



Decision

Matter of: Midwest Moving & Packing, Inc.

File: B-256603

Date: August 1, 1994

DIGEST

Carrier has failed to establish that government set-off for loss of household goods was improper where the record establishes a prima facie case of carrier liability and the carrier has not proven that it was not responsible for the loss.

DECISION

Midwest Moving & Packing, Inc., requests review of our Claims Group's settlement denying Midwest a refund of \$638.98 the Navy set off against the carrier for loss of a Navy member's television and suitcase. We affirm the settlement.

The member's household goods were picked up from El Cajon, California, on October 25, 1991, and delivered to Alexandria, Virginia, on November 21, 1991. On delivery, the member noted that the carrier had delivered the wrong television (item 31) and suitcase (item 14). According to the member, inventory item 31 was a 14-inch Montgomery Ward remote controlled color television set and item 14 was a leather suitcase filled with clothing. The carrier delivered a 19-inch black and white manually operated television and a large black plastic suitcase with nothing inside. The items were returned to the carrier, and the DD Form 1840 (Joint Statement of Loss or Damage at Delivery) was annotated to reflect that the delivered items did not belong to the shipper and were being returned. In accordance with the Military Personnel and Civilian Employees' Claims Act of 1964, as amended, 31 U.S.C. § 3721, the Navy paid the member \$657.49 for the loss of these items. The Navy recovered \$638.98 from Midwest.

In its appeal, Midwest argues that the shipper has the burden of proof to show that the items received were not the property tendered.

A prima facie case of carrier liability for loss/damage is established by showing that the shipper tendered the goods

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to the carrier in a certain condition, that the property was not delivered by the carrier or was delivered in a more damaged condition, and the amount of loss/damage. See Missouri Pacific Railroad Co. v. Elmore & Stahl, 377 U.S. 134 (1965). The shipper in this case has established a prima facie case of liability through personal statements, the inventory sheets, and the claims forms. In a written statement, the member states that item 14 was a large black leather suit case filled with clothing and other miscellaneous items, and item 31 was a 14-inch Montgomery Ward remote control color television. The member also refused to accept delivery of the television and suitcase, and the DD Form 1840 was so annotated, with the reason for the refusal, in the presence of Midwest's agent at the time of delivery. Clearly, the circumstances establish a prima facie case of carrier liability for loss of the items tendered.

Since a prima facie case of carrier liability has been established, the burden of presenting evidence in rebuttal shifts to the carrier. Jones Motor Co., Inc., B-202426, July 8, 1981. Here, the carrier has not shown that it delivered the items in issue.

The Claims Group's settlement is affirmed.

/s/ Seymour Efros
for Robert P. Murphy
Acting General Counsel

Date: August 1, 1994
To: Director, Claims Group - Sharon S. Green
From: Acting General Counsel - Robert P. Murphy

Subject: Midwest Moving and Packing, Inc. - B-256603

Attached is your file (Z-2862445) along with a copy of our decision of today's date.

Attachment