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

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FILE: B-191889 DATE: October 2, 1978

MATTER OF: Browning Freight Lines

DIGEST:

Motor carrier's claim for recovery of amount set-off for loss of three packages of wearing apparel is disallowed because Government bill of lading showing receipt of the items by the carrier and record of shortage at place of delivery together with the amount of damages constitute prima facie case of carrier liability which is not overcome by carrier's form reporting that shortage of three packages was detected at carrier's terminal during transloading from one vehicle to another.

This decision is in response to a claim submitted on behalf of Browning Freight Lines, Inc. (Browning), for $1,540.99, part of an amount the Government set-off against Browning's freight charges to compensate it for a shortage in a shipment of wearing apparel transported under Government bill of lading (GBL) No. M-3875654.

The GBL, dated August 7, 1975, covered a shipment of nine packages from the Army Defense Depot, Memphis, Tennessee (Memphis), to the Mountain Home Air Force Base (Mountain Home) in Idaho. The GBL described the contents of the packages and listed their respective weights. On August 7, 1975, a driver for the initial carrier Consolidated Freightways, Inc. (Consolidated), loaded the shipment into a set-out trailer and signed the GBL without exception. When on August 15, 1975, the connecting carrier Browning delivered the shipment to Mountain Home, the Mountain Home inchecker noted the shipment was short three packages of wearing apparel, and noted the shortage on Browning's Freight Bill and on a Government Shipment Tally. Mountain Home prepared a Standard Form 361 "Discrepancy in Shipment Confirmation" on August 25, 1975, and forwarded it to Memphis, a copy going to Consolidated. Memphis returned the form with the notation "shipped as billed," dated September 13, 1975.

On February 23, 1976, the Army Finance and Accounting Center (AFAC) approved a Discrepancy in Shipment Report holding Browning liable for $1,540.99, representing the value of the lost apparel. AFAC revised that figure to $1,548.34 on April 27, 1976, to include unearned freight charges. Collection was initiated in June of the same year, and completed in July.

Consolidated alleges that it never received the three packages of wearing apparel. In support of this, Consolidated has forwarded a copy of its Form 66, "Trailer Unloading Exception Report to Connecting Carrier or Shipper," dated August 8, 1975, and addressed to the shipper, which states that when stripping the shipment from trailer at Consolidated's Memphis terminal for transfer to another vehicle, Consolidated discovered the shortage of the three packages. Consolidated and Browning both contend that the Form 66 establishes no liability on the part of the carriers.

It is not clear whether Memphis ever received the Form 66. In denying Browning's claim for a refund of amounts withheld, AFAC stated in a letter to Browning dated May 20, 1977:

> ". . . there is no evidence that articles declared short were not given to the carrier picking up the shipment originally. The Consolidated Freightways exception report as referred to would seem to indicate that the shortage was noted at the carrier's terminal at the time of transloading. In which event the shortage could have occurred between point of pick up [sic] and the terminal, while in the carriers [sic] hands. If this is not the case then documented evidence to the contrary must be presented."

We believe that the AFAC decision is correct under the circumstances presented.

Under sections 20(11) and 219 of the Interstate Commerce Act, 49 U.S.C. 20(11), 319 (1970), carriers are liable for loss or damage without proof of negligence unless they affirmatively show that the damage was caused by the shipper, an act of God, a public enemy, public authority, or the inherent vice or nature of the commodity. The shipper demonstrates a prima facie case of carrier liability by showing that the shipment was in good condition when tendered to the carrier at origin, that the shipment was delivered in a lesser quantity or in a damaged condition at destination, and the amount of damages, whereupon the burden of proof is upon the carrier to show both its freedom from negligence and that the loss or damage to the cargo was due to one of the excepted causes relieving the carrier of liability. Missouri Pacific R.R. v. Elmore & Stahl, 377 U.S. 134 (1964). The presumption of carrier liability is a substantial right of the shipper which can be overcome only by convincing proof to the contrary. Yeckes-Eichenblum, Inc. v. Texas Mexican Ry. Co., 263 F.2d 791, 794 (5th Cir. 1959), cert. denied, 361 U.S. 827; B-165788, January 6, 1969.

A GBL signed by the carrier without exception constitutes prima facie evidence that the goods were received by the carrier, and that

they were received in apparent good order and condition. United States v. Mississippi Valley Barge Line Co., 285 F.2d 381, 388-389 (8th Cir. 1960); Cf. Strohmeyer & Arpe Co. v. American Line S.S. Corp., 97 F.2d 360 (2d Cir. 1938). However, the presumption is not conclusive; it is rebuttable and is extinguished if the carrier can establish facts different from those recited in the GBL. Strohmeyer & Arpe Co. v. American S.S. Corp; supra.

The GBL showing receipt of the three packages of wearing apparel and the Government's notices of exception upon delivery of the shipment to Mountain Home constitute a prima facie case of carrier liability. Since the Government has presented a prima facie case, Browning must demonstrate by clear and convincing evidence that Consolidated never received the packages. Consolidated's Form 66 is not sufficient in itself to rebut the presumption of carrier liability. As AFAC points out, the shortage could have occurred between the Memphis Defense Depot and the place of transloading. Furthermore, there is evidence that the goods were shipped as billed in the GBL. The shipper stated in the Form 361 dated September 13, 1975, that the cargo was shipped as billed, and Browning's own Freight Bill shows receipt of the three packages. Therefore, the presumption of carrier liability has not been overcome.

Although it is not clear which of the two carriers was responsible for the loss, it was proper for AFAC to recover the value of the lost goods from Browning, because section 20(11) of the Interstate Commerce Act makes both the origin and the delivery carriers liable for the loss and damage occurring anywhere en route regardless of which of the carriers is responsible for the loss. Minneapolis, St. Paul & Sault Ste. Marie R.R. v. Metal-Matic, Inc., 323 F.2d 903 (8th Cir. 1963). As for the recovered freight charges, freight charges are not due the carrier unless and until the goods are delivered to their final destination. 50 Comp. Gen. 164 (1970) and cases cited therein. Since the three packages of wearing apparel were not delivered to their destination, the carriers are not due any freight charges for shipping the missing items, and AFAC's recoupment of those charges was in order.

Browning's claim for $1,540.99 is disallowed.

R.F.K.11

Deputy Comptroller General
of the United States