air Force staff sergeant. We affirm the Claims Group's decision.

The goods were packed by Starck in Dayton, Ohio; picked up by a Starck agent; delivered to storage-in-transit in Dubuque, Iowa; and delivered in Epworth, Iowa by another Starck agent. Upon delivery, several damaged items were noted on the delivery receipt by the delivery agent. The transportation officer from Rock Island Arsenal inspected the shipment and found additional damaged property, which he listed on the

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inspection report, dated the day after delivery. The inspection report, which was signed by the inspector and the sergeant's wife, attributed the damage to, among other things, failure to protect finished surfaces, improper packing and unqualified carrier personnel. The amount withheld represents the Air Force's calculation of Starck's contractual liability, which our Claims Group has supported.

Starck'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 loss or damage caused by them to property they transport and declares unlawful and void any attempted means of limiting this liability. The statute codified 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 vice or nature of the property. Therefore, 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 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-191432; B-211194, January 5, 1984.

Starck points out that the staff sergeant unpacked the goods himself, even though Starck was responsible for doing so since the shipper had not executed a waiver of carrier unpacking. Starck notes that the sergeant did not list any damage on the delivery receipt with respect to two items he unpacked (items 300 and 271), and argues that, according to a military-industry memorandum of understanding, a shipper who does not formally waive unpacking by the carrier and nevertheless unpacks himself has no right to claim for damage he does not indicate on the delivery

receipt. Starck further argues that a claim for damage should not be permitted as to four other items (items 288, 319, 329, and 303) for which no damage was noted on the delivery receipt, since they were not packed and their condition thus was apparent at the time of delivery.

The mere fact that the delivery receipt for the items does not note the claimed damage does not relieve Starck of liability, since the prima facie case of carrier liability does not extend only to those damages noted on a delivery receipt. Southeastern Freight Lines, B-213089, March 6, 1984. A clear delivery receipt is not conclusive evidence of the condition of the property at the time of delivery at the destination and 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).

As to the effect of the military-industry memorandum on the two items the shipper unpacked, the memorandum provides:

> "Upon delivery by the carrier, all loss or damage to the household goods shall be noted on the delivery document . . . . For later discovered loss or damage, including that involving packed items for which unpacking has been waived in writing, written documentation . . . advising the carrier of later discovered loss or damage, dispatched no later than 45 days following delivery, shall be accepted by the carrier as overcoming the presumption of the correctness of the delivery receipt." (Emphasis supplied.)

The memorandum thus only establishes a notice provision that overcomes the implication of the terms of a delivery receipt for situations "including" those where there are written waivers; the memorandum does not expressly exclude the situation where there is no written waiver. A shipper who unpacked items therefore is not precluded under the memorandum from claiming damage after delivery simply because the shipper did not waive carrier unpacking in writing and did not, upon unpacking, note the damage on the delivery receipt.

Thus, the general rule about the effect of a delivery receipt--that the receipt is not conclusive--applies to the six items in issue. Starck was notified of the damage 2 days after delivery, but did not choose to inspect the damage. The record establishes all the elements necessary to a prima facie case of carrier liability. Since Starck has furnished no evidence to show that its negligence did not cause the damage in issue, the carrier must be held liable.

The other damage for which Starck was charged was to a washing machine (item 321) and a baby crib (item 329, which also is involved in our prior discussion). The washing machine was described as "bent" on the delivery receipt but "smashed & chipped" on the inspection report. The Air force concedes that the washer was bent and chipped when it was delivered to Starck and contends that the damage for which it claims $120 from Starck was new damage to another part of the washer. The Air Force also agrees that there was pre-existing damage to the baby crib, and again contends that Starck was charged only for new damage. Starck complains that the allegedly new damage was not recorded at the time of delivery, and argues that the Air Force has failed to show that the damage was pre-existing.

As stated above, the fact that damage is not noted on a delivery receipt does not preclude a subsequent claim once damage is discovered. The record includes adequate documentation to establish a prima facie case that the washer and the crib were in worse condition when they were delivered by Starck than when they were delivered to Starck at the point of origin. Thus, the burden is on Starck to show that its failure to deliver the household goods in the same condition as they were when picked up was caused by one of the five exceptions listed in Missouri Pacific R.R. v. Elmore & Stahl, supra. See Brown Transport Corporation, 55 Comp. Gen. 611 (1976). Mere allegations or suppositions do not satisfy this burden, id., and Starck thus has not overcome the legal presumption that the damage occurred while in its possession during transit.

Our Claims Group decision is affirmed.

for Milton J. Socolar
Comptroller General
of the United States