Trans

DECISION

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

10,339

FILE: B-193432 DATE: June 1, 1979

CN0D536

MATTER OF: Chandler Trailer Convoy Inc.

[Claim By Carrier for Recovery of Government Set Off Action]

DIGEST:

1. Shipper establishes prima facie case of carrier liability for damage in transit by showing failure to deliver the same quality goods at destination.

2. Once prima facie case of loss or damage in transit is established burden is on carrier to show by affirmative evidence that loss or damage did not occur in its custody or was sole result of an excepted cause and mere suggestion or allegation is not sufficient.

This decision is in response to a claim submitted by Chandler Trailer Convoy Inc. (Chandler), for $2,391.91 which represents the amount the Government set off to compensate it as subrogee to an Army member for damages to his mobile home transported under Government bill of lading (GBL) No. M-3281419.

The GBL covered the shipment of a 65-foot, 1972, mobile home, belonging to an Army member, from DeRidder, Louisiana, to Wrightstown, New Jersey. On October 7, 1977, Chandler received the shipment in moveable condition subject to the exceptions noted on the Pre-Move Inspection Record. The record showed that all exterior sides of the mobile home had dents, but there was no evidence of buckling, holes, or scratches. The record also showed that the windows and doors had been secured and that the structure of the chassis was not bent or cracked. Chandler then transported the shipment to Wrightstown, New Jersey, where it was delivered October 18, 1977.

At destination, the member reported damage to the front end of the home and to the front picture window; metal was torn on both sides of the home, windows were knocked out of alignment, the frames were bent and loose, the floor was buckled in the kitchen area, the interior panels were loose, the right side exterior had been hit, and insulating board under the home was torn loose. On December 21, 1977, a Government Inspector verified the damage to the mobile home.

The member filed a claim with the U.S. Army Claims Service and submitted two estimates from repairmen, one for $4,269.93, the other for $3,996.93. The amount allowed the member by the Army Claims Service was $2,561.91, as follows:

005463

11 56 1/2" by 34" Green Panels		$ 352.00
11 34" by 25 1/2" Cream Panels		272.25
2 34" by 25 1/2" Corner Panels		49.50
Top Metal Trim		38.00
Bottom Starters		216.00
Bow Trim		73.00
Corner Trims		92.00
Windows		121.00
Plywood		74.85
Outriggers		67.50
Kool Seal		70.00
Homasote		40.00
	Total Materials	$1,466.10
	Labor	950.00
		$2,416.10
	New Jersey Tax	120.81
	Estimate Fee	25.00
	Grand Total	$2,561.91

This estimate did not include the cost of repair to those panels that were already dented when Chandler received the shipment. The member paid for repairs to those panels from his own funds. The estimate was then reduced by $170 which represented the cost of the Kool Seal and its application to the mobile home's roof. Thus, the final claim was for $2,391.91.

The Army Claims Service demanded payment from Chandler to cover the cost of the damage done in transit. Chandler refused to accept liability for any of the items of damage. Chandler stated that most of the damage was caused by "flexing" of the unit over the highway during the transportation due to its large size. Chandler then claimed no knowledge as to how the kitchen floor buckled or windows broke.

Notice was given Chandler that the Army intended to take set off action to recover those repair costs, and the set off action was completed in February 1979. Chandler appealed the set off action to the U.S. Army Claims Service which sustained the action. Chandler then appealed that decision to this Office.

The central issue in this case ~~is~~ WCA whether the Government has established a prima facie case of carrier liability. A prima facie case is established when the evidence shows that the shipment was delivered or turned over to the carrier at origin in good condition or at least in better condition than when received at destination, that the shipment arrived in a damaged condition and that the amount of damages can be established. 57 Comp. Gen. 170 (1977)

and cases cited therein. If a prima facie case is established then Chandler is liable for the damages unless it affirmatively shows that the damage was caused by the shipper, an act of God, the public enemy, the public authority or the inherent vice or nature of the commodity and the carrier's freedom from negligence. Missouri Pacific R.R. v. Elmore & Stahl, 377 U.S. 134, 138 (1964). Thus, if the Government proves the elements of a prima facie case, then Chandler must affirmatively prove that it was not liable for the damages.

In this case, all of the elements of a prima facie case have been established. The original GBL establishes that the mobile home had dents in all four exterior sides when turned over to Chandler, but the carrier's delivery receipt shows further and extensive damage at destination. Other evidence in the record establishes the value of the damages.

Chandler alleges that the mobile home was the sole cause of its own damage. However, this is only an opinion about the propensity of mobile homes to sustain damage when transported a great distance. The law places a burden on Chandler to establish not only the general tendency of a mobile home to be damaged in transit, but that the damage was due solely to that tendency. 56 Comp. Gen. 357 (1977). See Whitehall Packing Co., Inc. v. Safeway, 228 N.W.2d 365 (Wisc. 1975). Chandler has merely claimed that mobile homes built around 1972 are generally weak. We have held that mere allegations that the carrier is free from liability will not suffice. See 55 Comp. Gen. 611 at 613 (1976).

An inherent vice in a commodity will result in the loss of the commodity without any outside influence. 56 Comp. Gen. 357, supra. Loss from an "inherent vice" does not relate to an extraneous cause but to a loss entirely from internal decomposition or some quality in the property which brings about its own injury or destruction. See Employers Casualty Company v. Holm, 393 S.W.2d 363 (Ct. Civ. App. Texas 1965). The mobile home was picked up by Chandler and transported from Louisiana to New Jersey, and it arrived in a damaged condition. It follows that an extraneous cause, the elements of the transportation movement, caused its damage. The mobile home would not have sustained the reported damage had it remained at its origin and not been moved. Thus, it cannot be said that an inherent defect was the sole cause of the damage.

When a carrier knows or should have known that goods delivered to it for transportation are in peril or danger of damage or loss, a carrier must use ordinary care, skill and foresight to avoid the consequences. 56 Comp. Gen. 358, 359, supra. Thus, if Chandler

was of the opinion that the mobile home could not be transported without damage, it could have refused to do so. And if it was known that the mobile home was susceptible to damage, Chandler should have taken the necessary foresight to avoid the consequences.

The carrier

Chandler has failed to rebut its prima facie case of liability for damage and to meet its burden of proof that the sole cause of the damage was due to an inherent defect. Therefore, Chandler is liable for the damages sustained to the mobile home and its claim for $2,391.91 is disallowed.

P.F. Kelly

Deputy Comptroller General
of the United States