



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Aalmode Transportation Corp.

File: B-231357.2

Date: September 9, 1992

DIGEST

Carrier claim for transportation charges that had been withheld in connection with the shipment of two items that were damaged in transit is denied where the record now shows that the items were destroyed within the meaning of the applicable regulation.

DECISION

The Department of the Air Force requests reconsideration of our decision Aalmode Transportation Corp., B-231357, Jan. 15, 1991, in which we allowed Aalmode's claim of \$29.69 for freight charges that the Air Force had deducted because of damage to a chest and book that the firm had transported. Based on information in the Air Force's request, we agree that Aalmode should not be allowed the freight charges since the current record indicates that the household goods in question were destroyed in transit within the meaning of the applicable regulation. Our prior decision is modified accordingly.

BACKGROUND

In September 1985, Aalmode delivered a shipment of household goods to an Air Force officer. Among other items, a chest and a Globe Illustrated Shakespeare with a leather binding were damaged. An inventory prepared at the time of delivery indicated that the chest was broken, rubbed and badly worn, and that the book was dented and torn. In a claim analysis prepared after a damage investigation, the Air Force said that the chest had its "finish worn off to pressed wood underneath on both sides--border strips ripped [and] inner draws [sic] apart," and that the book had its "leather covering dented and torn, pages damaged and crinkled." The claim analysis noted the original cost of the chest and book respectively to be \$300 and \$75.

A repair estimate prepared by a furniture refinishing company stated that the chest, which was part of a set, was not reparable to its original condition, and indicated a

replacement cost of \$250-\$300. The record did not include a repair estimate for the book.¹

The Air Force concluded that, in addition to being liable for the damages, Aalmode was not entitled to the freight charges it had been paid for transporting the items. The Air Force reasoned that the transportation services had been useless, since it was not economically feasible to repair the articles.

The Air Force notified Aalmode 10 months after the delivery that the carrier would not be paid transportation charges for 70 pounds of missing and/or irreparably damaged (but unspecified) items. The notice gave Aalmode 30 days to appeal. The carrier, however, did not contact the agency, and the Air Force initiated set-off action 5-1/2 months after the notice date.

Our Office's Claims Group agreed with the Air Force in an October 6, 1987, settlement action. However, we subsequently reversed the settlement, in our January 1991 decision, on the basis that the record did not indicate that the chest and book were totally destroyed or rendered useless for the purposes for which they were intended.

In requesting reconsideration of our 1991 decision, the Air Force objects to the implication that the sole basis for its action was that it was not economically feasible to repair the items. Although maintaining that it "is reasonable to consider withholding payment for movement of property which is so damaged that repair costs exceed the value of the item," the Air Force says that the reason for not paying Aalmode was, in fact, that the chest and book were "destroyed" within the meaning of the Interstate Commerce Commission (ICC) regulation governing collection of freight charges on household goods shipments, as explained in ICC decisions. The Air Force further points out that the base claims officer decided that the two items as damaged were not worth enough to justify keeping them for salvage.

Aalmode responds that, among other things, the chest and book were in a usable condition following delivery, and the Air Force erroneously determined they were destroyed.

The owner of the items recently informed us that she threw out the Globe Illustrated Shakespeare soon after delivery

¹The analysis also listed several other items that were damaged in the same shipment; however, the amounts claimed for repair were considerably less than the original costs.

because of the damage to it. She also said that the chest, once part of a bedroom set, could no longer be used in the bedroom because of its damaged condition. After her husband repaired the chest, she put it in her den where it has been used to store old sweaters and other items of clothing.

DISCUSSION

The ICC regulation, 49 C.F.R. § 1056.15, provides that carriers are not entitled to freight charges when the goods are destroyed in transit. The ICC has explained that the term "destruction" implies that goods are "beyond repair or renewal, that they no longer exist in the form in which they were tendered to the carrier, or that they are useless for the purpose for which they were intended." Practices of Motor Common Carriers of Household Goods, 126 M.C.C. 250, 270 (1977). The ICC said that these are only "rough guidelines" in the area, since "the matter of destruction is essentially a question of fact to be determined in each instance." Id. The ICC indicated in the cited case that although loss of value would not automatically qualify as destruction, a shipper need not demonstrate that tendered goods have been totally demolished to establish they have been destroyed.

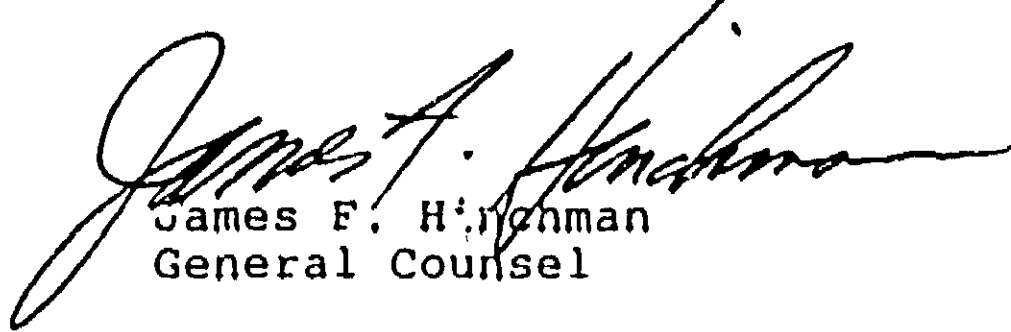
We see no reason to disagree with the Air Force that the chest and the Globe Illustrated Shakespeare were destroyed within the meaning of the ICC regulation. The regulation establishes three alternatives for determining whether a household good has been destroyed. If the condition of a damaged household item falls within any one of these alternatives then the item is deemed to have been destroyed.

Upon delivery the chest no longer existed in the form in which it was tendered to the carrier, and was useless. Although the chest was repaired, the repair appears to have been the result of the shipper's own talent, not the item's continued viability. In this respect, as stated above the Air Force determined that the chest had no salvage value, and Aalmode did not avail itself of the offered appeal opportunity to contest that determination. See Interstate Van Lines, Inc., B-197911.4, Dec. 2, 1988, discussed in footnote 3 to our first Aalmode decision. In our view, a decision as to whether a damaged item has any salvage value is a factual one that is best made by those involved in the initial stages of a claim, see McNamara-Lunz Vans and Warehouses, Inc., 57 Comp. Gen. 415 (1978); here, that judgment was made by the base claims office, and we are unwilling to overturn it on this record.

Although the information on the Globe Illustrated Shakespeare is not as detailed as that for the chest, we

think that upon delivery the book properly was destroyed. As delivered, the book's leather covering was torn and dented and the pages were damaged and crinkled. The owner threw the book out based on her view that it was both beyond repair and useless for the purpose for which it was purchased; as was the case with the chest, the Air Force found the item had no salvage value.

Our January 1991 decision was based on our objection to the Air Force's apparent reliance solely on the economics of repair to justify its action. In light of the Air Force's argument in requesting reconsideration, and the result of our further inquiries, we find that the record now supports a finding that the chest and book were destroyed within the meaning of 49 C.F.R. § 1056.15(a).



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General Counsel