

DECISION

29336
**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-213841**DATE:** September 18, 1984**MATTER OF:** Paul Arpin Van Lines Inc.**DIGEST:**

Carrier has failed to establish that government setoff for loss and damage claim was excessive where agency based amount of setoff for damage to sofa on repair estimate by upholsterer which specifically indicated that complete reupholstery was necessary because of the nature of the damages, and carrier has offered on evidence to refute the reasonableness of this estimate, instead offering subjective opinion that the failure to estimate on the basis of a lesser repair demonstrates the lack of expertness of the upholsterer.

Paul Arpin Van Lines Inc. (Arpin) requests review of a GAO settlement certificate dated September 30, 1983, in which the GAO Claims Group disallowed Arpin's claim for a refund of \$151. The Air Force had set off this amount from bills due Arpin to reflect part of the damages to household goods which were the property of Air Force member, Robert L. Smith, while being transported by Arpin under government bill of lading No. BP 024060. In its request for review, Arpin alleges that the Air Force set off an excessive amount for damages to one of the two items considered by the Claims Group, a sofa bed.

Initially, the Air Force reimbursed Mr. Smith for \$1,997.77 for loss and damage to various items in the shipment in question, thereby becoming subrogated to his claim against the carrier and taking setoff action. After appeals within the Air Force, Arpin eventually filed with our Claims Group with respect to \$151 of the setoff relating to two of the damaged items. Our Claims Group issued a settlement certificate disallowing the entire claim and, in particular, disallowing that part of the claim relating to the sofa on the basis that carrier liability had been established and the Air Force had provided a reasonable basis for its calculation of damages, which was not rebutted by Arpin.

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We sustain the Claims Group settlement action.

Arpin's request for review relates only to the sofa and is based solely on Arpin's contention that, in its opinion, the damages were based on an estimate by an upholstery repairman whom Arpin asserts was not a qualified upholsterer, nor an expert in his field. Arpin bases this opinion on the fact that the repairman in question made the estimate on reupholstering the entire sofa, rather than on effecting repairs to the damaged areas by matching the sofa material from information available on labels on the sofa. Arpin concedes that while it caused some damage, the appropriate amount should be \$36, not the \$126 that was assessed, and, therefore, Arpin believes it is entitled to a refund of \$90.

First, we note that the amount of damages paid to Smith by the Air Force was based on a repair estimate of \$562.45 by an upholstery shop. This estimate states that reupholstery is necessary because the damages "cannot be repaired--not sufficient fabric on back." The record also contains an estimate by a second upholstery shop for \$411.32, also for complete reupholstering, with a notation that "all upholstery cannot be replaced." In assessing setoff damages against Arpin, the Air Force reduced the amount to \$126, representing the maximum allowable damages under the applicable released valuation limitation of 60 cents per pound on the sofa, which weighed 210 pounds.

With respect to the extent of damages, the carrier was notified of the damage on DD Form 1841 and apparently declined to inspect the damages. Under these circumstances, rule No. 5 of the Motor Carriers Freight Claim Rule Book concerning inspection governs. This rule provides that:

"In the event carrier does not make an inspection as the result of a waiver or for any other reason the consignee shall make the inspection and record all information to the best of their ability pertinent to the cause. Consignee inspection, in such case, will be considered as the carrier's inspection and will not jeopardize any recovery the consignee is due based on the facts contained in the report."

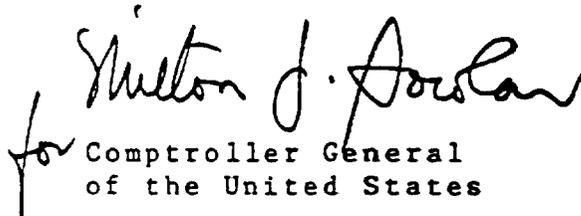
In these circumstances, the carrier is bound by the shipper's damage inspection findings. Overnite Transportation Company, B-211222, Apr. 15, 1983.

Here, the government inspector's DD Form 1841 report noted that the sofa had a loose back right leg, the back right upholstery was pulled loose from the frame, the front left arm fabric was torn and the stuffing pulling loose, and material from the front panel at the foot of the sofa was ripped from the wood sofa base. While Arpin initially argued that there had been preexisting damage, it now argues only that the amount of the damages assessed is excessive because it was based on an allegedly incompetent expert repair estimate.

The Air Force damage estimate is substantiated by estimates from two different upholstery shops, both of which are substantially in excess of the \$126 setoff, which was limited by the released valuation. Both upholstery shop estimates take specific note of the fact that complete reupholstering was necessary because of the nature of the damages and the infeasibility of patchwork repair. Under these circumstances, the government has reasonably established the extent and measure of damages which are in excess of the amount of the setoff. See Overnite Transportation Company, B-211222, supra; B-178233, June 7, 1973.

The carrier has presented no evidence to rebut the government estimate of damages. Rather, Arpin's argument simply assumes that lesser repair of the sofa was feasible. Accordingly, Arpin has failed to meet its burden of proof of establishing the unreliability of the government estimate by clear and convincing evidence to the contrary. McNamara-Lunz Vans and Warehouses, Inc., 57 Comp. Gen. 416, 419 (1978).

We sustain the Claims Group settlement action denying Arpin's claim for a refund.


for Comptroller General
of the United States