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E. Wells
Transp.

DECISION



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

FILE: B-190655

DATE: February 17, 1978

MATTER OF: Bowman Transportation, Inc.

DIGEST:

Where property lost in transit has no market value, damages are premised on the actual value of the goods lost to the owner, considering initial cost, replacement cost and such other conditions as affect their value to the owner.

Bowman Transportation, Inc. (Bowman), by its attorney, Edgar C. Gentry, requests review of the settlement which disallowed the carrier's claim for repayment of most of the moneys withheld by the Department of the Army to recoup the damages sustained as the result of the loss of 54,511 steel nut clamps and 6,890 self-locking steel nuts while in transportation from the Defense Depot at Memphis, Tennessee, to the Marine Corps Development and Education Command at Quantico, Virginia, under Government bill of lading F-9279079, issued on August 3, 1972.

Our file Z-2719124 shows that Bowman by its claim 17150 requested repayment of the \$23,578.46 which was withheld from moneys otherwise payable to Estes Express Lines (Estes claim G-0046) the destination carrier. Bowman, the origin carrier, thereafter reimbursed Estes in that amount and is a proper claimant. Bowman contends that the amount withheld is excessive because the articles were surplus property and had no value except to repair obsolete airplanes.

Included in the record here is a copy of the "Requisition and Invoice/Shipping Document" (DD form 1149) which shows that the nut clamps were valued at 23 cents each and the self-locking nuts at \$1.00 each. Those amounts represent the cost of the articles to the Government, and the amounts invoiced to the Curator at the Marine Corps Museum. The Marine Corps states that the items lost were desirable and useful to the Marine Corps Museum and that the articles had been requisitioned for the use of the Aviation Center to repair, reconstruct and assemble various museum pieces. The Marine Corps also states that the value of the items lost is the value shown on the invoice transfer document.

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Information in the claim files shows that in response to an inquiry made by the Marine Corps, the Pratt and Whitney Aircraft Corporation of Hartford, Connecticut, advised that neither the nuts nor the clamps were currently being manufactured and that none of the items were in stock. The manufacturer further advised that any order for the items would have to be made in a sizeable quantity to economically justify the further manufacture of the two items.

Where goods lost in transportation have no market value in the ordinary acceptance of the term, compensation for the actual loss is the fundamental principle on which the measure of damages rests. The measure of damages is ordinarily the actual value to the owner of the goods lost, considering their cost, the practicality and expense of replacing them, and such other conditions as affect their value to the owner, and not what the goods might bring if sold for salvage. See F. J. McCarty Co., Inc. v. Southern Pacific Co., 289 F. Supp. 875 (1968), affirmed 428 F.2d 690 (9th Cir. 1970); Smith v. Railway Express Agency, 110 F. Supp. 911 (1953), affirmed 212 F.2d 47 (6th Cir. 1954), Kates Transfer v. Klassen, 59 Sou. 355 (1912); Southern Express Co. v. Owens, 41 Sou. 752 (1906).

The nuts and clamps lost were not surplus, but had been transferred to the Marine Corps Development and Education Command. The requisition in the record shows that the 54,511 nut clamps were invoiced at 23 cents each and the self-locking nuts were invoiced at \$1.60 each. Those amounts represent the cost to the Government in the initial procurement. Information of record indicates that cost of replacement would exceed the invoiced amount. The Marine Corps advises that they had requisitioned the items for use in assembling and restoring aircraft. The articles lost thus had value to the Marine Corps and the acquisition cost to the Government is the best criteria for establishing the damages sustained.

The settlement certificate issued by our Claims Division is therefore correct and the disallowance of your claim is sustained.

Deputy


Comptroller General
of the United States