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DECISION

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

10,209

FILE: B-191889 DATE: May 16, 1979

MATTER OF: Browning Freight Lines, Inc. - Reconsideration

DLG01605

DIGEST:

Decision disallowing [carrier's claim for recovery] of amount set off for value of three packages of wearing apparel lost by carrier is affirmed where carrier alleges but offers no evidence that packages were not delivered by shipper to carrier at origin.

Browning Freight Lines, Inc. (Browning) requests reconsideration of our decision of October 2, 1978, B-191889, in which we disallowed its claim for $1,540.99.

The claim represented an amount set off by the Government to recover the value of three packages of wearing apparel delivered short by Browning, the destination carrier, from a shipment of nine packages tendered to Consolidated Freightways, Inc. (Consolidated), CNG00457 the origin carrier, on Government bill of lading (GBL) No. M-3875654 for transportation from the Army Defense Depot (Depot), Memphis, DLG01606 Tennessee, to Mountain Home Air Force Base, Idaho. DLG01607

The claim was disallowed because the Government's prima facie case of carrier liability for the shortage was not overcome by a carrier form showing that the shortage was detected by Consolidated when transloading the shipment from the vehicle into which it was loaded at the Depot to another vehicle at Consolidated's Memphis terminal; the loss could have occurred between the Depot and the place of transloading.

Browning enclosed a letter to it from Consolidated in which Consolidated states that although three packages were reported missing, the Government claimed for only one piece. This, says Consolidated, would indicate that the other two pieces were in fact located at origin since they were not delivered by Consolidated or Browning. However, the record indicates that the $1,540.99 set off from Browning covered the cost of all three packages. Neither Consolidated nor Browning have presented any other evidence to show that Consolidated did not receive all three packages or that two of the packages were found. Once the shipper has proved a prima facie case of carrier liability, the burden of proof shifts to the carrier and remains there. Thus, mere allegations that the goods

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were not lost and that they were not delivered to Consolidated at origin will not rebut the presumption that the shortage was due to carrier negligence. See 55 Comp. Gen. 611, 613 (1976).

Consolidated also claims that its driver did not physically count or check the freight at origin and that ". . . it is a well known fact that the government does not allow a shipper's load and count notation to be placed on the GBL." However, Defense Supply Agency Regulation (DSAR) 4500.3 ch. 214-20.4 para. 214045 states that when shipments are loaded by the shipper and no check or tally has been made by the initial carrier as to the contents, the carrier may require that the bill of lading be annotated "Shipper's Load and Count" or "SL&C". In any event, the record shows that Consolidated's driver loaded the shipment, and that the driver signed the GBL without exception. The fact that the driver did not count or check the freight does not relieve the carrier of liability for the missing packages.

Our decision of October 2, 1978, B-191889, is affirmed.

For R.F. Keller

Deputy Comptroller General
of the United States