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DECISION



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

FILE: B-190147

DATE: November 15, 1977

MATTER OF: Pacific Intermountain Express Co.

DIGEST:

1. Carrier's delivery of an overage on a free astray basis at one terminal does not explain shortage of different items at another terminal.
2. Agency advised that it had no record of receiving missing items and it is the practice of our Office to accept statements of facts furnished by agency in absence of "plain and convincing" proof to the contrary. 48 Comp. Gen. 638, 644 (1969); B-181871, February 11, 1977.

Pacific Intermountain Express Co. (PIE) requests review of our Claims Division's Settlement Certificate dated August 3, 1977, in which the Division disallowed PIE's claim for \$1,622.51. The amount claimed was collected by administrative setoff from Central Storage & Transfer Co., Inc. (Central), to liquidate the Government's claim for unearned freight charges and the loss of three cartons of automobile transmissions from a shipment of miscellaneous freight tendered to PIE and delivered by Central. PIE reimbursed Central for the deduction and as a subrogee presented this claim.

On April 26, 1972, PIE, the origin carrier, picked up a shipment at Tooele Army Depot, Tooele, Utah, consisting of 26 items of freight consigned to New Cumberland Army Depot, New Cumberland, Pennsylvania, under Government bill of lading (GBL) No. H-0953128. Described in the bill of lading, among other items, were 12 automobile transmissions, TCN (Transportation Control Number): AK6270 2120 0005 CXXX, FSN (Federal Supply Number): 2520 880 4152. Central, the delivering carrier, delivered only nine of the transmissions to the New Cumberland Army Depot. As a result, \$1,622.51 (\$1,575, the value of the three missing transmissions, plus unearned freight charges of \$47.51) was deducted from monies otherwise due Central.

PIE does not dispute the fact that a prima facie case of carrier liability has been made out here by proof that a stated quantity of goods was delivered to the carrier in good condition at origin, that a lesser quantity was delivered at destination, and that the damages were

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\$1,622.51. Missouri Pacific R.R. v. Elmore & Stahl, 377 U.S. 134 (1964). Instead, PIE contends that the loss is explained by the fact that another shipment was picked up at Tooele Army Depot on GBL No. H-0953126, on the same date, consigned to the Military Ocean Terminal (MOT), Bayonne, New Jersey, and delivered there without exception. PIE states that it delivered three articles to MOT at a later date on a free astray basis and as an apparent overage on the shipment moving under GBL No. H-0953126. It alleges that those items were the three missing transmissions. PIE has asked for identification of the three pieces delivered as an overage at MOT.

PIE has furnished copies of its free astray billing and two copies of MOT internal receiving documents. One MOT document, apparently complimenting the free astray billing, shows that three boxes designated as military surveying outfits, TCN AK6270 1263 8371 XXX, were delivered to MOT on May 31 by PIE's agent "Rapid Distrib. Corp." The other MOT document shows that 13 items were delivered on May 5, 1972, presumably by Rapid on GBL No. H-0953126, which calls for only 12 items. The internal MOT documents show that four additional items were delivered by PIE's agent and the four items are similar to the items listed on GBL No. H-0953126, the MOT shipment. However, none of the items delivered to MOT under GBL No. H-0953126, including the overage of four, not three, items, are automobile transmissions. Thus, the obvious discrepancy at MOT (which involves different commodities) does not lead to the conclusion that the three cartons of transmissions (the missing items) consigned to New Cumberland Army Depot were delivered to MOT in error.


MOT in its ordinary course of business, checks each inbound commodity by its corresponding TCN identification code. This is supported by the MOT internal documents furnished by PIE which show each item checked off by its commodity description. Thus, MOT would have been aware of three cartons of automobile transmissions, each weighing approximately 170 pounds, consigned to the New Cumberland Army Depot. Further, a Discrepancy In Shipment Confirmation form was sent to MOT requesting its assistance in locating the three missing transmissions. MOT advised that it had no record of the shipment. And we accept this statement of fact furnished by MOT in the absence of "plain and convincing" proof to the contrary. 48 Comp. Gen. 638, 644 (1969); B-181871, February 11, 1977. Such proof has not been furnished by PIE.

Once a 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 by PIE that the overage of items delivered to MOT account for the later

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shortage of different items at the New Cumberland Army Depot will not rebut the presumption that the shortage was due to the negligence of the carriers. See B-185131, September 30, 1976.

Our Claims Division's Settlement Certificate dated August 3, 1977, is not otherwise shown to be erroneous and is sustained.


Deputy Comptroller General
of the United States