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DECISION

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

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FILE: B-194116 DATE: APR 9 1979

MATTER OF: Pacific Intermountain Express Co. CNG02028

[Allegation by Carrier that Setoff claim by Government was Unreasonable]

DIGEST:

1. Inclusion by Air Force installation of overhead cost of 26 percent in damages collected from carrier for Government's repair of generator damaged in transit was not improper because the law is concerned with restoration of claimant to position that would have been occupied had there been no damage to shipment and overhead cost assessed is sustained by cost accounting records.

2. Damage noted on delivery receipt is not conclusive as to extent of damage to shipment and does not prevent proof of damages by other means. In addition, where Air Force's repair facility AGC00035 documents number of work hours needed for repairs and claimant does not present any evidence challenging propriety of those costs, we have no basis to question labor costs in the damage claim.

3. Transportation costs to ship generator to repair facility are incidental to costs of repair and are proper elements of damages but should be corrected to reflect constructive cost of motor carrier transportation to repair facility.

Pacific Intermountain Express Co. (PIE) by letter dated November 27, 1978, requests review of our Claims Division's settlement certificate dated October 24, 1978, in which the Division disallowed PIE's claim for $2,128, [Claims Division file No. Z-1351463(6)]. The claim represents the amount collected by the Government by setoff from monies otherwise due PIE to satisfy the Government's claim for damage against the carrier.

AGC00035

The Government's claim arose from the damages sustained to a generator shipped by the Department of the Air Force under Government bill of lading (GBL) No. K-5506352. The generator which weighed 4,483 pounds was picked up at Loring Air Force Base, Maine, by Coles Express on February 25, 1975, and interlined to PIE for delivery on March 11, 1975, to McClellan Air Force Base, California. An inspection at the destination revealed that the generator had been damaged during the transportation, and the delivery receipt was annotated to reflect the damaged condition. The damage was acknowledged by the signature of the carrier's driver and was inspected by an agent of the carrier.

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The Air Force determined that the actual repair cost of the generator was $2,128, representing $326.60 for material, $842.52 for direct labor, $550.88 for overhead cost, and $408 for transportation to the repair facility. Although PIE does not deny its liability for the damage to the generator, it questions the reasonableness of the amount deducted by the Government for the repairs.

PIE contends that the overhead cost of $550.88 is excessive. However, we find no basis for this allegation.

Section 20(11) of title 49, United States Code, makes a carrier liable for "the full actual loss, damage, or injury" to property caused by the carrier. The law is concerned with the restoration of the claimant to the position that would have been occupied had there been no damage to the shipment. Atlantic Coast Line Railway Co. v. Roe, 118 So. 155 (1928); 53 Comp. Gen. 109 (1973). Pursuant to this policy, the courts have consistently held that in addition to the direct costs of labor and materials utilized in the repair of the damaged shipment, the damages may include a reasonable allowance for overhead expenses. Marquette Cement Mfg. Co. v. Louisville & Nashville R.R., 281 F. Supp. 944, 949 (D. Tenn. 1967), affirmed 406 F.2d 731 (1969); Conditioned Air Corp. v. Rock Island Motor Transit Co. 114 N.W.2d 304 (Iowa 1962), cert. denied, 371 U.S. 825 (1962); 53 Comp. Gen. 109 (1953).

Overhead represents the continuous expenses of a business irrespective of the outlay on a particular contract. It includes such costs as pay of administrative personnel, building rent, travel, depreciation on machinery, operating supplies and expenses, and telephone and telegraph costs. In determining the amount of an admitted damage, mathematical accuracy is not required. A reasonable estimate based on relevant facts is sufficient. See Baltimore & Ohio R.R. v. Commercial Transport Inc., 273 F.2d 447 (7th Cir. 1960); Ford Motor Co. v. Bradley Transportation Co., 174 F.2d 192, 198 (6th Cir. 1949).

The overhead costs here were based upon costs developed by the Air Force installation cost accounting records. Air Force regulations state that overhead is the product of actual direct hours times the predetermined or standard overhead rate. The rate is based upon the fiscal year overhead budget and activity estimate, which is determined from the depot and field maintenance cost accounting system. 53 Comp. Gen. 109 (1973).

