

DECISION

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

FILE: B-216757

DATE: August 14, 1985

MATTER OF: Continental Van Lines, Inc.

DIGEST: The system used by the Armed Forces for the shipment of household goods provides for written notice (DD Form 1840) of damage to the goods discovered after delivery which identifies the shipment and informs the mover that the owner of the goods intends to file a claim for damages. The movers have agreed that written notice of damages discovered after delivery filed with the mover within 45 days of delivery is sufficient to overcome a prior delivery receipt showing no damage to the goods. DD Form 1840 plus a later claim by the owner specifically describing the nature of the damage to the goods establishes a prima facie case of the mover's liability for the damaged goods. Where the mover furnishes no evidence to rebut a prima facie case, he is held liable.

Continental Van Lines, Inc., has appealed our Claims Group's denial of its claim for a refund of \$271.32 which the Army withheld from Continental for loss and damage to the household goods of Captain Robert J. Kainz.

Continental concedes that the Army has established a prima facie case of its liability for three damaged articles in the goods amounting to \$6 because of damages noted upon delivery. However, Continental argues that the Army's later actions under its system for shipping household goods were not effective to establish Continental's liability for the loss and damage beyond that amount. Continental requests that \$271.32 of the \$277.32 withheld from payment otherwise due them be returned. We agree with our Claims Group that the Army established Continental's liability for the loss and damage to all the goods and affirm the denial of the claim.

Continental delivered Captain Kainz' household goods on September 21, 1981, and exceptions to the condition of three of the articles were then stated on the delivery

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receipt. On October 9, 1981, the Army sent Continental a DD Form 1840, which notified Continental of additional loss and damage to the shipment, estimated the amount of damage at over \$100 involving approximately 20 articles, stated that Captain Kainz would file a claim, and invited Continental to inspect the damaged goods. Although Continental did not inspect the household goods, the Army made an inspection on November 17, 1981, and noted loss of or damage to 40 articles. Captain Kainz claimed reimbursement for loss and damage from the Army and the Army, under the provision of 31 U.S.C. § 3721 (formerly 31 U.S.C. §§ 240-243), paid this claim. The Army filed a claim against Continental for the amount of the damage to the goods. The Army's claim is supported by the Army's Inspection Report and a summary of the repair costs for damaged articles. Continental denied the claim, so the Army withheld \$277.32 from funds otherwise due Continental. Continental claimed all but \$6 of this in the claim our Claims Group denied, and it has appealed the Claims Group's denial.

Continental agrees that as a common carrier its liability is controlled by the Carmack Amendment of 1906, section 20(11) of the Interstate Commerce Act, 49 U.S.C. § 11707 (1982), formerly 49 U.S.C. § 20(11), which makes carriers liable for the actual loss or damage caused by them to property they transport. In an action to recover for the loss or damage to the household goods, the shipper establishes a prima facie case of carrier liability by showing delivery of the goods to the carrier in good condition, arrival at the destination in damaged condition, and the amount of damages. The burden is then shifted to the carrier to show both that it was free from negligence and that the damage was due to an excepted cause. Missouri Pacific Railroad v. Elmore and Stahl, 377 U.S. 134 (1964). Continental concedes that the Army has established a prima facie case for the three articles that were shown on the DD Form 619-1 delivery receipt to be damaged. However, it argues that a prima facie case has not been made for any other of the goods because the DD Form 1840 notice, submitted to Continental within 45 days of delivery, did not contain the specific,

itemized exceptions establishing arrival at destination in damaged condition. Such information was contained only with the DD Form 1843 claim which was submitted to Continental more than 45 days after delivery. Continental argues that a Military/Industry Memorandum of Understanding governing the determination of loss or damage in this case requires specific, itemized exceptions to be submitted within 45 days. This argument was rejected in Starck Van Lines, B-213837, March 20, 1984, and Continental Van Lines, Inc., B-215507, October 11, 1984.^{1/}

The Military/Industry Memorandum of Understanding allows loss or damage in addition to that shown on the delivery receipt to be included as part of the shipper's prima facie case as long as the carrier receives written notice of the loss or damage within 45 days of delivery. Starck Van Lines, B-213837, supra. And that written notice need not include specific, itemized exceptions such as are included with the DD Form 1843 claim later submitted to the carrier. The general DD Form 1840 notice that was used in this case is sufficient. Continental Van Lines, Inc., B-215507, supra. We find that the Army's Inspection Report and schedule filed with its claim against Continental establish a prima facie case of the mover's liability. And there is nothing in the Memorandum of Understanding that limits the time within which this material must be presented to the mover

^{1/} In one case we did conclude that the Government's claim for an item of lost property could not be sustained where the carrier was not given specific notice of what item was lost until 10 months after shipment. Continental Van Lines, Inc., B-214554, December 14, 1984. The present case, however, except for a lost broom which we consider de minimis, concerns damaged rather than lost property, which the carrier should have inspected if it wished to rebut the claim.

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to be legally effective. Since Continental has done nothing to satisfy its burden of rebutting the Army's prima facie case, we affirm our Claims Group's denial of Continental's claim.^{2/}

for Milton J. Rowland
Comptroller General
of the United States

^{2/} Continental observes that there is a possibility of false claims during the indeterminate time gap between notification of loss or damage discovered after delivery but within 45 days thereof and the particularization of that loss or damage claim. This has been addressed in a revised Military/Industry Memorandum of Understanding soon to become effective. We understand that the Government will be required to particularize and list all loss or damage discovered after delivery on a newly developed DD Form 1840 R, but instead of having to file the form with the mover within 45 days of delivery, the time period has been extended to 75 days. Until this procedure becomes effective the mover's only protection is to request an immediate inspection.