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Kenneth Siegel
Manag.

DECISION



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

FILE:

DATE: FEB 11 1977

MATTER OF: B-181871

Jones Truck Lines, Inc.

DIGEST:

- (1) Prima facie case of liability of common carrier is established when shipper shows delivery to carrier in good condition, delivery by carrier at destination in damaged condition. Once prima facie case is established burden of proof shifts to the carrier and remains there. To escape liability carrier must show that loss or damage was due to one of the accepted causes and that it was free of negligence.
- (2) Pursuant to the Federal Claims Collection Act of 1966, the head of an agency or his designee has authority to take action to collect all claims of the United States arising out of the activities of that agency. Among those means which are available to affect collection of those claims is the common law right of setoff.

This decision is in response to a request by Jones Truck Lines, Inc. (Jones), for reconsideration of the Government's claim for \$14,355.50 against it. Since the claim has been collected by setoff from monies otherwise due the carrier, we will treat the carrier's request for reconsideration as a claim for refund of the \$14,355.50 collected by setoff.

The Government's damage claim arises from the transportation of a recorder and parts from Longmont, Colorado, to Memphis, Tennessee, under Government bill of lading No. F-9231923, dated May 4, 1973. The Federal Aviation Administration, the shipper, requested and received exclusive use of vehicle service for this transportation. The damage to the recorder was discovered upon delivery at destination and notation of the damage was made upon the back of the Government bill of lading and upon the carrier's delivery receipt. A claim for the damage was presented by the Government and rejected by the carrier. After a series of demands by the Government and rejections by the carrier, the Government's claim was collected by means of setoff against monies otherwise due the carrier.

Jones contends that the damage was caused by the shipper's improper packing; that the Government has not established that the damage was caused by the carrier's negligence, carelessness or accident during the period of transportation and that the deduction action was arbitrary and improper.

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While it is Jones' contention that it is the Government's responsibility to establish that the damage was caused by Jones' negligence, carelessness or accident during the period of transportation, such a contention never has been the established law. To establish a prima facie case of carrier liability for loss of or damage to a shipment, the shipper must show delivery to the carrier at origin in good condition, delivery by the carrier at destination in a damaged condition and the amount of damages. Thereupon the burden of proof shifts to the carrier where it remains. The carrier, in order to relieve itself of liability, must show both that it was free from negligence and that the damage to the cargo was due to one of the excepted causes. See Missouri Pacific R.R. v. Elmore & Stahl, 377 U.S. 134, 138 (1964); Super Service Motor Freight Co. v. United States, 350 F.2d 541 (6th Cir. 1965); L. E. Whitlock Truck Service, Inc. v. Royal Drilling Co., 333 F.2d 488 (10th Cir. 1964).

The Government has established the three elements of a prima facie case of carrier liability for damage to the shipment moving under CBL No. P-9231923. The burden of proof has passed to Jones to present sufficient evidence to rebut the Government's prima facie case. The carrier asserts that a joint inspection report on which was stated that the unit was improperly packed, relieves it of all liability. However, reports from the Federal Aviation Administration show that the unit was sufficiently packed, that the packing was done by experienced personnel and that the bolts and hinges used to hold the unit in place were designed and tested to withstand normal motion and vibration encountered during shipment. Thus, the joint inspection report relied on by Jones is not "plain and convincing" proof sufficient to overcome the contrary facts set out in the administrative report. 48 Comp. Gen. 638, 644 (1969).

The burden of proof remains with the carrier to produce tangible evidence to establish the applicability of one of the excepted causes and to prove itself free from all negligence which may have caused the damage in order to free itself of liability. Jones has failed to present evidence sufficient to rebut the Government's prima facie case of carrier liability.

Jones also questions the right of the Government to use setoff as a means of collecting its claim against the carrier. But the Government has collected its claim pursuant to the provisions of the law.

B-101871

The Federal Claims Collection Act of 1966, 31 U.S.C. 951-953, Pub. L. 89-600, 80 Stat. 308-9, gives authority to the head of an agency or his designee to take action to collect all claims of the United States arising out of the activities of his agency, as follows:

"(a) The head of an agency or his designee, pursuant to regulations prescribed by him and in conformity with such standards as may be promulgated jointly by the Attorney General and the Comptroller General, shall attempt collection of all claims of the United States for money or property arising out of the activities of, or referred to, his agency."

The standards referred to specifically mention collection by setoff. See 4 C.F.R. 102.3 (1976). And in United States v. Munsey Trust Co., 332 U.S. 234 (1947), the Supreme Court states at page 239:

"The government has the same right 'which belongs to every creditor to apply the unappropriated moneys of his debtor, in his hands, in extinguishment of the debts due to him.'"

The Government has established a prima facie case against the carrier and the carrier has the burden of proving its freedom from negligence and that the damage was due to an excepted cause. Missouri Pacific case supra. The carrier's contested assertion that the damage was a result of the shipper's improper packing is insufficient to rebut the prima facie case established against it. Jones has failed to present tangible evidence proving its freedom from negligence or establishing that the damage was due to one of the excepted causes. In the absence of such tangible evidence to rebut the prima facie case, Jones must continue to bear the burden of liability for the Government's damage.

The action taken by the Government in collecting the debt owed it pursuant to its claim for damages was proper and Jones' claim for a refund of the amount deducted must be and is disallowed.

R.F. KELLER

Deputy Comptroller General
of the United States