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DECISION

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

FILE: B-197670 [Employee Liability For] DATE: April 16, 1981

MATTER OF: American Red Ball Transit Co., Inc. - Jimmie Leonard - Excess valuation charges] DLG 06548

DIGEST:

1. Where Government paid commercial rates without agreement to declare released valuation, the carrier is liable at common law for full value in the event the shipment is lost or damaged in transit.

2. Under FTR, Federal employee may declare a valuation above carrier's minimum released valuation, but he most bear additional costs of coverage.

3. Liability of employee for insurance charges is matter between carrier and employee where evidence suggests employee independently contracted for additional insurance.

An authorized certifying officer of the General Accounting Office (GAO) has submitted the carrier's invoice for the cost of excess valuation insurance on the shipment of Mr. Jimmie Leonard's (a GAO employee) household goods. The shipment was transported from Dayton, Ohio, to Anchorage, Alaska, under Government bill of lading (GBL) K-1163761, dated June 13, 1979.

As required by law, 49 U.S.C. 66 (1976), GAO paid the transportation charges for this shipment including the insurance costs billed at $450 on presentation of the bill by the carrier. GAO now seeks to collect the money from the employee who is responsible for the cost of additional insurance where the employee declares a valuation above the carrier's minimum released valuation. Federal Travel Regulations (FTR) paragraph 2-8.4e(3). The GAO has billed Mr. Leonard $450 on the basis of the carrier's charge of $22.50 per $1000 valuation for the additional insurance he allegedly requested. In a letter

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to our Office, Mr. Leonard states that he believes that he should only be charged $112.50 based on a rate of 50 cents per $100 valuation.

In support of his view, Mr. Leonard states that the GAO's "Employees Guide for Permanent Change of Station Moves," and two other employee guides contained statements that the excess valuation rate was 50 cents for each $100 of the lump sum value stated on the bill of lading. This rate was confirmed by an employee of the GAO travel services unit and also apparently by the carrier orally prior to declaring the lump sum value of the shipment on the commercial bill of lading.

It is Mr. Leonard's position that everything he was told or read indicated his rate would be 50 cents per $100, not the $22.50 per $1000 later charged; and had he known the true cost of the declaration of value, he would not have agreed to the additional coverages.

Pursuant to 31 U.S.C. 82d (1976), the certifying officer requests our decision, first, as to whether Mr. Leonard is responsible for paying the $450 or $112.50. Second, in the event Mr. Leonard is only liable for $112.50, is GAO or the carrier liable for the remaining amount. Third, if Mr. Leonard is liable for the higher rate of insurance, how can this situation be avoided in the future since the General Services Administration, not GAO, selects the carrier.

The FTR provision requiring that the employee pay the additional costs for the higher valuation is a statutory regulation having the force and effect of law and may not be waived or modified by any department or agency of the Government in an individual case. B-189775, September 22, 1977; 49 Comp. Gen. 145 (1969). The declaration of excess valuation and the resulting charge is a voluntary act on the part of the employee and not required nor authorized to be paid by the Government. See B-195953, June 5, 1980.

Under paragraph 2-8.4e(3) of the FTR, a Federal employee may declare a valuation above the carrier's minimum released valuation, but he must bear the additional costs for the higher valuation. B-183053, March 12, 1975; cf. B-181991, April 8, 1975. Only in situations where some law or regulation applicable to the shipment requires

additional insurance will the Government bear the added expense. 28 Comp. Gen. 679 (1949). No such law or regulation has been cited or appears in the record before our Office.

The 50 cents per $100 of excess valuation which Mr. Leonard argues applies here is prescribed by the Interstate Commerce Commission (I.C.C.) in 49 C.F.R. 1157.201 and is reflected in the tariffs of common carriers of household goods by motor. However, the insurance provision applies only to common carriers of household goods by motor. It is not applicable to Red Ball International (Red Ball), a freight forwarder of used household goods which is exempt under section 402(b) of the Interstate Commerce Act, as amended, 49 U.S.C. 10562.

To the extent Mr. Leonard asserts the apparently misleading statements of the Government as a defense to his liability, it is a well established and longstanding rule of law supported by decisions of the court and of this Office that the Government cannot be bound by the erroneous advise given by its agents. See Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380, 384 (1947); Utah Power & Light Co. v. United States, 243 U.S. 389 (1917); 56 Comp. Gen. 85, 89 (1976); 54 Comp. Gen. 747, 749 (1975); B-190981, April 6, 1978. Thus, Mr. Leonard's argument does not bar his liability in this case.

However, the employee's obligation to pay the cost of the higher valuation is predicated on the contracting for such service, either by the employee himself or by the Government on behalf of the employee. The special rate authority under which this shipment moved is noted on the GBL as "Per Letter Date 4/25/79." This rate authority is a single sheet quotation of rates at varying weights by the American Red Ball Transit Co., Inc., for complete door to door transportation from Dayton, Ohio, to Anchorage, Alaska. The rates are not made subject to released valuation.

In the absence of a valid agreement to release the value of goods lost or damaged in transit, a carrier is liable at common law for the full value. Caten v. Salt Lake City Movers & Storage Co., 149 F.2d 428 (1945). And a declaration of released value on a bill of lading is ineffective unless supported by a choice of a higher rate for the full common law liability of the carrier and a

lower rate at a limited liability. Union Pacific R.R. v. Burke, 255 U.S. 317 (1921). See also, Lehigh Valley R.R. v. State of Russia, 21 F.2d 396, 403 (1927). The Government had no explicit or implied contract with Red Ball to carry the shipment on a released valuation basis. The Government paid commercial rates and therefore, the carrier was obligated for full value in the event of loss or damage. Thus, GAO had no liability for the insurance costs submitted by Red Ball.

In this connection, Red Ball apparently confirms our view of this transaction. The carrier states in a letter dated November 11, 1980, to this Office that its rates to the Government were simple factor rates which did not include insurance, storage or warehouse handling. Red Ball states that it deals exclusively with Frank B. Hall of Washington, D.C., Inc., on international insurance and Red Ball's rates worldwide are $22.50 per $1000 valuation for surface movement.

Thus, the Government did not contract with Red Ball for insurance and is not liable for the insurance costs.

Consequently, under these circumstances, GAO should not bill Mr. Leonard for the insurance since GAO was not obligated to pay for it.

However, Mr. Leonard did sign a Lloyd's of London form setting forth the values of various items in the shipment. There is no indication in the file that he knew or should have known that the line-haul rates were unreleased or that Red Ball's rates were $22.50 per $1000 valuation. On the contrary Mr. Leonard states that on pickup of the goods the agent of Red Ball asserted that a rate of 50 cents per $100 valuation was applicable.

Thus, we believe that if a contract of insurance did exist it was between Red Ball and Leonard. In its letter to this Office, Red Ball recognizes that Mr. Leonard was not clearly advised of the cost of the insurance. Red Ball has agreed to reduce its insurance charges to $225 which represents a charge of $0.50 per $100 from Dayton to Seattle and the same assessment for the move from Seattle to Alaska, which Red Ball indicates would have been the charges by a domestic freight forwarder.

By letter dated this day, we are notifying Mr. Leonard and Red Ball of our decision in this matter. We are advising both parties that the resolution of the insurance payment issue is a matter between them. Also, we are sending a copy of the file and our decision to GSA so that the $450 erroneously paid on presentation of Red Ball's bill can be recovered.

Milton J. Socolar

Acting Comptroller General
of the United States