



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Interstate Van Lines, Inc. - Unearned Freight
Charges

File: B-197911.4

Date: December 2, 1988

DIGEST

The government paid a carrier's charges for transporting a shipment of household goods belonging to an Air Force member, including two items delivered in a damaged condition. The Air Force recovered a portion of the freight charges in addition to the replacement value of the damaged items. The carrier claims refund of the freight charges, contending that an estimate of repair costs shows the items were repairable, and therefore, it earned the freight charges. The Air Force, however, has shown that it is not economically feasible to repair the damaged items because the repair costs exceed the items' replacement value. Thus, the items, in law, were not delivered in specie; therefore, the carrier is not entitled to the freight charges since they were not earned.

DECISION

Interstate Van Lines, Inc., appeals our Claims Group's denial of its claim for refund of freight charges deducted by the Air Force as part of the damages for damage incurred to two items of household goods belonging to an Air Force officer.^{1/} We sustain the denial of Interstate's claim.

The government had paid Interstate for transporting the member's household goods. Of several items either lost or damaged only two are in issue. The Air Force recovered the replacement value of the items and since in the agency's opinion they were irreparable, the Air Force also collected \$27.26 of the shipment's freight charges as unearned.

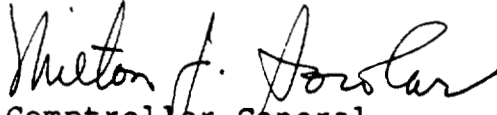
^{1/} The claim was denied in Settlement Certificate Z-2727878(78), August 19, 1987. The shipment, consisting of goods belonging to First Lieutenant Timothy Chappell was transported in July and August 1984, on Government Bill of Lading NP-160187.

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Interstate contends that the Air Force should not have deducted the freight charges since a repair estimate supporting the government's claim shows that the items were repairable. The Air Force points out, however, that the cost estimates to repair the items exceeded their replacement value; therefore, even though the items could have been repaired, physically, it was not economically feasible to repair them, thus, legally, they were irreparable. Thus, it was as though they had not been delivered. We agree.

We have held that delivery in an irreparable condition, that is, not in specie, is the equivalent of no delivery at all. See B-166882, Nov. 18, 1969. Even though an item is delivered and can be repaired physically, whether a carrier is entitled to freight charges for delivery of items in a damaged condition depends on whether it is economically feasible to repair them. Where, as here, the repair cost exceeds replacement value, freight charges have been paid for useless transportation services. Thus, the charges are recoverable as part of the shipper's "actual loss." 49 U.S.C. § 11707(a)(1); Contempo Metal Furniture Co. of California v. East Texas Motor Freight Lines, Inc., 661 F.2d 761 (9th Cir. 1981).

Accordingly, the Air Force properly recovered proportionate freight charges for the two items delivered in a damaged condition; thus, our Claims Group's settlement denying Interstate's claim is sustained.

for 
Comptroller General
of the United States