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DECISION

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

[Liability of Carrier for Mobile Home Damage]

FILE: B-194208 DATE: August 13, 1979

MATTER OF: Chandler Trailer Convoy Inc. CNV 00556

DIGEST:

1. Carrier's bare statement that mobile home was not involved in collision does not establish that inherent vice was sole cause of damage.

2. Law makes carrier responsible for damage which, in fact, may not be due to its fault, in absence of proof of facts relieving it of liability.

3. In absence of competent evidence proving carrier's allegation of defense of inherent vice, or of lower quantum of damage, GAO must disallow carrier's claim for amount set off by Army.

Chandler Trailer Convoy Inc. (Chandler) claims $891.76 set off by the Army from monies otherwise due the carrier to pay the Army's claim for damage incurred to a mobile home while in Chandler's possession for transportation.

The record shows that a 64-foot, 1973, mobile home was picked up on Government bill of lading No. M-2514831 at Columbus, Georgia, on December 5, 1977. Chandler's driver, who appears to have been Glen Howell, prepared a Pre-Move Inspection Record showing that, other than a hole on the front right corner, the unit was in fair condition.

The record also contains another Pre-Move Inspection Record. This one, dated December 19, 1977, was prepared by Leonard Mohler, Chandler's second driver, whose comments on the form disclose that Howell's truck broke down at Toms Brook, Virginia, while en route to destination, Dover, Pennsylvania. On taking over the transportation from Howell, Mohler noted the following results of his inspection:

> RIGHT SIDE: Front shutter bent down half Hanging, I put in trailer, Small dents, Rear corner damaged.
>
> LEFT SIDE: Rear corner damaged, small dents, scraped along top.

FRONT: Hole near bottom right corner.

REAR: Damaged on both Corners

The inspection report prepared by the Government inspector at destination substantially verified the damages noted by Mohler.

The Army's claim is based on the lowest of two estimates of repairs:

120' sq. ft. of siding material with holes	332.50
168 sq. ft. siding which is dented along top	462.00
1 pc bottom rail 12" x 12'	33.00
2 2x4x8 rear right corner	3.78
Labor to give estimate	10.00
	841.28
tax	50.48
	$891.76

Chandler apparently concedes that, by presentation of the two Pre-Move Inspection Records and the repair estimates, the Government establishes a prima facie case of carrier liability, although the amount of damages is challenged. But Chandler asserts that whatever damage occurred resulted from the inherent vice of the mobile home. The age and quality of the unit are factors stressed by the carrier, who explains that it is an old (1973) and inexpensive model, which was poorly constructed and is particularly susceptible to metal fatigue.

The defense of inherent vice under Missouri Pacific R.R. v. Elmore & Stahl, 377 U.S. 134 (1964), which Chandler would have us find here, has not been shown. The tendency of mobile homes to be damaged through flexing during transportation, inherent weaknesses of older units, and mere allegations of the carrier's freedom from liability do not establish the defense of inherent vice. The law

requires, in addition to proof of the existence of inherent vice, proof that the damage was due solely to that condition. See 56 Comp. Gen. 357 (1977), 55 Comp. Gen. 611 (1976), and B-193432, June 1, 1979. The bare statement that the mobile home was not involved in a collision and the assertion that the exact facts are never known are immaterial for a finding of sole cause, because in the absence of proof relieving it of liability the law makes the carrier responsible for damage which, in fact, may not be due to his fault. See Schnell v. The Vallescura, 293 U.S. 296, 307 (1934).

As to the amount of the damages, the Army offered to accept $445 in a compromise settlement, which Chandler rejected and made a counteroffer to settle the Army's claim for $250, believing that only two panels, costing $10 or $20 a piece, and a little corner molding would be sufficient to make repairs. Although the Army does not show whether the cost of repairs includes the cost to repair the pre-existing hole in the front of the unit, Chandler fails to allege or prove that it does. And in the absence of any competent evidence from Chandler concerning the reasonableness of the cost of repairs or the market value of the mobile home before and after transportation, we will accept the administrative determination of damages. See 57 Comp. Gen. 415 (1978). Further, where the cost of repairs is used as the measure of damage and the value of the repaired property is less than its value before the injury, the difference in value is also allowed. See Conditioned Air Corp. v. Rock Island Motor Transit Co., 114 N.W.2d 304 (Iowa 1962), cert. denied, 371 U.S. 825.

We conclude that the carrier has presented nothing of evidentiary substance that would justify this Office in refunding any of the monies deducted by the Army. Therefore, its claim is disallowed.

Acting Comptroller General
of the United States