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DECISION

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

FILE: B-200396 DATE: July 16, 1981

MATTER OF: American Farm Lines

DIGEST:

1. To rebut prima facie case of common carrier liability, carrier must show affirmatively that damage was caused by shipper, an act of God, the public enemy, public authority, or inherent vice or nature of commodity, and, furthermore, that this excepted cause was sole cause of damage.

2. Allegations that agency's failure to advise carrier that additional lading, not listed on GBL, was loaded on truck and that shipment was overdimensional do not establish that damage to shipment was caused by shipper's action, where, contrary to these allegations, record shows that lading was visible upon ordinary observation, that carrier did not object on GBL at pickup to loading of said items, that carrier's agent was present at weighing and apparently aware of additional cargo, and that shipment was not oversized.

American Farm Lines (AFL) has filed a claim to recover monies set off by the United States Army Finance and Accounting Center (Army) for damage sustained by Government property transported by AFL under Government bill of lading (GBL) M-3,531,715, from Fort Bliss, Texas, to Ford Ord, California.

The GBL described the shipment as two pieces of military impedimenta: one 2-1/2-ton truck and one trailer mounted generator. The 2-1/2-ton truck contained three radar antenna reflector assemblies (antennae) with cases; but they were not listed on the GBL. As loaded by the Army, the antennae protruded

[Determination of Carrier Liability]

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substantially above the sides of the truck's open-top cargo body; they were damaged when they struck the overpass on I-10 West near the Anthony, Texas, exit. The Army determined that AFL was liable for $16,473 for damage to the antennae; however, when AFL denied liability, the Army set off the money owed.

AFL apparently does not dispute the Army's finding that a prima facie case of common carrier liability exists. Where such a case is established, the carrier is liable for damages without proof of negligence unless the carrier can show affirmatively that the damage was caused by the shipper, an act of God, the public enemy, the public authority, or the inherent vice or nature of the commodity, and, furthermore, that this excepted cause was the sole cause of the damage. Missouri Pacific R.R. v. Elmore & Stahl, 377 U.S. 134, 138 (1964).

AFL asserts that the acts of the Government relieve it of liability. Specifically, AFL states that the antennae caused the shipment to be overdimensional. (An overdimensional shipment would have required special permits and use of alternate routing.) The carrier contends that because of the Army's failure to identify the antennae on the GBL, it was not on notice that the shipment was overdimensional. AFL also contends that the shipper did not load the antennae properly, and that the improper loading, not the accident, was the proximate cause of the damage.

The Army has responded to these allegations by stating that the carrier's acceptance of the shipment is prima facie evidence of adequate packing by the shipper, and with statements tending to show that the placing of items not described on the GBL in the cargo body of trucks tendered the carrier for transit is a general practice which AFL is aware of, having transported many similar shipments before, and that the shipment was not overdimensional. Thus, the Army asserts that the Government was not negligent, and that AFL has failed to disprove its negligence in striking the overpass and should be held fully liable for the damage to the antennae.

The general rule concerning loading is that when, as here, the shipper performs the loading, he is responsible for the defects which are latent and concealed and cannot be discerned by ordinary observation by the agents

of the carrier. However, if the improper loading is apparent, the carrier will be liable notwithstanding the shipper's negligence. United States v. Savage Truck Line, Inc., 209 F.2d 442, 445 (4th Cir. 1953) cert. denied, 347 U.S. 952 (1954); B-193101, March 12, 1979.

Here, the transportation officer states that the carrier was present when the vehicle was weighed and believes that the driver was aware of the antennae. The Army's report also indicates that carriers are generally advised to inspect all shipments for overheight and overwidth. The agency denies that the height of the shipment exceeded the maximum legal height and submits measurements of shipments to prove this contention.

Photographs of the shipment, as loaded at origin on AFL's flatbed trailer, plainly show that the antennae were readily visible to ordinary observation. Moreover, AFL did not object to the failure to describe the antennae on the GBL at origin nor did it object to the manner in which the antennae were loaded.

As indicated in both the Army's report and AFL's letter, it is apparent that AFL transported many similar shipments before. Thus, it was aware of the procedures used by the Army in preparing shipments and had the opportunity to object to the condition of the shipment if it believed it could not be safely transported. Although a carrier is not required to inspect goods prior to shipment, the courts have stated that since a carrier does have the duty to safely transport goods delivered to it in good condition, an inspection by the carrier should take place to prevent any damage en route. Carrier Corporation v. Furness, Withy & Co., 131 F. Supp. 19, 21 (E.D. Pa. 1955); 52 Comp. Gen. 930, 931 (1973).

Thus, AFL has not shown that the Army's action caused the damage to the shipment.

In any event, we point out that even had AFL shown that the Army was contributorily negligent in this case, AFL has not demonstrated that the Army's actions were the sole cause of the damage, i.e., that its driver was not negligent in striking the overpass regardless of the alleged special nature of the shipment. 52 Comp. Gen., supra.

Thus, the Army's determination of liability was correct. However, the issue of the correct measure of damages is also raised by AFL. The amount set off by the Army, $16,473, reflects the actual value of the antennae; whereas, AFL contends that, based on the released valuation provisions of item 30(A) and (C) of AFL Tender 345, its liability would be limited to $2.50 per pound, and since the antennae weighed 1,190 pounds, its liability would be only $2,975.

The record discloses that the Army is uncertain as to which tender is applicable, and, if a released value tender is applicable, whether the antennae alone or the antennae and the 2-1/2-ton truck together constitute an article--the apparent basis for applying the $2.50 per pound liability.

In view of the Army's uncertainty as to the applicable tender, the Army may refer the issue to the General Services Administration (GSA) for technical assistance, as provided for in 41 C.F.R. § 101-41.102(8) (1980). That section states that GSA will furnish information on rates, fares, routes and related technical data to agencies such as the Army upon request.

In any event, upon determination of the applicable tender terms and conditions, the Army should calculate the proper amount of damages and take appropriate settlement action.

Milton J. Socolar

Acting Comptroller General
of the United States