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DECISION

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

FILE: B-193432 DATE: September 13, 1979

MATTER OF: Chandler Trailer Convoy Inc. -- Reconsideration

DIGEST:

[Carrier Liability for Mobile Home Damage]

1. Used condition of mobile home does not rebut prima facie showing of good order delivery to carrier by original Government bill of lading.

2. Difficulties experienced by mobile home carrier in proving cause of damage is insufficient reason for GAO to relieve carrier from burden of proof imposed upon it by well-established legal principles.

3. In absence of competent evidence from carrier concerning unreasonableness of cost of repairs and market value of damaged mobile home, little basis exists for ignoring administrative determination of damages.

4. Carrier has no right to insist that repairs or replacement actually be made and settlement by Army of member's claim under Military Personnel and Civilian Employees' Claims Act by payment of sum of money for damage to member's mobile home not subject to GAO review.

CWO 0556

Chandler Trailer Convoy Inc. (Chandler) requests reconsideration of our decision of June 1, 1979, B-193432. We held that the Government's prima facie case of carrier liability, established by evidence showing substantially more damage to a mobile home at destination than shown on the original Government bill of lading (GBL) at time of receipt by the carrier at origin, is not rebutted by the carrier's mere opinion that used mobile homes generally have the propensity to sustain damage when transported a great distance.

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The decision was the result of an appeal by Chandler of a decision by the U.S. Army Claims Service sustaining setoff of $2,391.91 from monies otherwise due the carrier because of the damage. The Army's claim against Chandler arose by subrogation through settlement of the member's claim against the Government pursuant to the Military Personnel and Civilian Employees' Claims Act of 1964, as amended, (Claims Act) 31 U.S.C. 240-243 (1976).

Chandler contends that the condition of the mobile home when received by the carrier was not considered; that the mobile home was in a "bad state" when received at origin, and that a carrier is not liable for pre-existing damage. Although the statement of law is reasonably accurate, the contentions of fact are without merit.

The damage noted by the carrier at origin was considered in resolving the central issue against it. The decision states that "The original GBL establishes that the mobile home had dents in all four exterior sides when turned over to Chandler, ..." It further states that:

> "[A]t destination, the member reported damage to the front end of the home and to the front picture window; metal was torn on both sides of the home, windows were knocked out of alignment, the frames were bent and loose, the floor was buckled in the kitchen area, the interior panels were loose, the right side exterior had been hit, and insulating board under the home was torn loose,"

and that a Government inspector verified the damage. Clearly the list of defects discovered at destination reflects a greater quantum and more serious type of damage than mere dents.

Chandler, however, goes beyond the record, in alleging that the mobile home was in a damaged condition at origin; that all the defects existing at origin could not have been noted there; that the window was too large and that the kitchen floor was buckled when the unit left the manufacturer.

Generally, where breakage, rather than spoilage, is involved, the condition of the property at origin is established by introduction of a good order bill of lading. Yeckes-Eichenbaum, Inc. v. Texas Mexican Ry. Co., 263 F.2d 791 (5th Cir. 1959), cert. denied, 361 U.S. 827. Where goods themselves contain a basic, inherent defect, there may be reason to require proof of good condition, except where there is an opportunity for inspection; otherwise, there is no excuse to avoid the normal effect of the bill of lading. Kupfermann v. United States, 227 F.2d 348 (2nd Cir. 1955). These rules apply in cases where the damage discovered at destination could have been disclosed at origin upon ordinary observation. See 14 Am. Jur. 2d Carriers § 619. The facts that the mobile home had been used for several years; that it had been moved before, and that the exterior showed signs of wear, do not constitute convincing proof that would rebut the presumption of good order delivery (with noted exceptions) established by the GBL.

In Parrott Chemical Co. v. St. Johnsbury Trucking Co., 257 A.2d 507 (Cir. Ct. Conn. 1968), property was shipped in used containers, some being stained and open at the top, and the carrier noted the bill of lading "Recouped as is. Used boxes rattle." The carrier argued unsuccessfully that these circumstances would prevent a finding of good order delivery to the carrier. With proof that upon delivery at destination the contents were broken and leaking, and that the truck floor was wet, the court held that the presumption of good order delivery applied where the truck driver could have seen the contents at origin and had a full opportunity to inspect. See also Textile Distributors, Inc. v. Roadway Express, Inc., 397 S.W.2d 760 (Ct. Ap. Mo. 1965).

The defects discovered at destination, if they existed at origin, could have been observed upon reasonable inspection, and there is nothing in the record showing that the carrier was denied the opportunity to inspect the interior or the exterior of the mobile home. The fact that the exterior panels, or the interior and its contents showed evidence of use at origin does not affect the Government's prima facie case.

We conclude that on the available record the decision properly recognized the presumption of good order delivery (with noted exceptions), and the carrier has failed to produce convincing proof to the contrary.

As to the issue of proof, Chandler asserts that since it is difficult for anyone to establish what caused the damage, the burden imposed upon the carrier by law to prove that the damage was not caused by transportation should be relaxed. The Supreme Court of the United States responds to this position in Schnell v. The Vallescura, 293 U.S. 296, 307 (1934), where it was stated:

> ". . . the carrier is charged with the responsibility for a loss which, in fact, may not be due to his fault, merely because the law, in pursuance of a wise policy, casts on him the burden to show facts relieving him from liability." (Emphasis added)

The policy of allocating the burden of proof to the party being in a better position to know the true circumstances and facts explains the presumption that damage is caused by the carrier during transportation. See 56 Comp. Gen. 357 (1977) and B-193195, May 7, 1979. The principle is derived from the common law and is reflected in 49 U.S.C. 20(11) (1976). Chandler presents no good reason why the principle should be arbitrarily discarded. See 55 Comp. Gen. 1209 (1976). At least part of the explanation in these cases may be, as stated in Yeckes-Eichenbaum, Inc. v. Texas Mexican Ry. Co., supra, at p. 794 that the carrier, to save itself expense and trouble presumably elected not to perform a more careful inspection at origin.

Chandler also believes that under the Claims Act, supra, the member must actually have the repairs made to his property, and Chandler alleges that the mobile home here has not been repaired. In the insurance field there is a principle stating that the insurer has no right to repair and rebuild in lieu of paying the loss, in the absence of an expressed right confirmed by the policy. See 6 Appleman, Insurance Law & Practice § 4001 (1972). We know of no right of a carrier to insist upon repairs or replacement, and the agency authorized to settle claims under the Claims Act has the discretion to pay the claim or replace the property in kind. Under the implementing regulations, the Army generally views a claim as a demand for the payment of a specified sum of money. See Army Regulation 27-20, Par. 1-5(d). The allowance by the Army in this case and acceptance by the member constitutes settlement of the member's claim and a release of the United States from all liability. These settlements are not subject to review by this Office. See B-192978, February 28, 1979.

Our decision of June 1, 1979, is affirmed.

R.F. Keller

Deputy Comptroller General
of the United States