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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Fogarty Van Lines, Inc.

File: B-235558.7

Date: December 28, 1994

DIGEST

A carrier is liable for damage to goods occurring during more than 180 days of storage-in-transit (SIT) notwithstanding a regulation providing for the termination of Government Bill of Lading (GBL) shipments in SIT after 180 days, where the carrier: (1) did not notify the government that the carrier was placing the shipment in permanent storage, as required by the GBL; (2) did not annotate the inventory upon change of custody, as required by the standard Tender of Service, and (3) billed the government for SIT, not permanent storage.

DECISION

Fogarty Van Lines, Inc, requests review of our Claims Group's settlement denying its claim for a refund of $1,447, which the Navy set off from other revenue due Fogarty, for loss and damage to a Navy member's household goods.[1] We affirm the settlement.

On September 29, 1988, Fogarty's agent, Bonded Moving & Storage, inventoried and packed the member's household goods in Jacksonville, Florida. On October 11, the shipment was delivered into storage-in-transit (SIT) in the Portsmouth, Virginia, warehouse of another Fogarty agent, Republic Portsmouth Storage Corporation. Fogarty vouchered and received payment for the delivery into SIT. The shipment remained at the Portsmouth warehouse for 666 days until it was delivered on August 7, 1990, to the member's Norfolk, Virginia, quarters. When the shipment was delivered, apparently by Fogarty's warehouse agent,[2] the member noted damage on the DD Form 1840 (Joint Statement of Loss or Damage at Delivery) to seven items. Thereafter, the member

[1]The Navy conducted the move under Personal Property Government Bill of Lading No. PP-840,026, issued to Fogarty on September 26, 1988.

[2]Block 15C (Name of delivering carrier/agent/contractor) of DD form 1840 is blank; however, Block 9 (Names and address of carrier/contractor) is filled in with Fogarty's name and address.

filed a DD Form 1840R (Notice of Loss or Damage) claiming loss/damage to five additional items. The Navy reports that it timely dispatched notice of the member's claim to Fogarty, on August 9. On August 17, Fogarty's warehouse agent vouchered the government, in Forgarty's name, for 666 days SIT and delivery, which the government paid on September 26. On January 4, the Navy issued a demand against Fogarty for damage to the household goods in the amount of $1,447. The Navy set off the funds in issue after Fogarty denied the Navy's claim. Our Claims Group endorsed the Navy's action in its settlement.

Fogarty disclaims liability for the damage on the ground that at the time of the shipment's delivery to the member, Fogarty had no carrier liability under the GBL. Forgarty admits liability as a carrier for shipments delivered into SIT, but argues, notwithstanding the Navy's alleged extension of SIT, that after 180 days the shipment, by regulation, automatically converted from SIT to permanent storage, ending Fogarty's carrier liability, because the Navy did not notify Fogarty that it had authorized the SIT extension.

With respect to temporary storage at destination, Block 25 of the GBL provided the following:

> "SIT not to exceed 90 days is authorized at destn. Before effecting delivery to residence or placing in storage, carrier will notify the PPSO [personal property shipping office] specified in block 20."

Fogarty contends that:

> "If the original SIT period was to be extended it was incumbent upon the Navy to issue an SF FM 1200 indicating the original SIT period was extended from 90 days to 180 days or 270 days, the maximum period for extension of SIT within the authority of an installation transportation officer."[3] Fogarty refers to government regulation[4] that provides:

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[3]Fogarty states that it is only liable for any damage that may have been noted on a rider to the original inventory at the time of the shipment's conversion to permanent storage.

[4]DOD Personal Property Traffic Management Regulation, DOD 4500.34R, May 1986, Change No. 3, Dec. 1, 1987, The regulation in effect when the GBL was issued. See generally, 37 Comp. Gen. 287 (1957).

> "d [GBL] Termination After 180 Days SIT. [GBLs] of shipments in SIT after 180 days are terminated."

DOD 4500.34R, chapter 2, para. H, 6, d (May 1986), change no. 3 (Dec. 1, 1987).

The consequence of a GBL termination after expiration of the SIT period is described in the current DOD 4500.34R as follows:

> "...When a shipment remains in storage beyond the SIT entitlement period, carrier liability shall terminate at midnight of the last day of the SIT period, the Government Bill of Lading character of the shipment shall cease and the warehouse shall become the final destination of the shipment. At this time, the warehouseman shall become the agent for the property owner and the shipment becomes subject to the rules, regulations, charges and liability of the warehouseman...."

DOD 4500.34R, ¶ 6000b (4) (Oct. 1991). In sum, Fogarty argues that when the SIT period ended no later than the 180th day, its carrier liability ceased as described above.

