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Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Carlyle Van Lines, Inc.--Claim for Reimbursement of Amount Collected by Setoff for Damage to Household Goods

File: B-257884

Date: January 25, 1995

DIGEST

When a prima facie case of carrier liability has been established, the burden shifts to the carrier to rebut that liability. When the nature of the internal damage to an item is consistent with its having been mishandled or dropped and the shipper states the item was in working order at the time of tender, the mere lack of external damage is not sufficient proof to rebut the carrier's liability.

DECISION

This is in response to an appeal of our Claims Group's settlement which denied the claim of Carlyle Van Lines, Inc., for refund of $121 collected by setoff for damage to a television. We affirm the Claims Group's settlement.

On February 1, 1991, Carlyle picked up the household goods of Staff Sergeant Michael P. Basye in Tacoma, Washington, and shipped them under Government Bill of Lading TP 831,834 to San Antonio, Texas, with delivery on February 25, 1991. At the time of delivery, the member tried the television and discovered that it was broken. He stated that the television was used and functioned properly just prior to tender to the carrier. The member and the carrier's agent filled out a Form 1840 noting the damage. The member obtained a repair estimate of $196.56. The Army adjusted the cost of the repair parts due to depreciation and allowed $121 of the member's repair claim. The repairman indicated that the malfunction was caused by a broken main current circuit board due to mishandling or dropping of the television. After settling the member's claim, the Army claimed that amount from Carlyle, eventually collecting by setoff. Through its agent, Resource Protection, Carlyle claimed reimbursement of the $121, and the Claims Group denied the claim.

In its appeal Resource Protection denies Carlyle's liability, noting that there was no evidence of negligence such as external damage, and in support of its argument cites two Comptroller General decisions for the proposition that a carrier is not liable for internal damage without proof of negligence as evidenced by external damage. Because the member tried the television at delivery to check its condition, Resource Protection argues that the member must have been aware of a pre-existing malfunction.

A prima facie case of carrier liability is established by a showing that the shipper tendered property to the carrier, that the property was not delivered or was delivered in a more damaged condition, and the amount of the damages. See Missouri Pacific Railroad Co. v. Elmore & Stahl, 377 U.S. 134 (1964). The burden of proof then shifts to the carrier to rebut the prima facie liability.

In Department of the Army, B-255777.2, May 9, 1994, we dealt with a video cassette recorder (VCR) which was inoperable upon delivery by a carrier. The record indicated that the VCR had sustained a broken circuit card. The shipper indicated that the VCR had been tendered to the carrier in working order, and we did not question the shipper's statement to that effect. A prima facie case of carrier liability had been established, and the burden of proof shifted to the carrier to rebut its liability. Since a circuit card is a normally sturdy component and since the damage was consistent with the item having been dropped, the carrier had not rebutted the prima facie liability.

In the present situation a prima facie case of carrier liability was established against Carlyle, and the burden then shifted to Carlyle to rebut that liability. The Army accepted the member's statement that the television was operational until it was tendered to the carrier, and we have no reason to question the Army's determination. The fact that the member tried the television to determine its condition at delivery does not call his statement into question. Due to the nature of the damage which the repairman observed, he gave an opinion that the television had been mishandled or dropped. While there was no external damage, the type of damage sustained was consistent with the item having been dropped.

Resource Protection calls our attention to two decisions in which the carrier was not liable for damage to electronic equipment. These decisions are not applicable to the present situation. In both B-252763.2, June 29, 1993, and Interstate Van Lines, Inc., B-197911.5, June 22, 1989, we said a prima facie case of carrier liability had not been established because the record contained no evidence that the items in question were in proper working order at tender.

In contrast, a prima facie case of carrier liability has been established in the present situation. Since Carlyle has not rebutted that case, the Claims Group's settlement is affirmed.

Robert P. Murphy
General Counsel