

11007048E

DECISION



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

28225

FILE: B-213774

DATE: May 14, 1984

MATTER OF: Allied Van Lines, Inc.

DIGEST:

Under applicable regulations, the government may terminate a shipment prior to delivery and separately arrange for onward movement to the destination when the shipment becomes frustrated due to nontraceable or non-available documentation attributable to the fault of the carrier or its agents. Here, however, the charge for the separate delivery was improperly deducted from the carrier's bill where the evidence did not establish that the documentation became lost when the shipment was still in the carrier's control.

Allied Van Lines, Inc. requests our review pursuant to 31 U.S.C. § 3726(d)(1) (1982) of a settlement action taken by the General Services Administration (GSA) under government bill of lading (GBL) No. K-1,332,359 regarding the movement of a Navy member's household goods from El Centro, California, to the U.S. Naval Station, Rota, Spain. The government provided Military Airlift Command (MAC) terminal services in the U.S. and Spain, and overseas air transportation to the MAC terminal in Spain.

According to the record, the shipment containers were received at the MAC terminal in Spain without proper documentation.¹ Because the documentation was

¹We understand the documentation is normally placed in a pouch affixed to the first container, and generally consists of the GBL, the transportation control and movement document (TCMD), the shipment inventory, and the consignment notice.

028826

missing, the government terminated the shipment and arranged for separate delivery to the final destination by a local carrier at a cost of \$124.73. This amount was deducted from Allied's original payment voucher, to which Allied objected in a claim for supplemental payment filed with GSA. GSA, however, disallowed the claim, deciding that the charge had been properly deducted since the lack of documentation was Allied's fault. We believe the deduction was improper.

Allied asserts that the government has failed to establish the carrier's liability for the lack of documentation. Allied states that the MAC terminal in the U.S. would not have accepted the shipment for further routing overseas if the documentation had been missing at that point--according to Allied, this fact implies that the documentation was lost when the shipment was in the government's control. Further, Allied notes that there was sufficient information stenciled on the containers themselves² to enable the government to complete the shipment without resorting to a separate carrier. Allied also states in this regard that all carriers are required to file and maintain a list of their international port agents with Headquarters, Military Traffic Management Command (MTMC), and these lists are distributed to MAC terminals. Allied asserts the MAC terminal in Spain therefore easily could have verified who Allied's port agent was--the agent's name allegedly was stenciled on the containers--thus obviating the need to secure another carrier to effect final delivery.

GSA responds that the government would not have resorted to arranging separate delivery if in fact the name of Allied's port agent had been displayed on the containers. GSA's position is that Allied cannot recover the deducted charge because, under section 4004 b(2)(a) 4 of MTMC's rate filing instructions and procedures, the government has reserved the right,

"to terminate shipments at any point during transportation prior to delivery and to separately arrange for onward movement to the destination when the shipment becomes frustrated at an origin or destination agent's or

²This information generally includes the property owner's name, rank, and serial number, the point of destination, and the name of the carrier's port agent.

port agent's facility due to nonavailable documentation attributable to the fault of the carrier or its agents."

Assuming Allied has compensated its Spanish port agent for delivery to the destination--we note the firm's original bill represented the total charge for the shipment from origin to destination--and cannot now recover any such payment, we believe Allied should be reimbursed.³ Although there is no way of ascertaining the exact point or time at which the documentation in question became lost, we agree with Allied that the MAC terminal in the U.S. most probably would not have accepted the shipment for further routing overseas without it. It logically follows that if the documentation was missing upon arrival in Spain, it was lost during the time that the shipment was in the government's control.

Further, the only evidence GSA presents to support its view that the lack of documentation was, in the words of MTMC's rate filing provision, "attributable to the fault of" Allied is a copy of the GBL with the following typewritten statement on it:

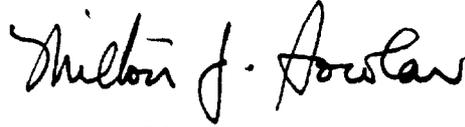
"NOTE: THIS SHIPMENT WAS RECEIVED WITHOUT DOCUMENTATION AND WAS DELIVERED . . . WITH A COST OF \$124.73."

In our view, however, it is obvious that this notation was placed on a copy of the GBL only after the shipment had arrived in Spain and had been delivered by the local carrier to the destination, not when Allied initially delivered the shipment to the MAC terminal in the U.S. (since the cost for separate delivery could not have been known at that time). In order to establish the carrier's fault here, the documentation would have had to have been noticed as missing when Allied delivered the shipment to the government's control at the U.S. terminal which, as stated above, likely was not the case. Therefore, the notation does not establish that the documentation was lost while Allied had control of the shipment. We believe that the rate filing provision GSA relies on therefore does not apply to the present case.

³We do not believe Allied is entitled to any money except in the way of reimbursement.

B-213774

We therefore believe GSA's deduction of \$124.73 from Allied's bill for separate delivery was improper. Contingent on submission to GSA of proper proof that Allied paid its Spanish port agent, and the amount (which the record indicates is no more than \$124.73), the carrier's supplemental bill should be allowed to that extent.



Acting Comptroller General
of the United States