RICHARD FELDMAN
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DECISION

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

FILE: DATE: NOV 29 1976

MATTER OF: B-183483

Western Carloading Co., Inc.

DIGEST:

Prima facie case of carrier liability for concealed damage established where damage to 4,520 pound shipment of firebrick shapes is discovered five days after delivery only one block from actual point of delivery on consignee's premises; where a photograph shows boxes in shipment worn and torn on the inside with extensive damage to firebrick shapes; and where a signed statement of Receiving Department Supervisor evidences visual inspection of shipment upon receipt and immediately after discovery of damage.

Western Carloading Co., Inc. (Western) requests review of a Settlement Certificate dated January 20, 1976, in which the Claims Division of the General Accounting Office disallowed its claim for refund of $1,146.55. The claim represents one-half of the total damages collected from Western incident to damages to a shipment of firebrick shapes transported October 27, 1972, under Government bill of lading No. H-1505209 from Atlanta, Georgia, to El Segundo, California.

Western asserts that the damage could have occurred prior to its receipt of the shipment at origin, while the shipment was in the hands of the carrier or in the handling after delivery. Western argues that since no evidence has been produced to show where or when the damage occurred, its compromise settlement in accordance with Interstate Commerce Commission Administrative Ruling 120 of July 7, 1972, interpreting Section 20(11) of the Interstate Commerce Act, 49 U.S.C. 20(11) (1970), should be accepted. Therefore, Western argues in effect that the disallowance of its claim is unwarranted.

The shipment, weighing 4,520 pounds, consisted of firebrick shapes contained in two pallets of boxes with metal strapping. Delivery to the consignee was on November 3, 1972. At that time the shipment did not show any visible signs of damage to the outside of the shipping boxes and the consignee signed a clear delivery receipt. The shipment then was transported to the using department approximately one block away. The cartons were not opened until

November 8, 1972, whereupon the carrier was notified of the concealed damage. The carrier did not inspect the property damage until November 15, 1972.

In a signed statement dated June 14, 1974, Walter I. Curtis, Receiving Department Supervisor who was present when the shipment was unloaded, indicated that the shipment was transported by an in-plant trucking department to the using department which is one block away. There were no visible signs of damage at the time of delivery. When the shipment was opened on November 8, Mr. Curtis states his inspection revealed that 14 of the 20 firebrick shapes were broken and chipped and that it appeared as if the inside of the cartons had been rubbed and worn.

There is no evidence that the damage was attributable to the consignee or its employees.

An informal administrative ruling, like Administrative Ruling 120, of a bureau of the Interstate Commerce Commission, indicating what the bureau deems to be the correct interpretation of the Act, is tentative and provisional, and is not accepted as determinative of the issue. See Union Barge Line Corp. Applications, 250 I.C.C. 249, 266 (1942). Furthermore, the ruling states ". . . carriers are and have been for many years fully responsible for damage they cause to shipments they transport." Therefore, the Government or any claimant may determine on the basis of the record whether a prima facie case of carrier liability has been made out and thereby hold the carrier liable for the full amount of the damage.

To establish carrier liability, the primary burden is on the person asserting the claim (Government) to prove that damages actually occurred while the goods were in possession of the carrier sought to be held. Missouri Pacific R.R. v. Elmore & Stahl, 377 U.S. 134 (1964); Super Service Motor Freight Co. v. United States, 350 F.2d 341 (6th Cir. 1965). In concealed damage cases, the claimant (Government) must establish that neither the shipper nor the consignee could have been responsible for the damage, and that as a matter of logical deduction the loss must have occurred while the goods were in the carrier's possession. Elder & Johnson Co. v. Commercial Motor Freight, 115 N.E.2d 179 (Ct. App. Ohio 1953).

The carrier's receipt at origin of the firebrick shapes without exception is evidence that the shipment was received by the carrier in good condition. The clear delivery receipt is only prima facie evidence of delivery at destination in good condition. Even though the receipt was not excepted to, it is not conclusive and is subject

to rebuttal the same as any other receipt. See Rhoades Inc. v. United Air Lines, Inc., 340 F.2d 481 (3rd Cir. 1965); McNeely & Price Co. v. The Exchequer, 100 F. Supp. 343 (D.C. E.D. Penn. 1951); Mears v. New York, N.H. & H.R.R., 52 A. 610 (Conn. 1902).

As noted above, the signed statement of Mr. Curtis indicates that the shipment was delivered on November 3, 1972, with no visible signs of damage and was transported one block on the consignee's premises where it was opened on November 6 and the damage discovered. Since Mr. Curtis was present at the unloading and visually inspected the property immediately after discovery of the damage, his testimony is sufficient to impeach the delivery receipt.

There is no evidence that the damage was attributable to the consignee or its employees. It is unlikely that the damage would have occurred while the goods were being transported only one block on the consignee's premises. Although there is no specific indication of the type of care exercised by the employee who actually opened the boxes and discovered the damage, it is unlikely that this one employee could have so mishandled the 4,520 pound shipment on the two pallets as to cause the type of damage involved. A photograph in the record shows that the boxes were worn and torn on the inside and justifies a conclusion that the damage occurred in transit.

Since the carrier was not presented any evidence to rebut the prima facie case of carrier liability for the concealed damage to the shipment of firebrick shapes, the Claims Division's disallowance of the carrier's claim for $1,146.55, representing 50 percent of the amount administratively deducted, must be and is sustained.

R. F. Keller

Deputy Comptroller General
of the United States