COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

30953

B-177076

May 22, 1973

North American Van Lines
Law Department
P. O. Box 938
Fort Wayne, Indiana 46801

Attention: Michael L. Harvey, Esq.

Gentlemen:

Subject: Contract A-14470
National Industries

There has been referred here your letter of January 26, 1973, in which you request that our Transportation and Claims Division reconsider its denial of your company's (hereafter North American's) claim for transportation charges in the amount of $954 on a shipment of furniture from National Industries, Inc. (National), Edenton, Maryland, to the Veterans Administration Hospital in Omaha, Nebraska, which was delivered on August 23, 1971.

The furniture was purchased by the Government f.o.b. destination, freight to be borne by National. National shipped the furniture on a commercial bill of lading executed by North American, so marked that the freight was shown as "prepaid" but also indicating that the shipment was to be delivered to the consignee without recourse on the consignor and the carrier should not make delivery without payment of the freight and all other lawful charges. Your company, after attempting without success to collect the freight charges from National which you say went out of business--and subsequent to the Government paying it the contract price for the furniture--made claim against the United States for the freight charges.

You indicate that the Division cited cases holding that the obligation rests on carriers' agents to refrain from executing bills of lading which cannot lawfully be complied with or which contain conflicting or erroneous entries. It is your contention, however, that a review of our records will confirm that the bill of lading was executed by the shipper and not North American.

PUBLISHED DECISION
52 Comp. Gen. _____

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While our records indicate that the bill of lading was prepared by the shipper, as indicated in the division's letter, it is the responsibility and duty of the carrier, and his alone, to execute the bill of lading. 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, 49 U.S.C. 20(11) and 20(12), 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, Valco Mfg. Co. v. C. Richard & Sons, 92 A. 2d 501, 504 (1952). Also, the very definition of a bill of lading indicates it is a document issued to a shipper by a transportation agent. See, for example, Uniform Commercial Code, Section 1-201.

Thus, 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. A shipper may prepare a bill of lading, but the carrier must execute it. Exposition Cotton Mills v. Southern Ry. Co., 234 I.C.C. 441, 442 (1939). The issuance of the bill of lading is the responsibility of the carrier, not the shipper or consignee. See United States v. Southern Pacific Co., 325 I.C.C. 200, 209 (1965), and Combined Bill of Lading - Freight Bill Allowance, 323 I.C.C. 163 (1964).

It is also your contention that the facts in this case are dissimilar to those considered in United States v. Mason & Dixon Lines, 222 F. 2d 646 (1955). The bill of lading considered therein was marked prepaid, whereas the bill of lading here involved contains both the notations indicating freight was prepaid and the initialed no recourse clause which may have put the Government on notice of the possibility that it might be called upon to pay transportation charges not paid by the shipper.

In Chicago Great Western R. Co. v. Hopkins, 48 F. Supp. 60 (1942), and in Illinois Steel Co. v. Baltimore & Ohio R. Co., 320 U.S. 508 (1943), wherein both the no recourse and prepaid clause were included in the bill of lading contract, the courts gave effect to both clauses stating that any apparent inconsistency must be reconciled, if possible. However, both cases hold that the consignor was not liable for an additional amount in addition to the freight already paid, and therefore did not involve liability for the full amount of the transportation charges, as is the case here.

By stamping the bill of lading "prepaid," your company at least represented that some part of the charges were prepaid whether or not the Government because of the inclusion of the no recourse clause could be held liable for any supplemental freight charges not paid by the shipper at origin. But the freight prepaid notation at least amounted to a representation that some part of the freight was paid. Your claim is not for any supplemental freight charge but the whole of the freight charges on the shipment. Therefore, it is our position that in this instance the Government's liability has not been established, and the carrier is estopped from collecting the freight charges. See Southern Pacific Company v. United States, 243 F. Supp. 834 (1950); Missouri Pacific Railroad Co. v. National Milling Co., 409 F. 2d 882 (1969).

It is also your contention that Consolidated Freightways Corporation of Delaware v. Admiral Corporation, 442 F. 2d 58, 60 (1971), is not relevant in that such case involved a failure of the carrier to bill the shipper-consignor within the 7-day credit limitation, and North American billed National within the 7-day period. We agree that the additional evidence furnished us indicates that North American Van Lines repeatedly attempted to obtain payment from National, but the carrier, by its action in so treating the shipment as prepaid and its failure to promptly notify the Government of the difficulty in collecting its charges from the shipper until after payment was made to the contractor, deprived the Government of ample notice so that it could protect itself by withholding the freight charges from monies otherwise due the contractor.

We also note that your letter states only 90 days elapsed before the Government was billed, and hence the notice was not unreasonably delayed. However, our records indicate that approximately 140 days elapsed from the delivery date of August 23, 1971, and the date your invoice dated January 5 or 6, 1972, was received. At any rate the notice of your claim was received after the date the contractor-consignor had been paid, and if as you contend the Government as consignee is liable for the freight charges, the Government would in effect be paying twice for the transportation charges.

It is also to be noted that the Consolidated Freightways case, supra, states at page 61:

> We discern nothing in the language or policies of Section 223 (Section 223 of the Motor Carriers Act, 49 U.S.C. 323) to suggest that Congress intended to impose absolute liability upon a consignee for freight charges. Nor do we believe that the application of equitable estoppel against plaintiff's claim circumvents the policies of that Section.

Therefore, it is our view that the action taken by our Transportation and Claims Division in disallowing North American's claim was correct and it is sustained.

Sincerely yours,

PAUL G. DEMBLING

For the Comptroller General
of the United States