DECISION

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

615111 98012

FILE: DATE: SEP 20 1976

MATTER OF: B-185784

Chandler Trailer Convoy, Inc.

DIGEST:

1. Government cannot hold mobile home manufacturer liable for en route damage to mobile home because of alleged decrease in construction quality because specific statute, Carmack amendment, to Interstate Commerce Act, 49 U.S.C. 20(11) (1970), governs rights and liabilities of parties to bill of lading contract. Under Carmack amendment carrier is liable for all damage to goods transported by it unless it affirmatively shows damage occasioned by shipper, acts of God, public enemy, public authority, inherent vice or nature of commodity. United States v. Gulf, Mobile & Ohio R.R., 259 F. Supp. 704, 707 (E.D. La. 1966).

2. Assuming arguendo that Carmack amendment did not exist, it would still be impossible to hold manufacturer liable as there is no privity of contract between it and parties to bill of lading contract. State v. District Court of Third Judicial Dist., 420 P.2d 845, 847 (Montana 1966).

3. Member's claim was settled under Military Personnel and Civilian Employees' Claim Act of 1964, as amended, 31 U.S.C. 240-243 (1970). Claim is eligible for payment if claim is substantiated and not caused by negligent or wrongful act of claimant.

4. Agents of United States do not have authority or discretion to waive any provisions of a statute. Munro v. United States, 303 U.S. 36 (1938); United States v. Garbutt Oil Co., 302 U.S. 528 (1938); Finn v. United States, 123 U.S. 227 (1887).

5. B-185784, June 25, 1976, 55 Comp. Gen. _____, affirmed.

Chandler Trailer Convoy, Inc. (Chandler) in its letter of July 30, 1976, requests reconsideration of our decision of June 25, 1976, B-185784, 55 Comp. Gen. _____. In the decision we sustained

in part our Claims Division's settlement of November 28, 1975, which disallowed Chandler's claim for a refund of $1,942.66, which the Government as a subrogee collected by setoff for damage to a mobile home owned by a member of the military and transported by Chandler under Government bill of lading No. H-5671932 during January 1974.

Chandler states that proper consideration and expertise was not considered in the settlement of its claim. Specifically, Chandler contends that because of a decrease in construction quality the mobile home manufacturer and not the carrier should be held liable for the damage to the mobile home, and that the Government was wrong when it paid the member's claim for damages to his mobile home.

The answer to its first contention is that the Government must proceed against the carrier because there is a specific statute, the so-called Carmack amendment, to the Interstate Commerce Act, 49 U.S.C. 20(11) (1970), which governs the rights and liabilities of the parties to the bill of lading contract. Under the Carmack amendment the carrier is liable for all damage to the goods transported by it unless it affirmatively shows that the damage was occasioned by the shipper, acts of God, acts of the public enemy, public authority, or the inherent vice or nature of the commodity. United States v. Gulf, Mobile & Ohio R.R., 259 F. Supp. 704, 707 (E.D. La. 1966).

The overall purpose of the Carmack amendment is to impose a single uniform federal rule on obligations of carriers operating in interstate commerce. Rocky Ford Moving Vans, Inc. v. United States, 501 F.2d 1369 (8th Cir. 1974). One court stated that its main purpose is to place liability on either the receiving carrier or the delivering carrier for loss and damage caused by any carrier over whose lines the shipments traveled, so that a shipper would not have to determine where the loss or damage occurred and seek legal redress only where the proper venue lay with respect to the culpable carrier. United States v. Seaboard Coastline R.R., 384 F. Supp. 1103, 1105 (E.D. Va. 1974). The statute allows a single suit against the carrier for the full loss to the property and avoids multiplicity and circuity of court suits. Thompson v. H. Rouw Co., 237 S.W.2d 662 (Ct. of Civ. App. Tex. 1951). Thus, it would defeat the purpose of the Carmack amendment, if the Government, or any wronged party, had to seek out some unknown manufacturer and attempt to hold him liable.

Assuming arguendo that the Carmack amendment did not exist, it would still be impossible to hold the manufacturer liable as there is no privity of contract between it and the parties to the bill of

lading contract, namely Chandler and the Government. Privity as used with respect to contracts implies a connection, mutuality of will or an interaction of parties. State v. District Court of Third Judicial Dist., 420 P.2d 845, 847 (Montana 1966). The manufacturer did not contract with Chandler to transport the mobile home; the Government did. A contract for the sale of a mobile home is entirely separate from a contract for its transportation.

We will not attempt to defend the action of the administrative office in paying the member's claim for damage to his mobile home, but we do feel that an explanation may be helpful.

Again, we are dealing with statutory authority. The member's claim was settled under the Military Personnel and Civilian Employees' Claim Act of 1964, as amended, 31 U.S.C. 240-243 (1970). The statute provides for the settlement and payment of claims for damage to, or loss of, personal property incident to the members' service. The claim has to be substantiated, and, among other things, not caused wholly or partly by the negligent or wrongful act of the claimant. Therefore, when the member presented his estimates of damage (three are required by regulation), and his only act was to tender his mobile home to a common carrier incident to a transfer of station under orders, it follows that the claim would be eligible for payment.

Claims are settled by the General Accounting Office on the basis of facts and evidence as contained in the record and within the confines of applicable statutes, regulations, and case law. Since we are dealing primarily with the Carmack amendment here, the rights and duties of the parties are governed by that amendment. See Pennsylvania R.R. v. Greene, 173 F. Supp. 657 (S.D. Ala. 1959). And agents of the United States Government do not have the authority or discretion to waive any provisions of a statute. Munro v. United States, 303 U.S. 36 (1938); United States v. Garbutt Oil Co., 302 U.S. 528 (1938); Finn v. United States, 123 U.S. 227 (1887).

We realize that the carrier has a heavy responsibility of proof under the Carmack amendment but this is because the carrier has within its knowledge the facts which may relieve it of liability. United States v. Seaboard Coastline R.R. supra. If there are peculiarities in the transportation of mobile homes that would distinguish mobile home carriers from having the same obligations and liabilities under the Carmack amendment as other common carriers in interstate commerce, and we know of none, it would be necessary for the mobile home carriers to petition Congress for a change in the law.

In summary, the rights and liabilities of the parties to the contract represented by Government bill of lading No. H-5671932 are settled by the Carmack amendment and the applicable case law, and the Government cannot and is not required to pursue any claim against the manufacturer.

No evidence has been presented by Chandler to warrant a change in our decision of June 25, 1976, and it must be and is affirmed.

R.F.KELLER
Comptroller General
[Deputy] of the United States