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B-176436

October 12, 1972

C. I. Whitten Transfer Co.
P. O. Box 1833
Huntington, West Virginia 25719

Attention: Mr. L. D. Puffenberger
Traffic Manager

Gentlemen:

Further reference is made to the request in your letter of June 19, 1972, for review of the settlement (TK-942130) which disallowed your claim (CB-6032 O/C 1-051) for \$337.25 in additional freight charges on a shipment of 15 wooden boxes of ammunition for cannon with explosive projectiles weighing 795 pounds. The shipment was tendered on June 18, 1969, to Tri-State Motor Transit Company at Milan Army Ammunition Plant, Milan, Tennessee, for transportation under bill of lading E-6894349 to Camp Drum, Watertown, New York.

The payment record shows that for the transportation of this shipment your company, as delivering and billing carrier, already has been paid charges of \$337.25 which were computed on a minimum weight of 2,500 pounds at the rates of \$5.97 and \$9.52 per hundred pounds published to and beyond Jeffersonville, Indiana. In urging payment of a like additional amount of \$337.25, you state that a second freight movement was necessary because 10 of the boxes in the shipment were found astray at the origin carrier's terminal which resulted in your company not receiving those 10 boxes from the origin carrier at the Jeffersonville, Indiana interchange until after the first five boxes already had moved forward to final destination. You contend that the additional charges claimed are due the carriers because the Government prepared the bill of lading and incorrectly showed the quantity shipped as five boxes instead of 15 boxes. It is apparent that 15 boxes were tendered to the origin carrier when it accepted Government bill of lading E-6894349.

PUBLISHED DECISION
52 Comp. Gen. _____

Section 219 of the Interstate Commerce Act, 49 U.S.C. 319, incorporates into Part II of the Act Section 20, paragraphs (11) and (12) of Part I, which paragraphs provide, among other things, that a common carrier receiving property for transportation in interstate or foreign commerce shall issue a proper bill of lading for each shipment of goods delivered to the carrier for transportation. See, also, Chicago, M. St. P. & P. R. Co. v. Acme Fast Freight, 336 U.S. 465, 469 (1949); Independent Lock Co. v. Acme Fast Freight, 116 N.E. 2d 841, 843 (1953); and Valco Mfg. Co. v. C. Richard & Sons, 92 A. 2d 501, 504 (1952).

Thus, the duty for issuing an appropriate bill of lading is the responsibility of the carriers and not the shipper. See United States v. Southern Pacific Co., 325 I.C.C. 200, 209 (1955). The fact that it is not uncommon for shippers to prepare bills of lading for execution by carriers' agents does not relieve the carriers of their duty of ensuring that the bill of lading prepared by the shipper is correct in all respects. The Interstate Commerce Commission has repeatedly found that an obligation lawfully rests on carriers' agents to refrain from executing bills of lading that cannot lawfully be complied with or which contain conflicting or erroneous entries. See Exposition Cotton Mills v. Southern Ry. Co., 234 I.C.C. 441, 442 (1939); Essee Flow Corp. v. Illinois Central R. Co., 287 I.C.C. 281 (1952); and St. Louis Cooperage Co. v. Baltimore & Ohio R., 161 I.C.C. 258 (1930).

Since responsibility for the issuance and the accuracy of the bill of lading is the responsibility of the carriers, the Government, as a shipper, cannot be required to pay double freight charges on a shipment because the carriers failed in the performance of their duty to execute a proper bill of lading and transported the shipment as two separate freight movements.

Accordingly, the settlement issued to your company on March 22, 1972, which disallowed your claim for an additional \$337.25 on this shipment appears to be correct and is sustained.

Very truly yours,

RF.KELLER

'Deputy' Comptroller General
of the United States