DOCUMENT RESUME

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[Reconsideration of Disallowance of Claim for Refund of Deductions from Money Owed a Company]. B-189716. September 21, 1977. 4 pp.

Decision re: Richardson Transfer & Storage Co., Inc.; by Robert F. Keller, Acting Comptroller General.

Issue Area: Federal Procurement of Goods and Services (1900).
Contact: Office of the General Counsel: Transportation Law.
Budget Function: General Government: Other General Government (806).
Organization Concerned: Department of Defense.
Authority: Interstate Commerce Act (49 U.S.C. 20(11); 49 U.S.C. 319). 28 U.S.C. 2415. Reider v. Thompson, 339 U.S. 113, 119 (1950). Missouri Pacific R.R. v. Elmore & Stahl, 377 U.S. 134, 138 (1964).

The protester requested reconsideration of a settlement which disallowed a claim for the refund of money which was administratively deducted from amounts otherwise payable to the company. The deduction was for liability for damage to a shipment of household goods while being transported under a Government bill of lading. The Interstate Commerce Act does not require that a notice of loss and damage be given a carrier; it requires that the claim be filed within an agreed period of time. The claim for damage for household goods not noted at the time of delivery could have been substantiated by prompt reporting of additional damage because the delivery receipt was not conclusive. (Author/SC)

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DECISION

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

FILE: B-189716 DATE: September 21, 1977

MATTER OF: Richardson Transfer and Storage Co., Inc.

DIGEST: 1. Section 20(11) of the Interstate Commerce Act, 49 U.S.C. 20(11), does not require that notice of loss and damage be given a carrier; it requires that claim be filed within an agreed period that cannot be less than nine months.

2. GBL's Condition 7 is a waiver of the agreed period applicable to commercial shipments; Government's claims for loss and damage subject only to six-year limitation in 28 U.S.C. 2415.

3. Claim for damage to household goods not noted at time of delivery can be substantiated by prompt reporting of additional damage because delivery receipt not conclusive.

This decision is in response to a letter of June 20, 1977, from Richardson Transfer & Storage Company, Inc. (Richardson), requesting reconsideration of the action taken by our Claims Division in its settlement certificate of June 13, 1977, claim number Z-293205(15). In the settlement the Division disallowed Richardson's claim for refund of $450.40 which was administratively deducted from amounts otherwise payable to the company. The deduction was taken because of liability for damage to a shipment of household goods, the property of Homer G. Brooks, while being transported under Government bill of lading No. K-6814380, dated July 31, 1975.

The record shows that Richardson accepted the shipment of household goods on August 1, 1975, in the condition noted on the inventory prepared by its agent. The shipment moved from Bangkok, Thailand, to San Antonio, Texas, where it was delivered on September 22, 1975. At that time some exceptions were noted on DD Form 619-1, Statement of Accessorial Services Performed. On October 6, 1975, Richardson was sent DD Form 1843, Demand on Carrier, and DD Form 1845, Schedule of Property. DD Form 1845 itemized the loss and damage to the household goods in detail, including those items for which an exception was taken at delivery, as well as additional items not noted at time of delivery. No inspection of the damage is indicated in the record.

The carrier admits liability for those items listed on DD Form 1845 which were excepted to at time of delivery, but contends that DD Forms 1843 and 1345 did not afford him adequate notice as to those items listed on Form DD 1845, which were not excepted to at time of delivery. He contends that he was effectively denied an opportunity to inspect the goods because DD Form 1845, which listed items for which he had a clear receipt, did not constitute the same quality of notice as to those additional items as would a DD Form 1840, Notice of Loss and Damage, or a Government Inspection Report.

The carrier's liability here is controlled by section 20(11) of the Interstate Commerce Act, 49 U.S.C. 20(11), as amended, made applicable to motor carriers by section 219 of the Act, 49 U.S.C. 319. The purpose of section 20(11) was to relieve shippers of the burden of searching out a particular negligent carrier from among numerous carriers handling a shipment. Reider v. Thompson, 339 U.S. 113, 119 (1950). Section 20(11) does not require that notice of loss and damage be given to a carrier. It requires only that a claim against the carrier be filed within an agreed upon time limit, which cannot be less than 9 months. In fact, Condition 7 on the GBL used at the time of the shipment waived the usual rules and conditions applicable to commercial shipments as to the period within which a claim for loss and damage can be filed by the United States against a carrier; those claims are subject only to a six-year statute of limitations. 28 U.S.C. 2415 (1970).

One arguable notice requirement might be Section 13002 of the Military Personal Property Traffic Management Regulation, DOD 4500.34-R, which when this shipment moved read in pertinent part:

> "Notice of loss or damage. Upon receipt of report of loss, damage, or destruction of personal property from the property owner, or from any other source, the transportation officer or his representative will forward, within 24 hours after receipt of such report, DD Form 1840, Notice of Loss or Damage. The original will be sent to the home office of the carrier named on the GBL * * *."

We believe that such a requirement is really directed to employees and agents of the Government and is not a condition of the contract of carriage for holding a carrier liable for damages.

It merely requires the consignees to annotate items of loss and damage to avoid a false certification that the goods were received in good condition and serves as a notice to the delivering carrier of the loss and damage discovered.

Even if Section 13002 can be considered a condition for holding a carrier liable, the condition was satisfied. The regulation calls for a DD Form 1840, Notice of Loss or Damage, which is a general claim form. In addition to DD Form 619-1, Richardson received DD Form 1843, Demand on Carrier and DD Form 1845, Schedule of Property, 14 days after the delivery. DD Form 1845 listed each item damaged, the nature and extent of the damage and the cost of repairs. It included the items excepted to at delivery as well as the additional items. Although the regulation specifies that DD Form 1840 is to be sent to the carrier, DD Form 1845 certainly gave Richardson sufficient information upon which a prompt and complete investigation could have been based and, in fact, as to quality, went beyond the requirements of the regulation. Richardson received such notice well within a reasonable time after delivery and failed to make an inspection of the damage.

The real issue in this case is whether a prima facie case of carrier liability has been established. It must be shown that (1) the shipment was delivered to the carrier in good condition, (2) that on arrival there was damage to the shipment and (3) the amount of damages. Missouri Pacific R.R. v. Elmore & Stahl, 377 U.S. 134, 138 (1964); and Rodin, Inc. v. Atchison, Topeka & Santa Fe Ry., 477 F.2d 682 (5th Cir. 1973).

The record shows that the shipment was delivered to the carrier in good condition. Although all the damage at issue in this case was not noted at time of delivery, the rule is well settled that a delivery receipt is not conclusive and does not prevent proof of damages by other means. Rhoades, Inc. v. United Air Lines, Inc., 340 F.2d 481, 486, 487 (3rd Cir. 1965; Red Arrow Freight Lines, Inc. v. Howe, 480 S.W. 2d 281, 287 (Tex. Civ. App. 1972). Here, the additional damage was discovered shortly after delivery and was listed in detail on DD Form 1845. Although the record shows no inspection by the Army, a claim was made upon the carrier within a reasonable time by sending DD Forms 1843 and 1845. The carrier had an opportunity to inspect the damage, and he apparently waived this right. The amount of damages is established by DD Form 1845 and also by underlying repair estimates obtained by the service member.

Accordingly, since a prima facie case of carrier liability has been established and has not been rebutted by the carrier, the settlement action taken by our Claims Division, disallowing Richardson's claim for refund of $347.50 is sustained.

Acting Comptroller General
of the United States