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DECISION

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

[Claim for Amount Set Off Under Carrier Liabil

FILE: B-193182 DATE: March 18, 1981

MATTER OF: Paul Arpin Van Lines, Inc.

DIGEST:

Where record indicates doubt as to condition of property when tendered to carrier for shipment and condition of goods when delivered, Government has not established prima facie case of carrier liability, and carrier cannot be held liable for damage.

Paul Arpin Van Lines, Inc. (Arpin), appeals a settlement of our Claims Group (Claims) which disallowed its claim for $72. This amount was set off from monies otherwise due Arpin for damage sustained to a sofa which was contained in a shipment of household goods belonging to Captain Spencer Burnette. The shipment was transported from Wrightstown, New Jersey, to Fort Benning, Georgia, under GBL M-2478388, dated June 8, 1977.

In its Settlement Certificate of October 22, 1980, Claims determined that Arpin had failed to rebut the prima facie case of bailee negligence and carrier liability in accordance with 49 U.S.C. § 20(11) (1976) and the standards established in Missouri Pacific Railroad Co. v. Elmore & Stahl, 377 U.S. 134 (1965). Arpin contended that the specific damages asserted by the Department of the Army existed upon receipt of the sofa and were noted at that time as preexisting damage. Claims rejected the contentions referring to Army records which indicated that the sofa sustained additional damage while in Arpin's possession.

We do not believe the Government can establish a prima facie case of carrier liability because of substantial doubt in the record as to whether the damages claimed were preexisting or not.

To establish a prima facie case of carrier liability, the facts must show that (1) the shipment was tendered

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to the carrier in good condition, (2) the property was delivered by the carrier in damaged condition--here, in a more damaged condition than when tendered to the carrier, and (3) the amount of damages. A prima facie case shifts the burden of proof to the carrier to show that it was not liable for the damage. The record fails to establish two of the three elements of liability: that the goods were tendered to the carrier in good condition, and that the carrier delivered the property in a more damaged condition.

The inventory of Captain Burnette's property, prepared by Arpin at origin, shows that the sofa was torn on the right side, bottom and front, and that it was badly worn and soiled. Arpin's rider to the inventory indicated other damage. It states that the front legs were broken, that the arms were badly soiled, that the sofa was very old, and that the damage to the frame was hidden under a skirt.

The Army submitted three reports as evidence supporting its view that additional damage was incurred after it was tendered to Arpin. The DD Form 1845, Schedule of Property, indicated that the frame and legs were broken. This form was submitted to the carrier. The DD Form 1841, Government Inspection Report, indicated that the frame was destroyed and that all the legs were broken. Apparently, the DD Form 619-1, Statement Of Accessorial Services Performed, is the source of a claim for "paint splotches on left arm."

Arpin contends that the Army's reports of additional damage do not substantiate the claim that the carrier caused the damage. In effect, it is Arpin's position that the DD Form 1845 is the best evidence of the sofa's condition upon delivery and, except for the frame, it reflects only pre-existing damage. It had the following notation: "frame broken torn legs broken." Arpin believes this limited description on the DD Form 1845 fails to support the Army's current position as reflected in its Liability Analysis form; it shows that the frame was destroyed, that all the legs were broken, that there were paint splotches on the sofa; and that, in essence, the sofa was destroyed. Arpin concludes that there is no factual support for this analysis in the record, and we agree.

It is our view that Arpin's notation on the rider that the sofa arms were badly soiled includes paint damage. Moreover, the DD Form 1841, signed by both Captain Burnette and by an Army inspector, who personally inspected the articles subsequent to delivery, does not mention this damage. In the

past, we have given great weight to such inspections. See 57 Comp. Gen. 415 (1978). Therefore, paint damage, if being claimed, existed at origin.

There is doubt, also, as to whether there was additional damage to the legs. Arpin's rider showed that the front legs were broken prior to transport. The Army later charged the warehouseman, the custodian of the goods prior to receipt by Arpin, for this damage. The DD Form 1841 states that all the legs were broken; however, the Schedule of Property form (the DD form 1845) states merely that legs were broken, without specifying how many or which legs. Thus, the extent of the damage to the legs, beyond preexisting damage, is not clear.

With regard to the frame damage, a sofa frame is not visible upon reasonable inspection because of upholstery covering; therefore, it is in the nature of concealed damage, and the carrier accepted the shipment only in "apparent" good order and condition. It is doubtful that the Government could show the condition of the frame at origin, especially in view of the extensive preexisting damage to the sofa, generally, at origin. Cf., Hoover Motor Express Co. v. United States, 262 F.2d 832 (6th Cir. 1959); Ideal Plumbing and Heating Co. v. New York, New Haven and Hartford Railroad Co. 124 A.2d 908 (Sup. Ct. Conn. 1956); Wells Laundry & Linen Supply Co., Inc., 85 A.2d 907 (Sup. Ct. Conn. 1952).

Under these circumstances, we do not believe that the Government has a prima facie case of carrier liability; therefore, today, we are instructing our Claims Croup to allow Arpin's claim for $72.

Milton J. Socolar

Comptroller General
of the United States