



Comptroller General  
of the United States

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Washington, D.C. 20548

## Decision

Matter of: Ambassador Van Lines, Inc.  
File: B-256546  
Date: September 23, 1994

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### DIGEST

A prima facie case of carrier liability for the loss of a toolbox with tools is established even though the inventory description states "tools" with no specification as to the kind of tools or that they were contained in a toolbox, where it is reasonable to conclude that the missing tools were part of a toolbox set similar to one illustrated in a catalog furnished by the shipper.

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### DECISION

Ambassador Van Lines, Inc., requests review of our Claims Group's settlement denying its claim for a refund of \$643.22 that the Air Force had set off for the loss of a toolbox with tools during the shipment of a service member's household goods. We affirm the settlement.

The shipment originated at McChord Air Force Base, Washington, on December 28, 1989, and was delivered to Holloman Air Force Base, New Mexico, on January 30, 1990. A Notice of Loss/Damage (DD Form 1840R) was dispatched to Ambassador on February 13, 1990, informing the carrier of, among other things, a missing red, two-drawer toolbox with tools.

Initially, the shipper did not identify the missing toolbox by inventory number from the list of 201 items on the inventory list. Inventory items 177 and 178 were both labeled "3.0 CTN CP -- Tools." Later, the toolbox was identified as inventory item 177. The shipper also subsequently provided a catalog description of a 153-piece tool set with a two-drawer toolbox, allegedly similar to the missing items. The tool set had been a January 1986 gift to the shipper; the set-off reflects 2 years of depreciation (20 percent).

Ambassador contends that there is no evidence that the toolbox with tools ever was tendered. Ambassador notes that there was no indication of a toolbox on the inventory.

Ambassador argues that the label "Tools" could have meant tools like a rake, shovel, or hoe, or power tools such as a drill, sander, saw, or hedge trimmer. Finally, Ambassador argues that a two-drawer toolbox as described by the shipper could not fit into a 3-cubic foot shipping carton.

To recover from a carrier for loss of property, a shipper must make a prima facie case by showing tender of the goods to the carrier, the carrier's failure to deliver them, and the amount of damages. Only then does the burden shift to the carrier to show that it was free from negligence and that loss was due to an excepted cause relieving the carrier of liability. Missouri Pacific Railroad Co. v. Elmore & Stahl, 377 U.S. 134, 138 (1964); Stevens Transportation Co., Inc., B-243750, Aug. 28, 1991.

We find that the record supports a prima facie case against Ambassador. The inventory shows that tools were tendered to the carrier under item 177, and under item 178, and that the carrier packed them in two cartons. We see no reason to conclude that the tools were not of the type claimed, and instead were rakes, drills, etc.

Further, we recognize that tender of the set - box and tools - would have been established clearly had the carton in issue been labeled "toolbox" instead of just "Tools," since a toolbox may be presumed to contain tools. See American Vanpac Carriers, B-247876, Aug. 24, 1992, where we concluded that a prima facie case of carrier liability for the loss of tools shipped in a member's "tool box" was established even though the inventory did not specify that the box contained tools. Nevertheless, we do not think it unreasonable to decide that the carrier-chosen label "Tools" identified a tool set in a toolbox, as opposed to a collection of loose tools, in view of the catalog description provided by the shipper. The fact that the inventory did not specifically indicate that a toolbox was tendered to Ambassador does not in itself prove that the missing tools were not part of a set as described.

Finally, the carrier's argument that the toolbox as noted in the catalog provided by the shipper could not fit into a 3-cubic foot carton does not establish that the tools and toolbox were not tendered. According to the member, the set had been a gift, and the catalog was used merely to describe the type of tool set (including box) tendered, not to document the exact set. There is no evidence to show

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<sup>1</sup>Ambassador says that a 3.1 cubic foot carton, which evidently was the actual size used, is 18 inches long and 18 inches wide. The catalog toolbox is 20 inches long.

that the actual toolbox tendered to the carrier could not fit into the specified carton.

The Claims Group's settlement is affirmed.

Robert P. Murphy  
Acting General Counsel