DOCUMENT RESUME

02296 - [A1472481]

[Reasonableness of an Estimate to Repair Damaged Furniture]. B-182696. May 20, 1977. 4 pp.

Decision re: Allied Van Lines, Inc.; by Robert F. Keller, Deputy Comptroller General.

Issue Area: Personnel Management and Compensation: Compensation (305).
Contact: Office of the General Counsel: Transportation Law.
Budget Function: General Government: Central Personnel Management (805).
Organization Concerned: Department of the Air Force.
Authority: 49 U.S.C. 20(11). 49 U.S.C. 319. Gratiot v. United States, 40 U.S. (15 Pet.) 336, 370 (1841).

The claimant requested review of the disallowance of its claim for $336.46, which was collected by the Government by setoff as a subrogee from monies otherwise due the carrier to compensate it for the value of loss and damage to household goods owned by a member of the military. The measure of damages when the loss on an item is not total is ordinarily the reasonable cost of repairs to put the damaged article in as good condition as it was in before the damage. An owner of household goods may elect to have repairs performed by a firm of his own choosing. (Author/SC)

Kenneth Siegel
Transp.

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

02296

FILE: B-182696 DATE: May 20, 1977

MATTER OF: Allied Van Lines, Inc.

DIGEST: 1. The measure of damages when the loss on an item is not total is ordinarily the reasonable expense of repairs to put the damaged item in as good condition as it was in before damage occurred. See cases cited.

2. An owner of household goods is not required to have repairs to an item damaged while in possession of carrier performed by firm of carrier's choosing and may elect to have repairs performed by firm of his own choosing.

Allied Van Lines, Inc. (Allied) requests review of our Claims Division's disallowance of its claim for $336.46. The claim represents an amount collected by the Government by setoff as a subrogee from monies otherwise due the carrier to compensate it for the value of loss and damage to household goods owned by a member of the military.

The claim (No. 31395-9-B23) arose from a shipment of household goods owned by a member of the military which was transported from Pease Air Force Base, New Hampshire, to Grandview, Missouri, under Government bill of lading No. E-9441848, dated July 15, 1969. The goods were delivered by Federal Van & Storage Co., Kansas City, Missouri, Allied's agent, to the member's residence on August 8, 1969, and loss and damage to various items was observed and noted on the delivery documents by the member and by the carrier's agent.

On August 11, 1969, the member obtained a repair estimate on the damaged furniture from what is administratively reported to be a reputable furniture repairing and refinishing concern. A few days later in August, the member filed a claim for $723.30 against the Government; he filed a similar claim against Allied's agent. The amount claimed included the estimated repair costs as well as the value of

the lost items. Allied's agent arranged for an inspection by its own repair service. According to Allied's agent, the member would not permit repairs by the agent's repair service stating that he would have the repairs made by a firm of his choice. In October 1969, while the member's claim against the Government was being processed, Allied offered to settle the member's claim for $179.80 based on its own repair estimates on the furniture and its value of the missing items.

In November 1969 the member's claim against the Government was settled for $591.31 and the Government thereby became subrogated to the member's claim against Allied. Based on Government's evaluation and on the released valuation clause in the contract of transportation, the member's claim against Allied was reduced from $728.30 to $516.26. Several demands were made on Allied which finally offered to settle the claim for $179.80, an offer which was rejected. When after an exchange of correspondence Allied refused to pay the Government's claim of $516.26, it was deducted on October 12, 1970, from monies otherwise due the carrier. Allied's claim for refund of $336.46, the difference between the amount deducted and Allied's settlement offer, was disallowed by our Claims Division; this request for review followed.

The dispute here involves the measure of damages, principally, the reasonableness of an estimate to repair damaged furniture.

Allied asserts that while as a carrier it has an obligation to settle cargo claims fairly and promptly it also has an obligation to control such costs. Allied states that since claims are an integral part of its business they are:

> "in a position to work extensively with repair firms that provide quality service at a reasonable price. . . . Obviously, an individual shipper who has no experience in this area is not in a position to do so. If we (Allied) were to allow all shippers to choose their own repair firms, we would be deluged with unreasonable repair bills."

Allied also contends that the deduction action was "taken arbitrarily and without any effort to be fair."

It seems to be Allied's position that the member was obligated to either permit Allied to obtain the repairs required to restore the damaged articles to their predamage condition or to accept a monetary settlement equal to the expense Allied would have incurred in repairing the damaged articles.

The liability of a common carrier when goods in its possession are either lost or damaged is the ". . . full actual loss, damage, or injury . . ." to the goods. 49 U.S.C. 20(11), 319 (1970). One measure of the damage is the difference between the fair market value of the goods undamaged and their fair market value as delivered in damaged condition. Stackpole Motor Transp. v. Malden Spinning & Dyeing Co., 263 F.2d 47 (1st Cir. 1958). The reasonable cost of repairs is an appropriate measure of the loss where the property is not a total loss, but can be and is repaired and the cost of repair is not out of proportion to the value of the property or exceeds the value of the property before injury. Continental Can Company v. Eazor Express, Inc., 354 F.2d 222 (2nd Cir. 1965); Assoc. of Maryland Pilots v. Baltimore & O.R.R., 304 F. Supp. 548, 556 (D. Md. 1969); Southwestern Motor Transport Co. v. Valley Weathermakers, Inc., 427 S.W. 2d 597 (Texas 1968). And it has been held that the injured party is not compelled to accept the service of a repair man selected by the party causing the injury and is not acting arbitrarily or capriciously in having repairs performed by a dealer selected by himself. See Ferrand v. McCaskill, 91 So. 2d 612 (Ct. App. La. 1957).

Allied has not shown that the estimate obtained by the member was unreasonable in comparison with the market price of the service in the area or that the price was unreasonable in relation to the value of the goods prior to being damaged. It has shown only that estimate obtained by the member was higher than that available to the carrier by means of its commercial relationship with a particular firm.

It is agreed by the parties that the carrier's liability is the cost of restoring the goods to their predamaged

condition. In our opinion, the member acted within his legal rights in using a firm of his selection to perform the necessary repair work providing the cost was reasonable and not in excess of the predamage value of the goods and not out of proportion to their value. Allied has failed to raise any legal precedent contesting these points.

Allied contends that the deduction action was unfairly and arbitrarily taken. However, the record shows that Allied was furnished a breakdown of the member's cost estimates and that the Government as subrogee rejected as unreasonably low Allied's repair cost estimates.

Further, the Government's common law right, which belongs to every creditor, to apply the unappropriated monies of its debtor, in its hand, to extinguish debts due to it, has been recognized by the courts since Gratiot v. United States, 40 U.S. (15 Pet.) 336, 370 (1841) and the line of cases which have followed: McKnight v. United States, 98 U.S. 179, 186 (1878); United States v. Munsey Trust Co., 332 U.S. 234 (1947) and United States v. Cohen, 389 F.2d 689, 690 (5th Cir. 1967).

In these circumstances, our Claims Division's disallowance of Allied's claim was proper and is sustained.

Deputy Comptroller General
of the United States