

J. H. ...

DECISION



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

8585

FILE: B-193182

DATE: December 12, 1978

MATTER OF: Paul Arpin Van Lines, Inc.

DIGEST:

1. When there is a dispute between a carrier and the Navy over a question of fact, GAO will accept the Navy's report as correct in absence of sufficiently clear and convincing evidence to contrary.
2. Even though delivery receipt was not excepted to, carrier is not absolved of all liability; delivery receipt is not conclusive and is subject to rebuttal by timely notice to carrier of later discovered damage.
3. Mere allegations are not sufficient to rebut prima facie case of carrier liability.

This decision is in response to a letter of August 21, 1978, from Paul Arpin Van Lines, Inc., requesting reconsideration of the action taken by our Claims Division in its settlement certificate of August 8, 1978, claim number Z-1798360(12). In the settlement, the Division disallowed Paul Arpin's claim for refund of \$72 which was administratively setoff from amounts otherwise payable to the company. The deduction represents the released value of damages to a Navy member's household effects incurred in transit from Summerville, South Carolina, to Chesapeake, Virginia.

By Government bill of lading No. K-2672442, Paul Arpin Van Lines, Inc., contracted with the Department of the Navy to transport the household goods of MM2 Charles N. Nuss from Summerville, South Carolina, to Chesapeake, Virginia. The shipment was delivered on November 1, 1976. The carrier's employees were instructed by the member to place an air conditioner and other items outside of a shed behind his house. At some point after the moving crew had departed, MM2 Nuss noticed damage to the front grill and compressor of the air conditioner.

The member filed a claim against the Government for the damage. His claim was allowed. The Government, subrogated to the member's rights, made a claim against Paul Arpin Van Lines based on the released value of the air conditioner. After the carrier denied liability for the damage, the amount of \$72 was setoff from monies otherwise due him.

The carrier contends that the air conditioner was damaged not by his crew, but by the property owner, ME12 Nuss. It claims that there was no evidence of any damage at the time the air conditioner was placed outside of the shed. The damage, according to the carrier, was found subsequent to the movement of the air conditioner by the member into the shed.

Basically, this is a dispute over a question of fact. In its statement of the facts, the Navy says that the damage was discovered by Nuss after the items had been stacked outside of the shed by the carrier and before Nuss unstacked them to move them into the shed. According to the Navy report, Nuss began unstacking the items after the carrier's crew left in order to move them into the shed for storage. It was at this time that he discovered damage to the front grill and compressor of the air conditioner--not after he had moved the air conditioner from the shed to his house, as the carrier claims.

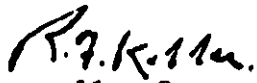
When there is a dispute over a question of fact, it has been the policy of the General Accounting Office to accept the administrative report as correct in the absence of sufficiently clear and convincing contrary evidence. 57 Comp. Gen. 415, 419 (1978); 51 Comp. Gen. 541, 543 (1972); 46 Comp. Gen. 740, 744 (1967). The administrative office is felt to be in a better position to consider and evaluate the facts. 57 Comp. Gen. at 419.

In support of its argument, the carrier points out that the household goods were examined when the air conditioner and other items were placed outside of the shed, and no damage was noted on DD Form 619-1. This does not mean, though, that it was absolved from any liability for damage. A delivery receipt is not conclusive and does not prevent proof of damages by other means. Roades, Inc. v. United Air Lines, Inc., 340 F.2d 481, 486-487 (3d Cir. 1965); International Forwarding Co. v. Bison Freightways, Inc., 316 F. Supp. 464, 466-467 (M.D. Pa. 1970); Red Arrow Freight Lines, Inc. v. Howe, 480 S.W.2d 281, 287 (Tex. Civ. App. 1972). Even though the receipt was not excepted to, it is subject to rebuttal. See B-189716, September 21, 1977; B-183483, November 29, 1976. Here, the damage was noted on DD Forms 1843 and 1845. This information was sent to the carrier on November 19, 1976--19 days after delivery. While a significant delay in reporting damage to a carrier might raise a countervailing inference that the damage occurred after delivery, this report was well within the then 30-day time period allowed under the Military-Industry Memorandum of Understanding for giving a carrier notice of loss or damage after delivery by the carrier.

Because the carrier has been unable to supply clear and convincing evidence to the contrary, we will accept the Navy's statement of the facts. The record, then, presents a prima facie case of carrier liability. See Missouri Pacific R.R. v. Elmore & Stahl, 377 U.S. 134, 137-138 (1964); 57 Comp. Gen. at 419; B-185283, June 22, 1978. The bill of lading shows the condition of the air conditioner when it was delivered to the carrier at origin. While some damage did exist prior to its receipt by Paul Arpin, the record reasonably supports the administrative determination that additional damage was caused while in the custody of the carrier. A failure to deliver the same quality of goods at destination will establish a prima facie case against the carrier. 57 Comp. Gen. at 419.

To relieve itself of liability, the carrier must show that it was not negligent and that the damage was due to one of the excepted causes. Missouri Pacific R.R. at 138. Paul Arpin has not introduced any evidence to overcome this prima facie case. It has merely alleged that the damage is due to the fault of the shipper. As explained above, it was unable to support this allegation. Mere allegations are not sufficient to rebut a prima facie case.

Accordingly, the action of our Claims Division in disallowing Paul Arpin's claim is sustained.


Deputy Comptroller General
of the United States