Trans

DECISION

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

10,083

FILE: B-193195 DATE: May 7, 1979

CNG 00556

MATTER OF: Chandler Trailer Convoy, Inc.

[Carrier Request for Refund of Setoff Charges By Department of Navy]

DIGEST:

1. Previous repair of mobile home spring hanger does not constitute inherent vice as such condition is not caused entirely by internal decomposition or some quality in the property which brings about its own injury or destruction.

2. Measure of damages for freight shipments delivered at destination in damaged condition is difference between market value of property at destination had damages not occurred and its value in damaged condition.

Chandler Trailer Convoy, Inc. (Chandler) transported in July 1976 a 60-foot mobile home, belonging to a member of the Department of the Navy (Navy), from Moyock, North Carolina, to Newport, Rhode Island, under Government bill of lading No. M-5897300. It was delivered in a damaged condition and the Government as the Navy member's subrogee collected $6,000 from the carrier by setoff for that damage. In a letter dated October 9, 1978, Chandler requests our review of the Navy's setoff action and refund of the amount deducted.

Chandler received the shipment in apparent good order and condition subject to the exceptions noted on its Pre-Move Inspection Record. That record shows that the frame was in fair condition with some buckling and a dent on the right side of the unit and some buckling on the left side of the unit. At destination, the mobile home's damage included a broken window, twisted trim, cracked and buckling interior and exterior wall panels, and a severely twisted chassis.

Chandler admits liability only for the broken glass and twisted trim; it states that this damage was caused by the mobile home's collision with a telephone pole en route to Rhode Island. Chandler claims that all other damage was caused by the unit's weak spring hangers on the undercarriage which had been welded before the trip by someone other than Chandler and which had to be welded again during the trip. Chandler states that because the spring hangers had been welded once before, they were weak and thus constituted an inherent vice in the mobile home.

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Under Sections 20(11) and 219 of the Interstate Commerce Act, 49 U.S.C. 20(11), 319 (1976), 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-Eichenbaum, Inc. v. Texas Mexican Ry. Co., 263 F.2d 791, 794 (5th Cir. 1959), cert. denied, 361 U.S. 827.

As justification for its denial of liability, Chandler claims that the inherent vice exception to common carrier liability applies in this case. Inherent vice has been defined as any existing defects, diseases, decay, or the inherent nature of the commodity which will cause the commodity to deteriorate with a lapse of time and without any outside influence. 56 Comp. Gen. 357 (1977). By definition, a previously welded spring hanger is not an inherent vice as such condition was not caused "entirely by internal decomposition or some quality in the property which brings about its own injury or destruction." See Employers Casualty Company v. Holm, 393 S.W. 363 (Ct. Civ. App. Texas 1965). Additionally, the elements of transportation movement and the mobile home's collision with a telephone pole constitute outside influences. Thus, Chandler has failed to prove that the mobile home's damage was due to an inherent vice.

Chandler also contends that a provision in its tariff relieves it of responsibility for a defective undercarriage. In 55 Comp. Gen. 1209, 1212 (1976), involving Chandler, we stated that, in our opinion, a tariff provision similar to the one now invoked by Chandler was ambiguous because it purports to free the carrier from liability for all enroute damage regardless of the carrier's negligence which would

be a violation of Section 20(11) of the Interstate Commerce Act, as amended, 49 U.S.C. 20(11) (1976). See Rules Governing Transportation of Mobile Homes, ExParte No. MC-108, a rulemaking proceeding pending before the Interstate Commerce Commission, involving similar provisions in mobile home carriers' tariffs.

Furthermore, Chandler admits that en route the mobile home collided with a telephone pole and the courts have observed that a carrier's contributing, concurring, subsequent or superseding neglect is sufficient to make it liable notwithstanding proof of a latent defect which may relieve a carrier of liability to an owner. McCurdy v. Union Pacific R.R., 413 P.2d 617, 621 (Wash. 1966); Cf. Redman Industries, Inc. v. Morgan Drive Away, Inc., 138 N.W. 2d 709, 710 (Neb. 1965).

While Chandler has failed to rebut its prima facie case of liability for damage and to meet its burden of proof that it was free from negligence and that the sole cause of the damage was due to an inherent defect, we believe that the Navy's determination of the amount of damages is in error.

The Navy determined that the amount of damages was $6,000. As evidence it used an estimate contained in a letter to the Navy member from another carrier who apparently repairs and transports mobile homes. The letter containing a repair estimate of $7,500 was used by the Navy member as part of the support for his claim against the Government under the Military Personnel and Civilian Employees' Claims Act of 1964, as amended (the 1964 Act), 31 U.S.C. 240-243 (1976). The letter states in part that a conventional estimate was impossible because of the lapse of time since the damage occurred and because the mobile home had been leveled and blocked making it impossible to look at the undercarriage. The estimator concluded, however, that the damages were well in excess of $7,500 and that, in his opinion, the unit should be "totaled."

The record shows that the Navy member wanted to keep his mobile home. The Navy, apparently accepting the estimator's opinion that the unit should be "totaled," estimated the mobile home's salvage value to be $1,500 which it deducted from the amount of damages. The Navy thus paid the member $6,000 to settle his claim under the 1964 Act and then collected the $6,000 from Chandler by setoff.

The general rule for determining the amount of damages is the difference between the market value of the property in the condition in which it should have arrived at its destination and its market value in the damaged condition in which it did arrive. Gulf, C.& S.F. Ry. v. Texas Packing Co., 244 U.S. 31, 37 (1917); Miller v. Aaacon Auto Transport, Inc., 447 F.Supp. 1201 (S.D. Fla. 1978). And, in any event, damages claimed for repairs or replacements may not exceed the fair value of the property before injury, unless the property has some special value to the owner greater than its value to others. Association of Maryland Pilots v. Baltimore & Ohio R.R., 304 F. Supp. 548 (D. Md. 1969).

The mobile home transported by Chandler was a 1971 Fairmont, serial No. 1849, 60-feet long and 12-feet wide. The "Inventory of Articles Shipped in House Trailer," DD Form 1412, shows that the mobile home included these accessories (which for the purposes of this case we assume were part of the mobile home when built): refrigerator, freezer, range and a washer and dryer. Accepting the Navy's apparent determination that the mobile home was "totaled" and had a salvage value of $1,500, we must determine the fair market value of the mobile home before it was damaged. Bearing in mind that the measure of damages sustained in transit must, in each case, depend upon the particular facts of the case [Illinois Central R.R. v. Zucchero, 221 F.2d 934 (8th Cir. 1955)], and that a pricing index offers competent proof of fair market value [Fraser-Smith Co. v. Chicago, Rock Island & Pacific R.R., 435 F.2d 1396, 1402 (8th Cir. 1971)], we have used the National Automobile Dealers Association Mobile Home Appraisal Guide for July - December 1976 to determine the damages. That guide indicates that prior to delivery the market value of this mobile home with the listed accessories was $4,695. Thus, in this case, the damages are $4,695, minus the Navy's estimated salvage value of $1,500, or $3,195.

Accordingly, we have instructed our Claims Division to allow Chandler $2,805 of its claim for $6,000 ($6,000 less $3,195), if otherwise correct.

R.F. Keller

Deputy Comptroller General
of the United States