In the absence of any indication that the computation by the Air Force was erroneous, we are without any basis to question the overhead assessment. In comparison with other cases, the overhead costs assessed are not unreasonable. The charge for overhead in this case represents only 26 percent of the total cost of repair. In 53 Comp. Gen. 109 (1973), we stated that overhead which constituted 43 percent of the

damages assessed was not unreasonable. Therefore, since PIE has failed to present any evidence supporting its allegation that the overhead assessment is unreasonable, we do not find the overhead component of the claim to be improper.

PIE also questions the cost of materials for the repair. The only material utilized was a thermal wattage converter, replaced at a cost of $326.60. PIE alleges that since the only damage noted on the delivery receipt was that the left and right panels of the generator were bent, the Government has failed to demonstrate the necessity for the replacement of the converter.

Although the damage to the generator initially seemed to be of a "cosmetic nature", upon dismantling the generator for the actual repair, internal damage was discovered. The whole generator system (fuel tank, housing, engine, and oil pan) was warped. Although it was determined that the fuel tank and other parts could be welded and repaired, the converter needed replacement.

PIE's reliance on the fact that the delivery receipt only noted external damage to the generator is misplaced. It is a well-established principle that a delivery receipt is not conclusive as to the extent of damage and does not prevent proof of damages by other means. Rhoades Inc. v. United Air Lines, Inc., 340 F.2d 481, 486 (3rd Cir. 1965); Red Arrow Freight Lines, Inc. v. Howe, 480 S.W.2d 281, 287 (Tex. Civ. App. 1972). Here, the additional damage was discovered upon repair and was listed on AF Form 20, titled "REPAIR COST AND REPARABLE VALUE STATEMENT." A copy of this form was sent to PIE. Since the carrier has not shown that the replacement of the converter was unnecessary, the cost of the converter was properly included within the cost of repair of the generator.

PIE also contends that the labor component of the Government's damage claim is excessive and unsubstantiated. However, we find no basis to this allegation. The Air Force repair facility at Kelly Air Force Base has detailed the actual repairs that were necessary and the number of work hours that were needed to perform each repair. PIE has not presented any evidence that questions the accuracy of these labor costs.

PIE also questions the propriety of the transportation charge of $408 for the shipment of the generator to the repair facility. The liability of the carrier for the costs of repair includes reasonable and necessary incidental expenses incurred, including transportation to and from the point of repair. Pasadena State Bank v. Isaac, 228 S.W.2d 127, 129 (1950); W.C. Cook & Co. Inc. v. White Truck & Transfer Co., 13 P.2d 549 (1932); 53 Comp. Gen. 109 (1973).

It was necessary to send the damage property in August 1975 from McClellan AFB, California, to the repair facility at Kelly AFB, Texas. The transportation was necessary because the local repair facility did not have the test equipment required to make the repairs. PIE states that the transportation costs incurred by the Air Force are unsubstantiated and requests that evidence of paid freight charges be supplied.

The generator was transported to Kelly AFB by the Logair system. Under this system, the Air Force contracts with an air carrier for the shipment of an unspecified number of items at a set fee. Since the cost is constant, the Air Force is not billed for individual shipments. The transportation charges for items shipped by Logair are determined by utilizing rates determined by the Air Force.

Recognizing its duty to mitigate the carrier's damages, the Air Force determined that the higher air transportation rate could not be justified in this case. Therefore, the transportation charge of $408 is intended to be the constructive cost of motor carrier transportation of the generator to the repair facility. However, we find that the Air Force's computation of the constructive cost is erroneous. We have been advised by the General Services Administration that the rate in the applicable tariff in August 1975 for the shipment of the generator would produce freight charges of $323 (See Rocky Mountain Motor Tariff Bureau, Agent, Tariff 226-A, MF-ICC RMB-226A, Item 3576, Section 4; 4,483 pounds at a rate of $7.21 per hundred pounds = $323).

We are furnishing PIE copies of a series of documents from the claim file which show the extent of the damages, the number of manhours required, the Logair manifest and other pertinent information as well as a copy of our decision of B-178604, August 20, 1973, which we cite in this decision as 53 Comp. Gen. 109 (1953).

Our Claims Division will reopen the settlement ~~of October~~ 24, ~~1978~~, and ~~will~~ allow ~~PIE $85~~, if otherwise correct, representing the adjustment of the transportation costs.

The prior will be reopened
the voucher will be allowed as

For the Comptroller General
R. F. KELLER
Deputy Comptroller General
of the United States