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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Perishable Deliveries, Inc.

File: B-248187

Date: September 8, 1992

DIGEST

Shipper makes prima facie case of liability against a carrier for the loss of 40 cases of bananas in a shipment of 1,016 cases of foodstuffs pursuant to a bill of lading where the driver, responsible for loading and counting the shipment, acknowledged receipt of 1,016 cases. Record does not support carrier's contention that driver was mistaken and that he never actually received the bananas from the warehouse.

DECISION

Perishable Deliveries, Inc. (PDI), requests review of our Claims Group's settlement denying the company a refund of \$650.80 (plus \$18.18 interest) set off by the Defense Finance and Accounting Service-Indianapolis Center against funds otherwise due to PDI for the in transit loss of 40 cases of bananas. We affirm the Claims Group's decision.

Pursuant to Government Bill of Lading (GBL) C-9,789,626, PDI agreed to pick up 1,016 cases of produce and other foodstuffs from a government warehouse on March 1, 1991. Upon delivery at the Fort George G. Meade Commissary, the consignee reported that 40 cases of bananas, which were supposed to be part of the total 1,016 cases of foodstuffs, were missing. The carrier states that it never received the 40 cases, even though its driver acknowledged receiving 1,016 cases and the GBL required the carrier to load and count at the warehouse.

PDI contends that the 40 cases of bananas actually were never received at the origin warehouse. As proof, PDI has offered copies of two pages of a computer printout which, it contends, reflects the produce that was delivered to the warehouse by suppliers on March 1, the pick-up date. It is not clear how many additional pages were involved in the printout, and the date on the printout is handwritten. But,

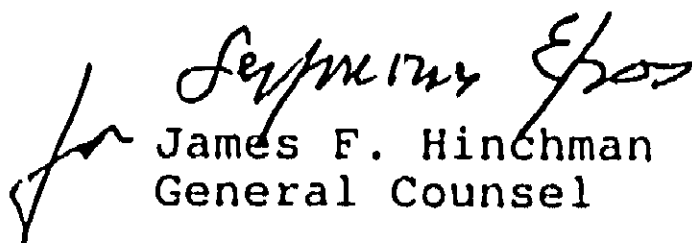
annotations on the two pages seem to indicate that the warehouse was shorted by more than 120 cases of bananas. PDI suggests that the banana supplier thus never billed the government for the bananas in issue, and that since PDI's truck was the last to load and leave from the warehouse, it did not pick any bananas up.

To recover from a carrier for loss of his property, a shipper must make a prima facie case by showing tender of the goods to the carrier, the carrier's failure to deliver them, and the amount of damages. Thereafter, the burden is on the carrier to show that it was free from negligence and that loss was due to an excepted cause relieving the carrier of liability. Missouri Pacific Railroad Co. v. Elmore & Stahl, 377 U.S. 134; 138 (1964); Stevens Transportation Co., Inc., B-243750, Aug. 28, 1991.

A bill of lading constitutes prima facie evidence of the facts stated in it, see J&V Audit Co., B-211465, Nov. 18, 1983, and the GBL in this case shows that PDI was to pick up and deliver 1,016 cases of food. Moreover, the carrier's driver, who was responsible for counting and loading the cases, acknowledged receipt of 1,016 cases of food. PDI has not met its burden of overcoming such evidence of tender of the full shipment.

Even if we accept the computer printouts offered by the carrier as proof that the warehouse was shorted bananas on March 1, that does not necessarily demonstrate that PDI was not tendered bananas. It is speculation to conclude that the carrier did not receive the bananas just because there was a shortage of them at the warehouse and the carrier was the last to load food that day. Further, the record does not support PDI's contention that the banana supplier did not bill the government for bananas to be picked up on March 1. In sum, there is nothing in the record to preclude our finding that a prima facie case of liability, based on the GBL and the driver's acknowledgement, exists here. See Yellow Freight System, Inc., B-197298, Sept. 12, 1980, 80-2 CPD ¶ 193.

The Claims Group's decision is affirmed.


James F. Hinchman
General Counsel