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DECISION

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

[Appeal of Navy Setoff Action]

FILE: B-202117 DATE: May 20, 1981

MATTER OF: Chandler Trailer Convoy Inc.

DIGEST:

Where record indicates substantial doubt as to when damage to front of mobile home occurred, and amount of damages is not certain, Government has not established prima facie case of carrier liability, and carrier cannot be held liable for that damage.

Chandler Trailer Convoy Inc. (Chandler) appeals a setoff action by the Navy in the amount of $750. This setoff from monies owed for bill No. 132626 under Government bill of lading (GBL) M-6299201 was for damage sustained to a mobile home which allegedly occurred during transportation of the mobile home of Petty Officer Ralph Clark, from Charleston, South Carolina, to Atlantic Beach, Florida.

Clark submitted a claim for damage of $1,862 to the Navy because of damage allegedly caused by an accident in which a car collided with the back of the mobile home during its transportation by Chandler. There was damage to the left rear corner of the home at the point of the collision.

Chandler does not dispute its liability for the left rear damage and has agreed to pay for the repairs. However, apparently, a significant portion of the setoff against Chandler relates to structual repairs to the front exterior and interior of the home. Chandler argues that this damage to the front end was not caused by the collision, but, rather, was caused by the attempt by Clark to lift the home onto blocks. Chandler relies on information provided by its adjuster, who found that after delivery Clark improperly used an automobile jack to lift the unit, causing the damage to the front, since use of more than one jack is necessary to avoid stress to the frame when lifting onto blocks.

Where the Government can establish a prima facie case of carrier liability, the burden of proof shifts

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to the carrier to show that it was not liable for the damage. Missouri Pacific R.R. v. Elmore & Stahl, 377 U.S. 134, 138 (1964); 55 Comp. Gen. 1209 (1976). To establish a prima facie case of carrier liability the facts must show that (1) the shipment was tendered to the carrier at origin in good condition or at least in better condition than when received at destination, (2) the shipment arrived in damaged condition and (3) the amount of damages can be established. Missouri Pacific R.R., supra. Here, the record fails to establish two of the three elements of liability--that the shipment was delivered in the damaged state alleged by the Navy and the amount of damages.

Chandler has alleged that the substantial damage to the home occurred after delivery and as the result of actions by Clark. The record indicates that structural damage occurred to the front portion of the home, but not when this damage occurred. The accident was a rear-end collision and immediately after the collision, the only observable damage was minor dents in the rear of the home where the automobile hit the home. Also, the accident occurred at a relatively slow speed since both vehicles were approaching toll gates.

The delivery receipt dated May 19, 1978, the day of the accident, shows the home arrived in apparent good order and condition except for the damage to the rear corner of the home. Damage to the front was not noted. While a delivery receipt is not conclusive as to the condition of a shipment on delivery, see National Trailer Convoy, Inc., B-199156, March 5, 1981, there was no immediate claim for additional damage. A claim which covered the front-end damage was not brought until almost 2 months later. On August 9, 1978, Clark filed his DD 1842 claim for personal property damage against the United States in which he states that damage to the tongue and outrigger was observable prior to delivery. However, as noted above, no exception for this damage or damage to the front of the home was indicated on the delivery receipt.

We also note other information provided in the record. Chandler employed an adjuster to examine the mobile home who reported that, according to Clark's wife, the damage to the front was not discovered until 3 days after the mobile home was placed on blocks, and that on the day of delivery, Clark attempted unsuccessfully to do the lifting

by use of one automobile jack. It was the adjuster's opinion that the improper lifting could have been a cause of the front-end damage. The adjuster called the appraiser employed by Clark, who had not known about the attempt to lift the home onto the blocks at the time of his appraisal of the damage and who concurred that the lifting by Clark could have caused the damage. The adjuster further notes that the rear damage did not appear to bear any relationship to the front damage, i.e., the frame rails did not appear to have been driven forward from the rear.

The Navy investigator does not actually dispute this evidence, although he recommended setoff. He interviewed Clark's appraiser, who stated basically what he had told Chandler's adjuster--that it was almost impossible to determine the actual cause of the damage claimed. The Navy investigator also noted that Chandler's driver apparently started to help Clark with the lifting, but had to leave. However, this does not appear to be the basis for setoff. In any event, even assuming the driver and Clark were responsible for the damage, we note that delivery had already been completed, and the GBL does not indicate that the lifting was a part of the contract of carriage between Chandler and the Government. Therefore, we believe the driver's action was outside his scope of employment and not part of the transportation contract. Thus, it is doubtful that Chandler could be held liable in this instance for damage caused by his agent's unauthorized work after delivery was completed.

In its letter to Clark allowing him $750 for his loss, the Navy states as its reason for not giving him his full claim of $1,862 "the apparent uncertainty as to how the damage to your mobile home occurred." We believe this statement by the Navy and others contained in the record, i.e., "there's no clear determination where the fault lies," indicate the lack of a prima facie case of carrier liability.

With regard to the amount of damages, the Navy states at one point that $750 is considered to be a fair and reasonable amount based on the itemized repair bill provided by Clark's appraiser, but also states that the setoff amount is a "sharing of the damages." In addition to disclaiming liability for most of the damage, Chandler disputes this repair bill, stating it does not sufficiently evidence the cost of repair.

Under these circumstances, we do not believe that the Government has established that the carrier delivered the home in the damaged condition claimed nor has it established the amount of damages. Thus, the Government has failed to show a prima facie case of carrier liability. Therefore, the $750, less an amount for repair of the damage to the rear of the home not in dispute, should be refunded to Chandler. In this connection, we note that Chandler indicates it is liable for $75 for this damage. The Navy should ascertain the precise cost of the repair to the rear corner.

Milton J. Socolar

Acting Comptroller General
of the United States