DECISION

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

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FILE: DATE: January 2, 1976

MATTER OF: B-183346

Brown Transport Corp.

DIGEST:

Disallowance of carrier's amended claim for refund of an amount administratively deducted from its account due to damage to floodlight units is sustained where carrier is liable for damage without proof of negligence unless damage is affirmatively shown to be the result of one of the exceptions to its liability as a common carrier, Federated Department Stores v. Brinke, 450 F.2d 1223 (5th Cir., 1971), and cases cited. Evidence on carrier's freight bill indicates extent of damage and allegations of faulty packaging without evidence that packaging was the sole cause of damage will not rebut the presumption of negligence by the carrier. Missouri Pacific R.R. v. Elmore & Stahl, 377 U.S. 134 (1964).

Brown Transport Corp. (Brown), by letter dated August 5, 1975, protests the action of our former Transportation and Claims Division in disallowing its amended claim for $519.11. The total amount of the claim, $521.91, was deducted from monies otherwise due Brown because of damage sustained to two floodlight units which moved from Fort Campbell, Kentucky, to Robins Air Force Base, Georgia, on Government bill of lading No. F-4756064, dated April 20, 1972.

Brown contends that (1) at destination, only damage to part of the floodlights (the tie rods, valued at $2.80) was noted; (2) the carrier does not have to show that it is free from negligence and the burden of proof is on the Government to prove that the carrier was negligent; and (3) the damaged items were not adequately packaged and packed in accordance with tariff provisions.

Brown admits that some damage to the tie rods on the floodlight units was noted at destination. However, Brown contends that the Government is speculating as to whether or not the remainder of the damage was caused by Brown because the additional damage was not noted at the time of delivery. The record indicates otherwise. Brown's Freight Bill No. 1-269413, dated 4/25/72, together with

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Thurston Motor Lines, Inc. (the origin carrier) Freight Bill No. 19-260678, dated 4/20/72, are stamped as received by the transportation officer on April 27, 1972, the date of delivery, and further stamped as to an exception for damage. Printed on the freight bill, together with two signatures, are the words "Reflectors damaged tie rods on both floodlights bent." Brown was notified of the damage on April 27, 1972, the date of delivery, and given the opportunity for a timely inspection within 48 hours of delivery. The record indicates, however, that although Brown was given the opportunity to promptly inspect the damaged floodlight units, an inspection was not performed until May 9, 1972, some 13 days after delivery. Further, the record contains a sworn affidavit by the destination receiving clerk as to the extent of the damage at delivery. Therefore, when coupled with the itemized repair bill, the actual damages of $521.91 is substantiated.

It is well settled in transportation law that under the Carmack Amendment, 49 U.S.C. 20(11) (1970), the initial and delivering carrier is liable to the holder of a bill of lading, without proof of negligence, for all damage to the goods transported by it, unless it affirmatively shows that the damage was occasioned by the shipper, act of God, the public enemy, public authority or the inherent vice or nature of the commodity. Federated Department Stores v. Brinke, 450 F.2d 1223, 1225 (5th Cir. 1971); Secretary of Agriculture v. United States, 350 U.S. 162 (1956); Chesapeake & Ohio Ry. v. Thomson Mfg. Co., 270 U.S. 416 (1926); Adams Express Co. v. Croninger, 226 U.S. 491 (1913). And if goods leave the shipper's hands in good condition and arrive at their destination damaged, it is presumed that the carrier was negligent and responsible. Johnson Motor Transport v. United States, 149 F. Supp. 175 (Ct. Cl. 1957). Thus, the very fact that the floodlight units were tendered to the carrier in good order, and damaged upon delivery, as evidenced by the Government bill of lading, presumes that Brown was negligent unless Brown can establish that the damage was caused solely by one of the exceptions previously mentioned.

Brown alleges that the floodlight units were not adequately packaged and in effect alleges that damage was occasioned by an act of the shipper, one of the exceptions to the carrier's liability. However, once the shipper has proved a prima facie case, the burden of proof shifts to the carrier and remains there. Super Service Motor Freight Co. v. United States, 350 F.2d 541 (6th Cir., 1965). Thus, mere allegations as to the cause of damage on the part of Brown will not rebut the presumption that the damage was due to the negligence of the carrier. And assuming that the damage was the

result of the shipper's defective packaging, the burden of proof is on the carrier to prove that the faulty packaging was the sole cause of the damage. Missouri Pacific R.R. v. Elmore & Stahl, 377 U.S. 134 (1964).

Accordingly, Brown has not met the burden of proof required by law and the disallowance of its amended claim for $519.11 is sustained.

PAUL G. DEMBLING
Acting Comptroller General
of the United States