



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Swift International, Inc.--Claim For Reimbursement of Amount Collected by Setoff for Damage to Household Goods

File: B-257612

Date: January 25, 1995

DIGEST

When the government and a carrier each have custody of household goods during a portion of a move and it is factually impossible to determine which is liable for damage, the 50/50 rule provides that the government may settle a damage claim against the carrier for 50 percent of the amount claimed. Because the purpose of the 50/50 rule is to reduce the amount of time and paperwork involved in settling such claims, the carrier is deemed to have waived the rule if it does not settle the claim promptly or chooses to argue its liability as to individual articles in the shipment.

DECISION

This is in response to an appeal of a settlement which denied the claim of Swift International, Inc., for reimbursement of an amount collected by setoff for damage to a member's household goods. We affirm the settlement.

On July 3, 1991, Swift delivered the household goods of Petty Officer First Class James Catchings in Naples, Italy, under Government Bill of Lading PP-031,218. The shipment was classified as a Code 5 shipment, a shipment which was in the custody of the government for part of the transit time. A prima facie case of liability was established against Swift for damage to the household goods. On March 24, 1992, the Navy sent Swift a demand for \$852. Swift responded with an offer of \$278.50 based on denials of liability or adjustments to some of the amounts claimed by the Navy and on a 50 percent reduction of the remainder under the 50/50 rule,¹ which could be applied in this instance because the shipment was in the custody of the government for part of the transit time

¹The 50/50 rule is contained in Claims and Tort Litigation, AFR 112-1, Section 6-62. It has its origin in Paragraph 1a of Air Force Claims Bulletin 72-6, dated August 3, 1972, and has been restated in various forms since then. AFR 112-1 describes the rule as "a compromise," applicable only where no evidence exists that the loss or damage occurred while the shipment was in the hands either of the government or the carrier.

(Code 5). The Navy rejected Swift's offer and suspended the 50/50 rule. Following further demand letters, the Navy collected the \$852 by setoff. Swift then requested that the setoff be rescinded and the 50/50 rule reinstated. The Navy subsequently accepted many of the individual adjustments set out in Swift's offer of June 1992 and therefore offered Swift a refund of \$156, but refused to reduce the balance of the claim by 50 percent.

Under the common law a carrier is liable without proof of negligence for damage to property it transports unless it can show that it was free from negligence and that the damage was due to an excepted cause relieving it from liability. Missouri Pacific Railroad v. Elmore & Stahl, 377 U.S. 34 (1964). Where more than one carrier has had custody, the last is generally held liable. In a Code 5 shipment, however, where the government and the carrier each have possession of the goods for part of the transit time and it is not possible to determine factually which one caused damage, a compromise has been reached via the "50/50 rule." Under the rule the government will accept 50 percent of the damages in return for prompt payment of the amount claimed. Since the purpose of the compromise is to reduce the time and paperwork involved in settling claims, the rule does not apply if the carrier does not pay within 120 days or attempts to argue its liability as to individual items in the shipment. Jet Forwarding, Inc., B-213835, May 10, 1984.

In the present situation the Navy determined Swift's liability to be \$852, but Swift was entitled to settle the claim for \$426 under the 50/50 rule. Swift responded after 92 days with an offer of \$278.50 based on the 50/50 rule and various modifications and limitations of liability as to certain items. The Navy was correct in suspending the rule in this situation because Swift disputed the amount claimed instead of paying 50 percent promptly. See B-213835, *supra*.

Accordingly, we affirm the prior settlement of this matter.

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General Counsel