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*The Feldman
Trans.*

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20040**

FILE: B-185132

DATE: December 22, 1976

MATTER OF: Consolidated Freightways

DIGEST: When bill of lading is annotated with a legend indicating "shipper's load and count" by carrier's representative burden is on the shipper to show proper and correct loading. In the absence of evidence such as a loading tally sheet or affidavit of shipper's employee as to number of cases loaded or other documentation, clean bill of lading does not fulfill this burden.

Consolidated Freightways (Consolidated) requests review of a Settlement Certificate dated January 30, 1976, in which the Claims Division of the General Accounting Office disallowed its claim for \$416.90. The claim was for reimbursement of damages collected from Consolidated for the value of one carton allegedly lost from a shipment transported under Government bill of lading (GBL) No. K-5239731 from Dover Air Force Base (Dover AFB), Delaware, to Hill Air Force Base (Hill AFB), Utah, in May 1974.

Consolidated asserts that the shipment moved under GBL No. K-5239731 on a shipper's load and count basis and that the shipment was received from the shipper, Dover AFB, one carton short. Initially, the shipper claimed that the shipment did not move on a shipper's load and count basis and that no seals were applied to the trailer. Dover AFB argued that the carton was lost in transit while in the control of the carrier.

The bill of lading indicates that Consolidated Freightways, via its agent Dover Trucking Co., picked up 28 pieces of freight all kinds weighing a total of 2,710 pounds at Dover AFB. The shipment, consigned to Hill AFB, was loaded by the shipper on trailer No. 20-4800 on May 17, 1974. No seals were applied and the carrier's driver did not inspect or count the load even though ordinary inspection by the driver was possible. The shipment was off-loaded at York, Pennsylvania, on May 24, 1974. At that time it was discovered that the shipment checked one short and three over. The next day, an employee at the York terminal notified Dover AFB of

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these exceptions, the 27 pieces were forwarded to Hill AFB and the overages were returned to Dover AFB for proper identification. The discrepancy report received from the consignee reflects that delivery was made at Hill AFB on trailer No. 29-5805 indicating trailer transloading by Consolidated. There is no evidence in the record indicating that additional pickups were made before the trailer arrived at York, Pennsylvania.

A careful review of the Government bill of lading shows that the notation SLC [shipper's load and count] appears next to the signature of the carrier's agent. Thus, despite the fact that this shipment did not move under seal and was a less than truckload shipment, the carrier's agent affixed the letters "SLC" on the bill of lading. This was done to indicate that the trailer was loaded by the shipper. Apparently Dover AFB does not dispute that the shipment moved on a shipper's load and count basis. It reports to us that:

"Eventho [sic] the carrier's representative marks the GBL as SLC it is of no consequence regarding this particular move because the SL&C notation on the GBL applies only in that leg of the movement where the shipper loads and up to the point where the carrier transloads. It invalidates the SL&C protection for the rest of the journey."

However, Dover AFB was immediately notified of the shortage when the trailer arrived at York, Pennsylvania.

Where the carrier loads loose goods consigned for carriage, and issues its bill of lading, the bill of lading establishes the description and number of items shipped, since the bill of lading is the contract and receipt for the goods, and the carrier is under a duty to count and observe the packages and to issue an accurate bill of lading. 49 U.S.C. § 100 (1970). But cf. Strohmeier & Arpe Co. v. American Line S.S., 97 F.2d 360 (2d Cir. 1938). Conversely, where the goods are packed by the shipper and delivered to the carrier under seal, or otherwise, or where the bill of lading is properly marked "shippers load and count," no presumption of any kind arises upon the description contained in the bill of lading, and it remains incumbent upon the shipper to prove that the goods claimed to have been lost

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or damaged were actually delivered to the carrier in good condition. Dublin Co. v. Ryder Truck Lines, 417 F.2d 777 (5th Cir. 1969); Minneapolis, St. P. & S.S. M. R.R. v. Metal-Matic, Inc., 323 F.2d 903 (8th Cir. 1963); B-160427, December 28, 1966.

Section 21 of the Bills of Lading Act, 49 U.S.C. § 201 (1970) provides:

"The carrier may also by inserting in the bill of lading the words 'Shipper's weight, load, and count,' or other words of like purport, indicate that the goods were loaded by the shipper and the description of them made by him; and if such statement be true, the carrier shall not be liable for damages caused by * * * the nonreceipt * * * of the goods described in the bill of lading * * *"

As noted above, a bill of lading containing the words "Shippers load and count" places the burden of proof of proper and correct loading upon the shipper, and the bill of lading without additional evidence does not satisfy this burden. Dublin Co. v. Ryder Truck Lines Inc., *supra*. The bill of lading and an affidavit of an employee of the shipper with personal knowledge of the number of cases loaded would fulfill the shipper's burden. United States v. Louisville and Nashville R.R., 389 F. Supp. 250 (M.D. Ala. 1975).

In the instant case, the bill of lading is the only evidence which indicates how many cases were loaded. There is no loading tally sheet or other documentation such as an affidavit. Therefore, the shipper has not met its burden of showing proper and correct loading and carrier liability for the lost carton has not been established.

We have today instructed our Claims Division to reopen the settlement and to allow Consolidated's claim, if otherwise correct.


Deputy Comptroller General
of the United States