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DECISION



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

FILE: B-197911

DATE: November 24, 1981

MATTER OF: Interstate Van Lines

DIGEST:

Where an Air Force member's household effects were delivered to the carrier in good condition and arrived at the destination in damaged condition, the carrier is presumed negligent absent convincing proof to the contrary. The carrier's allegation that the effects were packed improperly does not rebut the presumption of negligence without evidence that the allegedly improper packing was the sole cause of damage.

Interstate Van Lines, Inc. requests review of action taken by our Claims Group in disallowing its claim for refund in the amount of \$695.75. This amount was deducted from monies otherwise due to Interstate because of damage to various articles in a shipment of an Air Force member's household effects.

We affirm the Claims Group's decision.

The household effects were picked up at the member's residence in Omaha, Nebraska, on July 16, 1974, and transported to nontemporary storage by Modern Moving and Storage Company. On October 24, 1977, they were transferred to the storage facilities of Ford Brothers Van and Storage. On each of these occasions the warehousemen prepared an inventory listing pre-existing damage and the crushed condition of several containers. On October 15, 1979, Interstate picked up the household effects from Ford Brothers' storage facility and, on October 24, 1979, delivered them to the member, who noted that several items were damaged or missing. The amount in question represents damage to goods that, according to the warehousemen's inventories, were (1) given to Interstate in good condition, or (2) were given to Interstate in less damaged condition than that discovered by the member after Interstate delivered them.

Interstate contends that it delivered the household effects in the same condition that it received them, and thus that it was not responsible for the damage noted by the member. The record, however, does not support Interstate.

The Government establishes a prima facie case of carrier liability for damage to shipped items when it shows that the goods were tendered to the carrier at origin in good order and condition, received from the carrier at destination in a damaged condition, and the amount of damages. The carrier, to relieve itself of liability, must show by convincing proof that it was not responsible for the damage, by showing, for example, that the shipper caused the damage. See Chandler Trailer Convoy, Inc., B-193195, May 7, 1979.

The record shows that the Air Force carefully analyzed the inventories at each warehouse and the exceptions to the conditions of the goods as noted in the inventories and by Interstate when it picked them up. The items in question were ones found damaged at destination that were not excepted to either by Interstate or on the warehousemen's inventories, or that arrived with greater damage than was originally noted.

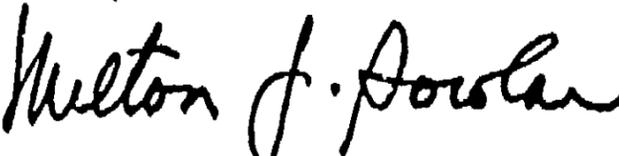
Interstate attempts to avoid liability by relying on statements by the Air Force member to the effect that in the member's view the damaged items were packed improperly, with fragile items packed beneath heavier ones. Interstate contends that this constitutes conclusive evidence of improper packing which, as an act of the shipper, relieves Interstate of liability. We disagree.

Even assuming that the member's statements constitute some evidence of improper packing, to exonerate Interstate from liability the evidence must show that the improper packing was the sole cause of the damage, that it was not discernible to ordinary observation, and that Interstate was free of negligence in handling the shipment. 46 Comp. Gen. 740, 745 (1967).

Interstate has not come forward with sufficient evidence in these respects. First, it simply has failed to show that what the Air Force member thought was improper packing was the sole cause of the damage sustained. Second, there is no suggestion in the record that some allegedly defective packing was not readily discernible to Interstate's agent when it picked the goods up from the warehouse; in fact, Interstate alleges that it noticed at that

time that some goods were packed improperly, but nonetheless decided to accept and deliver them without taking exception to the packaging, apparently for administrative reasons. See B-189597, January 29, 1980. Finally, Interstate has not shown that it was free from negligence in its handling of the household effects.

In order to rely on the improper packing exception to a carrier's liability for the delivery of damaged goods, the carrier's proof must bring its case entirely and perfectly within the exception. 46 Comp. Gen., supra. Interstate clearly has not done so here. Accordingly, we sustain the action of our Claims Group in disallowing Interstate's claim.

for 
Comptroller General
of the United States