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Comptroller General
of the United States

Washington, D.C. 20548

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Decision

Matter of: A Olympic Forwarder, Inc.

File: B-256450

Date: September 16, 1994

DIGEST

Carrier claim for transportation charges that had been withheld in connection with the shipment of items damaged in transit is denied where carrier has not presented clear and convincing evidence to show that the items could have been repaired or were useful for the purpose intended.

DECISION

A Olympic Forwarder, Inc., appeals our Claims Group's settlement of its claim for a refund of freight charges deducted by the Army for damage to an Army member's personal property.[1] We affirm the Claims Group's settlement.

The property was obtained by Olympic in South Korea on June 5, 1991, and was delivered to the member in Colorado on July 24, 1991. Olympic was notified of the damage at delivery, and on February 25, 1992, the Army dispatched a claim for damages in the amount of $85, attaching a copy of the DD Form 1844 (which listed the damaged property with a claim analysis) and repair/replacement estimates. The damage included a broken wooden footlocker and a broken wooden audio cassette box. The record does not indicate that Olympic inspected the damaged property or responded to the Army's claim. Olympic now contests the set-off for unearned freight, contending that the record does not support a finding that each of the items was damaged beyond repair.

The Interstate Commerce Commission's regulation at 49 C.F.R. § 1056.15(b) provides that if "any portion, but less than all, of a shipment of household goods is lost or destroyed in transit, a motor common carrier of household goods in interstate or foreign commerce shall . . . refund that portion of its published freight charges . . . corresponding to that portion of the shipment which is lost or destroyed in transit." The Commission has explained that

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[1]The shipment moved under Personal Property Government Bill of Lading GP-397,518 (Donald R. Bresher).

"destruction" implies that goods are "beyond repair or renewal, that they no longer exist in the form in which they were tendered to the carrier, or that they are useless for the purpose for which they were intended." See Aalmode Transportation Corp., B-231357.2, Sept. 9, 1992.

The record reasonably supports the Army's recovery of the freight charges. It is uncontested that the two wooden items were broken, as opposed to being only scratched or nicked, for example. In assessing carrier liability, the Army concluded that the damages were so significant that replacement costs, not repair costs, had to be used to measure the damages, and nothing indicates that Olympic disputed this finding on damages. Olympic has not introduced any evidence to demonstrate that any of the items were still repairable or useable for the purpose intended. The conclusion that an item was destroyed within the meaning of 49 C.F.R. § 1056.15(b) involves a question of fact, and our Office will not object to such a finding without clear and convincing evidence from the carrier that the agency acted unreasonably. See McNamara-Lunz Vans and Warehouses, Inc., 57 Comp. Gen. 415, 419 (1978).

The Claims Group's settlement is affirmed.

/s/ Seymour Efros
for Robert P. Murphy
Acting General Counsel