We disagree. The shipping documents required Fogarty to take two steps before terminating its carrier's liability by placing the shipment in permanent storage. First, the GBL required Fogarty to give the government notice before removing the shipment from SIT and placing it into non-temporary storage.[5] This provision provides a mechanism by which the government can advise Fogarty whether it has extended SIT on a particular shipment. There is no showing in the record that Fogarty gave the required notice. Second, the standard Tender of Service required Fogarty to annotate the shipment's original inventory upon change of custody from Fogarty to the permanent storage warehouseman. There is no indication that Fogarty did this either.

Finally, Fogarty's warehouse agent billed the government, in Fogarty's name, for 666 days of SIT and was duly paid for it. Since the shipment remained in SIT, albeit with

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[5]This is similar to the Interstate Commerce Commission requirement that a household goods carrier holding goods in SIT give a shipper 10 days notice in writing of (1) the date of the shipment's conversion to permanent storage, (2) the time frame in which the shipper may file loss and/or damage claims against the carrier, and (3) the fact that on the date of conversion, the liability of the carrier shall terminate. 49 C.F.R. § 1056.12(c) (1993).

Fogarty's warehouseman agent, Fogarty's carrier's liability for any loss or damage during the entire move remained intact.

Furthermore, Section 131(b)(2)(C) of the Uniform Services Pay Act of 1981, P.L. 97-69, 37 U.S.C. § 406(b)(1)(A), provides:

> "[t]emporary storage in excess of 180 days may be authorized."

The military implemented this authority in Part C, Section M8100 of the July 1, 1985 edition of the Joint Travel Regulation (JTR) in a manner that (1) permitted the authorization of temporary storage when conditions beyond the member's control precluded withdrawal within the time limitation and (2) allowed the authorization to be made either in advance of the deadline or subsequently, as follows:

> "a. General Limitation. A member will be entitled to temporary storage at Government expense for a period of 90 days in connection with any authorized shipment of household goods. In any case when household goods are not removed from storage before expiration of the initial 90-day period, all storage charges accruing after expiration of the initial 90-day period will be borne by the member unless additional storage is authorized under this paragraph.
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> "c. Temporary Duty or Deployment in Excess of 90 days for an Indefinite Period. When because of conditions beyond control of the member, household goods in temporary storage at Government expense under the provisions of this paragraph cannot be withdrawn during the time limitations prescribed in subpars. a [90 days] and b [180 days], additional storage may be authorized in advance or subsequently approved by the member's commanding officer, order-issue authority, or such other officer as the Service may designate. (Emphasis supplied.)

While it is true that another regulation, DOD 4500.34R, chapter 2, para. J, 6 Da (May 1986), change no. 3, (Dec, 1, 1987) states that:

> "PPGBLs of shipments in SIT after 180 days are terminated."

We read this as merely repeating the general rule that without authorization SIT terminates after 180 days. This understanding is confirmed by change no. 5 (Dec. 1, 1989), which provides that:

> "d. PPGBL Termination After 180 Days sit. You are not required to issue a PPGBL correction notice (SF1200) to terminate a PPGBL after 180 days SIT. Termination automatically occurs at midnight of the 180th day. However the PPGBL may extended by the authorized ITO. PPGBL may be extended by the authorized ITO from the 181st day to the 270th day. Any extension in excess of 270 days requires approval of the MACOM, or as directed according to the individual service regulations...." (Emphasis supplied.)

Thus, the version of DOD 4500.34R applicable to the instant shipment (change no. 3) simply did not address the procedures for granting extensions of SIT, and a later version (change no. 5) only addresses the matter up to 270 days and then directs the reader to other authorities and other regulations for guidance on extension in excess of 270 days. The JTR provides that direction and, as apparently happened here, allows the subsequent approval (i.e., approval granted after the shipment has exceeded the applicable time limit) of extensions in excess of 180 days.

As an alternative ground for avoiding its carrier's liability, Fogarty argues that it is not liable because it never received the DD Form 1840R giving notice of later discovered loss and damage.[6] The Joint Military/Industry Memorandum of Understanding on Loss and Damage provides that written documentation advising the carrier of later discovered loss or damage, if dispatched not later than 75 days following delivery, shall be accepted by the carrier as overcoming the presumption of the correctness of the delivery receipt. Consequently, the carrier is presumed liable for damage set out in a DD Form 1840R dispatched by the service to the carrier within 75 days of delivery.[7]

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[6]According to the Military-Industry Memorandum of Understanding, upon delivery a carrier is responsible for providing the member a copy of the standard from Joint Notice of Loss or Damage at Delivery (DD Form 1840), the reverse of which is the Notice of Loss or Damage (DD Form 1840R) used to report damage discovered later.

[7]The dispatch date entered on the DD Form 1840R, is the relevant date under the Memorandum of Understanding for purposes of the 75-day requirement. See National Forwarding Co., Inc., B-238982, June 25, 1992.

The carrier remains liable notwithstanding its alleged nonreceipt of the DD Form 1840R. See generally, Cartwright Van Lines, Inc., B-243746, Aug. 16, 1991.

The settlement is affirmed.

for Seymour Efros
Robert P. Murphy
General Counsel