



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: American Ensign Van Service, Inc.

File: B-224827.4

Date: November 21, 1990

DIGEST

1. Where correction notice to government bill of lading, providing for a stated lump sum released valuation, is mailed to carrier and delivered to carrier's agent prior to shipment, and freight bills and bills of lading accompanying shipment reflect release of shipment based on a lump sum valuation, the carrier's maximum liability for loss or damage to the shipment is contractually set at the amount of the lump sum valuation.
2. The government, in recovering under a contract with a carrier for loss or damage to a service member's household goods, is not limited in recovery to the amount it paid to the member under the Military Personnel and Civilian Employees' Claims Act of 1964, 31 U.S.C. § 3721.
3. Where a carrier liable for damage to a shipment of household goods has been accorded the pre-offset procedural rights specified in the Debt Collection Act, collection by administrative offset is proper.

DECISION

American Ensign Van Service, Inc., appeals our Claims Group's denial of its claim for \$12,000 as a refund of amounts the Marine Corps withheld from American Ensign for damage and loss sustained to Staff Sergeant William A. Hollis's household goods while being transported under a Government Bill of Lading (GBL). We affirm the Claims Group's determination, except for \$94.87 that we find is due the carrier.

Sergeant Hollis's household goods were picked up at his residence in Pittsburgh, Pennsylvania by Pioneer Movers as agent for American Ensign and transported to Grandview, Missouri. Two days before the pick-up, Sergeant Hollis requested release of his shipment based on a lump sum valuation of \$12,000 instead of the \$1.25 per pound of released valuation provided in the GBL as issued. The cognizant transportation office immediately called Pioneer Movers and advised the carrier of the change, and mailed a GBL correction notice reflecting the change to American

Ensign on the same day. Two days later, transportation office personnel handcarried copies of the correction notice to Sergeant Hollis's residence and delivered them to the Pioneer agent who was packing and loading the shipment.

Upon receipt of the shipment, Pioneer issued a Household Goods Bill of Lading and Freight Bill in accordance with 49 C.F.R. § 1056.5, which requires a carrier to prepare an order for service before accepting a shipment, and which also provides for bilateral amendment of such an order before loading. Pioneer submitted these documents, together with the GBL reflecting a charge of \$60 for the increased valuation, to the transportation office.

A number of oil paintings and a gun included in the shipment were lost in transit. There appears to be no dispute that the value of these exceeds \$12,000. Pursuant to the Military Personnel and Civilian Employees' Claims Act of 1964, as amended, 31 U.S.C. § 3721, Sergeant Hollis filed a claim against the government, but was allowed only \$6,136.76 based on agency regulations that limit the amount recoverable for lost paintings to \$1,500 per claim. The government then made a claim against American Ensign for the full \$12,000, subsequently collected the amount by administrative setoff, and reimbursed the additional remaining \$5,863.24 to Sergeant Hollis.

American Ensign argues that its liability for the shipment should have been limited to \$.60 per pound per article, not \$12,000. The carrier further contends that its liability should be "capped" at the amount paid by the Corps to the member. Finally, the carrier complains that the administrative offset of \$12,000 was not initiated in accordance with the Debt Collection Act of 1982 and the Federal Claims Collection Standards, and the amount offset therefore should be refunded.

We find no merit in American Ensign's first argument. The government's preparation and delivery of the correction notice to American Ensign and its agent, and Pioneer's acceptance of the shipment for movement under the GBL as corrected, clearly establish agreement between the government and the carrier that in moving the shipment the carrier would be liable for up to \$12,000. See Hughes v. United Van Lines, Inc., 829 F.2d 1407 (7th Cir. 1987). Furthermore, the freight bills and bills of lading accompanying the shipment all reflect a valuation charge for a declared value of \$12,000.

American Ensign's second contention is that the government's right to recover from the carrier for the loss of the shipment is limited by the amount initially paid to Sergeant Hollis on

his claim under the 1964 Claims Act, \$6,136.76, and that the carrier therefore is not liable for the remaining \$5,863.24.

American Ensign's position does not reflect its legal obligations with respect to the transportation. The government's right to recover from American Ensign arises from a contract with the carrier which, in our view, clearly sets the carrier's liability at up to \$12,000 for the shipment. The 1964 Claims Act, on the other hand, is intended to provide the authority for the administrative settlement and payment of claims by service members against the government for loss and damage to personal property incident to service. We see no legal basis to carry the government-member relationship over to the contractual one in the manner argued, that is, to alter the terms of the contract to limit the obligation to which the carrier agreed based on agency limitations on member recovery from the government under the 1964 Claims Act.

American Ensign also claims that the Marine Corps' administrative deduction from other sums payable to the carrier was improper because the Marine Corps failed to comply with section 10 of the Debt Collection Act of 1982, 31 U.S.C. § 3716. Section 10 provides that an agency may collect a

In sum, we find the setoff of \$12,000 from funds due American Ensign to have been proper. We also find that the firm is entitled to a refund totalling \$94.87.

for *Milton J. Fowler*
Comptroller General
of the United States